

06-1207-CD

Ford Motor Credit Co vs Tom Mervman

Ford Motor vs Robert Mervman et al
2006-1207-CD

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04364385-

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CD

vs.

COMPLAINT IN CIVIL ACTION

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
PA I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

November 29, 2006 Document
Reinstated/Reissued to Sheriff/Attorney
for service. 1CC

William A. Shaw
Deputy Prothonotary

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11:30 AM
William A. Shaw
Prothonotary/Clerk of Courts

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IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No.

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation with offices at PO Box 6508, Mesa, AZ 85216-6548.
2. Defendant, Robert Merryman, is an adult individual residing at 501 Alder Street, Phillipsburg, PA 16866.
3. Defendant, Tom Merryman Trucking, Inc., is a Pennsylvania corporation with a last known address of 501 Alder Street, Phillipsburg, PA 16866 .
4. On or about February 16, 1998, the parties entered into a written Closed-End Lease Agreement (hereinafter referred to as the "Agreement") for the lease of a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413, more particularly identified in the Agreement, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.
5. By the terms of the Agreement, Defendant was to make 60 (monthly) payments of \$1,540.23, commencing May 11, 2000, and to pay certain license fees due at the inception of the lease and during the lease term.
6. The terms of said Agreement provide for termination upon satisfaction by Defendant of all obligations provided thereunder and upon the return of the vehicle by Defendant to Plaintiff at the end of the lease term, which term would end 60 (monthly) months after it commenced.

7. Plaintiff avers that Defendant defaulted under the terms of the Lease Agreement by failing to make payment to Plaintiff as promised.

8. Due to the Defendant's default under the Agreement, Plaintiff exercised its right to terminate the Lease.

9. After calculating the early termination charges due Plaintiff pursuant to the terms of the Lease, Plaintiff avers that a balance of \$66,796.69 as of June 13, 2006 is due from Defendant.

10. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

11. Plaintiff avers that such attorneys' fees will amount to \$1,500.00.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, Tom Merryman Trucking Inc., individually, in the amount of \$66,796.69 with continuing interest thereon at the legal rate 6.00% per annum from June 13, 2006 plus attorneys' fees of \$1,500.00 and costs.

COUNT II – AGAINST ROBERT MERRYMAN - PERSONAL GUARANTY

13. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if the same were set forth more fully at length herein.

14. On or about February 16, 1998, Robert Merryman executed a Closed-End Lease Agreement (hereinafter the "Agreement") in favor of Plaintiff, a true and correct copy of said Agreement is attached hereto, marked as Exhibit "1" and made a part hereof.

15. As further inducement for the extension of credit, Defendant, Robert Merryman, executed and delivered to Plaintiff his personal guaranty.

16. Pursuant to said Agreement, Robert Merryman took possession of the vehicle more particularly identified in the Agreement as a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413.

17. Plaintiff avers that Defendant is in default of the Agreement by having not made payment to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

18. Plaintiff avers that a payoff balance of \$66,796.69 is due from Defendant as of June 13, 2006.

19. Plaintiff avers that the Agreement between the parties provides that Plaintiff is entitled to interest at the rate of 6% per annum.

20. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's reasonable attorneys' fees.

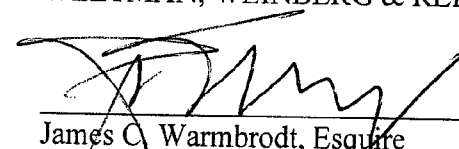
21. Plaintiff avers that such attorneys' fees amount to \$1,500.00.

22. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment on Count II against Defendant, Robert Merryman, individually, in the amount of \$66,796.69 with continuing interest thereon at the Contract rate of 6% per annum from June 13, 2006, plus attorneys' fees of \$1,500.00, and costs.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED SHALL BE USED FOR THAT PURPOSE.

WELTMAN, WEINBERG & REIS, CO., L.P.A.



James C. Warmbrodt, Esquire
PA/I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

COMMERCIAL LEASE AGREEMENT (TRAC)

TOM MERRYMAN TRUCKING INC ("Lessee") of RR3 BOX 428A, PHILIPSBURG, PA 16866, a CORPORATION organized under the laws of the State of PA, hereby leases from Ford Motor Credit Company, a Delaware corporation ("Lessor"), and Lessor hereby leases to Lessee, vehicles (hereinafter called "Leased Vehicles") designated and described from time to time in one or more Supplements ("Supplement(s)") hereto for use in lease service upon the following terms and conditions:

1. **USAGE.** All Leased Vehicles shall be leased by Lessee for use in Lessee's business in accordance with all applicable governmental and insurer requirements and limitations. All Leased Vehicles shall be inspected, prepared and equipped by Lessee in a manner approved by Lessor. No Leased Vehicle shall be removed from the United States for more than ninety (90) days during any (12) month period.
2. **TERM.** The term of lease as to each Leased Vehicle shall be as designated in the applicable Supplement.
3. **LEASE CHARGE.** (a) From time to time, Lessor will establish a lease rate which shall be expressed as a percentage of the Capitalized Cost of a Leased Vehicle. "Capitalized Cost" shall be the amount Lessor advanced to purchase the vehicle including all add-on equipment and service as well as applicable capitalized taxes. The monthly lease charge for each Leased Vehicle shall be based on the lease rate for such Leased Vehicle set forth in the Supplements. Lessee shall pay the monthly lease charge to Lessor for each Leased Vehicle in the amounts and on the dates set forth in the Supplement(s) to this Lease Agreement. In the event any monthly or other lease charges hereunder are not paid promptly when due, Lessee shall pay to Lessor, as an additional lease charge, interest on such overdue payment from the due date of such payment at a rate equal to the lesser of (i) 15% per annum or (ii) the maximum rate permitted by applicable law. All lease charges are due on the first day of each calendar month of the lease term. Lessee shall pay promptly to Lessor or its assignee as directed by Lessor all lease charges payable by it under this Lease Agreement without notice or demand and shall not be entitled to assert any setoff, counterclaim, deduction, recoupment or other defense for any reason.

(b) Lessor understands that Lessee may receive from manufacturers and vendors of the Leased Vehicles volume discounts, fleet rebates and dealer holdbacks ("Dealer Incentives") with respect to the Leased Vehicles, and Lessor has agreed that Lessee may retain any and all Dealer Incentives Lessee may receive as a result of leasing such Leased Vehicles with no duty to account to Lessor for such Dealer Incentives, except as may otherwise be agreed by the parties under a separate agreement.

4. **REGISTRATION AND TAXES.** Lessee shall, at Lessee's own expense, register, title and license each Leased Vehicle in the manner prescribed by Lessor so as to maintain Lessor's ownership and insurable interest in the Leased Vehicle and forward such title to Lessor at FORD MOTOR CREDIT COMPANY COMMERCIAL LENDING SERVICES P.O. BOX 1581 KING OF PRUSSIA, PA 19406. Lessee shall provide to Lessor any documentation pertaining to a Leased Vehicle as Lessor may from time to time request including but not limited to the Federal Highway Use Declaration Form. Lessee shall be responsible for determining taxes due and shall pay all taxes and other charges and expenses whatsoever with respect to each Leased Vehicle, and file all reports attendant thereto; except for the Federal Highway Use Tax which the Lessor shall pay. The cost of this tax will be charged to Lessee annually. Lessee shall promptly pay such charge when billed.
5. **OPERATING EXPENSES, MODIFICATIONS.** (a) Lessee shall pay, or provide for the payment of, all operating expenses of each Leased Vehicle, including without limitation, gasoline, oil, grease, anti-freeze, adjustments and repairs (except those covered by Ford Motor Company's warranty and policy adjustments), and storage, fines, towing and servicing. All replacement parts must be Ford Authorized Replacement Parts. (b) Lessee shall not make any additions, alterations or modifications to the Leased Vehicle; provided, however, that Lessee may make additions to a Leased Vehicle so long as Lessee

obtains Lessor's prior written consent and such additions are readily removable without any damage to the Leased Vehicle. Any dealer installed modifications, alterations or additions, the cost of which are included in the Capitalized Cost of a Leased Vehicle, shall be the property of the Lessor.

6. **RISK OF LOSS, MAINTENANCE AND INSPECTION.** Lessee shall bear, and indemnify Lessor against, any damage, loss, theft or destruction of each Leased Vehicle and shall maintain and repair each Leased Vehicle in accordance with manufacturer requirements and recommendations. Lessee shall permit representatives of Lessor to inspect each Leased Vehicle from time to time at reasonable intervals.
7. **INSURANCE.** Lessee shall provide, or cause to be provided, on each Leased Vehicle during the lease term thereof insurance with coverage and amounts not less than the following:

Cars and Light Trucks

bodily injury, \$300,000 bodily injury per accident,
\$50,000 property damage. Collision and Comprehensive
Coverage with deductible not to exceed \$1,000.00

Medium and Heavy Truck

A minimum of \$500,000 Combined Single Limit Liability per
occurrence. Collision and Comprehensive Coverage with
deductible not to exceed \$2,500.00

Tractors

A minimum of \$1,000,000 Combined Single Limit Liability
coverage per occurrence. Collision and Comprehensive
coverage with deductible not to exceed \$2,500.00.

Lessee shall cause each insurance policy issued pursuant to this Paragraph 7 to provide that (i) Lessor, as owner and Lessor of the Leased Vehicles, shall be insured as its interest may appear and (ii) if such policy is to be canceled or materially changed for any reason, such insurer will promptly notify Lessor, and such cancellation or change will not be effective as to Lessor for 20 days after receipt by Lessor of such notice. Lessee shall deliver to Lessor copies of each insurance policy required by this Paragraph 7 upon execution hereof and copies of each renewal policy not less than 30 days prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid. Lessee shall bear the entire risk of the Leased Vehicle being lost, destroyed, damaged or otherwise rendered permanently unfit or unavailable for use. Lessee, at Lessee's own expense, shall provide, or cause to be provided, any other insurance and post any bonds required by any governmental authority with respect to the operation of any Leased Vehicle. All such insurance shall protect Lessor, Lessee, any other person having an interest in the Leased Vehicle (if desired) and, except for any additional blanket liability insurance, any person leasing or driving the Leased Vehicle with valid permission. If any claim is made or action commenced for personal injury or death or property damage in connection with any Leased Vehicle, Lessee shall promptly notify Lessor, any other person known to have an interest in the Leased Vehicle and the insurance carrier thereof and furnish each of them with a copy of each process and pleading received in connection therewith and diligently defend against such claim or action and/or cooperate in the defense thereof. Lessee shall promptly furnish to the insurance carrier a report of any accident involving a Leased Vehicle on the form furnished by such carrier.

8. **FINANCE LEASE.** Lessee hereby acknowledges and agrees that it has read this Lease Agreement and agrees to signing this Lease Agree-

EXHIBIT

COMMERCIAL LEASE AGREEMENT

ment. (i) Lessee is entitled under Article 2A of the Uniform Commercial Code to the promises and warranties, including those of any third party, provided to the Lessor by the Selling Dealer; and (ii) the Lessee may communicate with the Dealer and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

9. **PERFORMANCE BY LESSOR.** If Lessee fails for any reason to perform any provision of this agreement to be performed by Lessee, Lessor may (but shall not be obligated to) perform the same without relieving Lessee of its obligation to do so and Lessee shall reimburse Lessor upon demand for any costs and expenses incurred by Lessor in connection with such performance.

10. **INDEMNITY.** Lessee shall indemnify and hold Lessor, its agents and employees, harmless against any and all losses, claims, damages or expenses (including attorney's fees) connected with or arising out of the management, control, use, storage condition (including, without limitation, defects, whether or not discoverable by Lessor or Lessee) or operation of any Leased Vehicle, or any default by Lessee in the performance of any of its obligations hereunder. Lessee shall promptly notify Lessor of any such claim.

11. **EXPIRATION OF LEASE.** Upon the expiration of the lease of any Leased Vehicle hereunder.

(a) Lessor may at its option, sell such Leased Vehicle in an arm's length transaction within 30 days after expiration of this lease or may appoint Lessee as Lessor's agent to sell such Leased Vehicle on Lessor's behalf. The sale may be public or private and with or without notice to Lessee, shall be at wholesale, and shall be only for cash payable in full upon delivery of the Leased Vehicle and its title papers to the purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee will not be entitled to any compensation for serving as Lessor's agent in connection with such sale. If Lessee, as Lessor's agent, sells the Leased Vehicle, Lessee shall remit to Lessor the sale price of such Leased Vehicle, any monthly or other lease charges for such Leased Vehicle due under this Lease Agreement and any additional lease charges as specified below.

(b) If the Net Proceeds of such sale are less than the Assumed Residual for such Leased Vehicle, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the Assumed Residual for such Leased Vehicle, Lessor shall pay or credit the excess to Lessee as a refund of lease charges. For purposes of this Lease Agreement, (i) "Net Proceeds" shall mean the amount received on the sale of a Leased Vehicle less all expenses incurred by Lessor in selling the Leased Vehicle and all debts incurred by Lessee which, if not paid, might constitute a lien on the Leased Vehicle or a liability of Lessor, and (ii) "Assumed Residual" shall mean the assumed residual for such Leased Vehicle expressed as a percentage of Capitalized Cost as set forth in the Supplement.

12. **RETURN OF LEASED VEHICLE.** Upon the expiration or termination of the lease of any Leased Vehicle, Lessee shall provide written notice thereof to Lessor and shall return such Leased Vehicle to Lessor at the location to which it was originally delivered or at a location otherwise agreed to by Lessee and Lessor. At Lessor's request and on behalf of Lessor, Lessee shall store any Leased Vehicle for a period not to exceed thirty (30) days at Lessee's own expense, other than for insurance coverage, which shall be provided by Lessor, or at the request of Lessor, Lessee shall assemble the Leased Vehicles and make them available to Lessor at such place or places as Lessor shall reasonably request.

13. **LOSS OF LEASED VEHICLE.** In the event that the Leased Vehicle suffers a total loss or is stolen prior to the end of its lease term, Lessee shall pay the monthly lease charge for the month in which such loss or theft occurs and the applicable early termination value ("Early Termination Value") for such Leased Vehicle determined by Lessor at

the commencement of the lease for such Leased Vehicle in accordance with Lessor's procedures with respect thereto in effect at such time and set forth in a schedule maintained by Lessor. The Early Termination Value for a Leased Vehicle applicable for a particular month during the term of the lease of such Leased Vehicle will be set forth in a statement corresponding to such month provided to Lessee by Lessor. Such statements will be provided to Lessee each month during the term of the lease of such Leased Vehicle. To the extent of payment by the Lessee pursuant to this Paragraph 13, any insurance proceeds shall be for the account of Lessee.

14. **TERMINATION.** (a) Lessor may terminate this Lease Agreement at any time with respect to any or all of the Leased Vehicles by written notice to Lessee upon the occurrence of any of the following events of default: (i) failure to pay any monthly lease charge or any other sum payable to Lessor hereunder, or (ii) failure or refusal by Lessee to perform any other provision hereof to be performed by Lessee, or (iii) any representation or warranty made by Lessee shall prove to be false or misleading in any material respect as of the date on which the same was made, or (iv) the filing of any petition by or against Lessee under any bankruptcy or insolvency law or the making by Lessee of any assignment for the benefit of creditors or the appointment of any trustee or receiver for all or part of Lessee's business or assets or the assignment (voluntary or involuntary) of Lessee's interest in any Leased Vehicle or the attachment of any lien or levy on any Leased Vehicle (unless such petition, assignment, appointment, or attachment is withdrawn or nullified within two days). Upon such termination, the Leased Vehicle(s) shall be delivered to Lessor as provided in Paragraph 12 hereof and Lessee shall be responsible for any additional lease charges calculated in accordance with Paragraph 15(c) hereof. If Lessee fails to return the Leased Vehicle(s), Lessor may repossess the same at any time wherever the same may be located and may enter upon the premises of Lessee for the purpose of repossessing the Leased Vehicle(s), and shall hold the same when so repossessed free and clear of this Lease Agreement and any rights of Lessee therein. Lessee agrees to pay to Lessor reasonable attorney fees (in an amount equal to 15% of the aggregate sum of all lease charges due or such other amount as may be permitted by law) if this Lease Agreement is placed with an attorney other than an employee of Lessor for collection.

(b) Upon notice to Lessee, which shall be effective immediately upon receipt thereof, Lessor may at any time, at its sole discretion, terminate Lessee's right to lease additional Leased Vehicles under this Lease Agreement.

15. **EARLY TERMINATION OF LEASE.** (a) Lessee may terminate the lease of any Leased Vehicle prior to the expiration of the term thereof by giving Lessor 30 days prior written notice of its election to terminate such lease. The effective date of such termination shall be determined in accordance with this Paragraph 15.

(b) After giving such notice of termination with respect to a Leased Vehicle, Lessee shall attempt to sell such Leased Vehicle, as agent for Lessor, in an arm's length transaction to an unrelated purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS, WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee shall not be entitled to any compensation for serving as Lessor's agent in connection with such sale. Upon such sale, the lease of such Leased Vehicle shall terminate and Lessee shall promptly notify Lessor and remit to Lessor any proceeds of the sale, any monthly or other lease charges due and owing to the date of termination and any additional lease charges calculated in accordance with this Paragraph 15(b). If the Net Proceeds of such sale are less than the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessor shall pay or credit the excess to Lessee as a refund of lease charges.

(c) If Lessee is unable to sell the Leased Vehicle on behalf of Lessor

COMMERCIAL LEASE AGREEMENT (TRAC)

within thirty (30) days of the date of such notice of termination, the Leased Vehicle shall be promptly delivered to Lessor as provided in Paragraph 12 hereof, whereupon Lessor shall attempt to sell such Leased Vehicle in an arm's length transaction. The lease of such Leased Vehicle shall terminate upon the earlier to occur of (i) the date of such sale by Lessor or (ii) the date that is thirty (30) days after the date of delivery of the Leased Vehicle to Lessor. Upon such date of termination, Lessee shall pay Lessor any monthly or other lease charges then due and owing to the date of termination and either (x) the excess, if any, of the applicable Early Termination Value for such Leased Vehicle over the Net Proceeds of any sale or (y) if Lessor was unable to sell such Leased Vehicle prior to such date of termination, such Early Termination Value.

(c) In lieu of attempting to sell the Leased Vehicle pursuant to Paragraph 15(b) hereof or in lieu of returning the Leased Vehicle pursuant to Paragraph 15(c) hereof, Lessee, with the consent of Lessor, may dispose of such Leased Vehicle for its own account, and the lease of such Leased Vehicle shall terminate upon Lessee paying to Lessor the applicable Early Termination Value for such Leased Vehicle, plus any monthly or other lease charges due and owing to the date of termination.

16. **FORCE MAJEURE AND NO CONSEQUENTIAL DAMAGES.** Lessor shall not be liable for any failure or delay in delivering any Leased Vehicle ordered for lease pursuant to this Lease Agreement, or for any failure to perform any provision thereof, resulting from fire or other casualty, riot, strike or other labor difficulty, governmental regulation or restriction, or any cause beyond Lessor's control. **IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCONVENIENCES, LOSS OF PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES RESULTING FROM ANY DEFECT IN OR ANY THEFT, DAMAGE, LOSS OR FAILURE OF ANY LEASED VEHICLE, AND THERE SHALL BE NO ABATEMENT OR SET-OFF OF MONTHLY LEASE CHARGES BECAUSE OF THE SAME.**

17. **ASSIGNMENT; SUBLEASE.** Neither this Lease Agreement nor any right hereunder may be assigned by Lessee, in whole or in part, without the prior written consent of Lessor. Lessee will not, without the prior written consent of Lessor, sublease or otherwise deliver, transfer or relinquish possession of a Leased Vehicle. If Lessor so consents to a sublease of a Leased Vehicle (i) the term of such sublease (including any renewal term) shall not extend beyond the term of lease for such Leased Vehicle provided herein, (ii) such sublease shall prohibit any further subleasing by the sublessee, (iii) such sublease shall provide that the rights of any sublessee thereunder shall be subject and subordinate to the terms of this Lease Agreement and rights and interests of Lessor in such Leased Vehicle, including, without limitation, the right of Lessor to repossess such Leased Vehicle and to void such sublease upon any repossession, (iv) Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease Agreement to the same extent as if such sublease had not occurred, (v) such sublease shall contain appropriate provisions for the maintenance and insurance of such Leased Vehicle, (vi) such sublease shall provide that it is assigned to Lessor for security purposes and (vii) such sublease shall provide that Lessor shall be permitted to proceed directly against the sublessee to enforce the sublessee's obligations thereunder. The review or approval by Lessor of a sublease agreement shall not constitute a waiver of any of the foregoing conditions or an acknowledgment that any of such conditions have been met. In the event of termination of this Lease Agreement pursuant to Paragraph 14 hereof, Lessor may require that all rentals or other proceeds of any sublease be endorsed or remitted to Lessor or deposited to Lessor's account in the same form received by Lessee, or may require that sublessee make such payments directly to Lessor. Lessee will obtain the execution of a consent to assignment by sublessee to Lessor and Lessee shall furnish such other documents to perfect such assignment as Lessor shall require. Lessor may assign all or any part of Lessor's right, title and interest in this Lease.

18. NO WARRANTIES. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER, OR THE DISTRIBUTOR OF THE LEASED VEHICLES HEREUNDER. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE FITNESS, SAFENESS, DESIGN, MERCHANTABILITY, CONDITION, QUALITY, CAPACITY OR WORKMANSHIP OF THE LEASED VEHICLES NOR ANY WARRANTY THAT THE LEASED VEHICLES WILL SATISFY THE REQUIREMENTS OF ANY LAW OR ANY CONTRACT SPECIFICATION, AND AS BETWEEN LESSOR AND LESSEE, LESSEE AGREES TO BEAR ALL SUCH RISKS AT ITS SOLE RISK AND EXPENSE. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST LESSOR AND ANY LEASED VEHICLE FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER AND AS TO LESSOR, LESSEE LEASES THE LEASED VEHICLES "AS IS." IN NO EVENT SHALL LESSOR BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHATSOEVER OR HOWSOEVER CAUSED. CALIFORNIA LESSEES WAIVE THE PROVISIONS OF SECTIONS 1955 AND 1957 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA.

19. **NOTICES.** Any notice required or permitted by this Lease Agreement shall be in writing and given by personal delivery or sent by United States mail, postage prepaid, addressed to the intended recipient at the Lessee's current billing address.

20. NO IMPLIED WAIVERS. The waiver by either party of, or failure to claim, a breach of any provision of this Lease Agreement shall not be deemed to be a waiver of any subsequent breach or to affect in any way the effectiveness of such provision.

21. MISCELLANEOUS. This Lease Agreement shall constitute the entire agreement between the parties and may not be changed except by an instrument in writing, signed by the party against whom the change is to be enforced. This Lease Agreement is a Michigan agreement and shall be governed by and construed in accordance with the laws of the State of Michigan.

22. **WAIVER OF DEFENSES, SECURITY.** Lessee's obligations to Lessor under the terms of this Lease Agreement shall not be subject to any reduction, abatement, defense, counterclaim, set off or recoupment which Lessee may now or hereafter claim against Lessor. The Leased Vehicles, including all attachments and accessories thereto, whether now or hereafter installed thereon, and the proceeds thereof, including, but not limited to the lease charges, proceeds of sale, exchange or other disposition thereof, and the proceeds of any damage claim and or insurance covering the Leased Vehicles, or any part thereof, and the proceeds due or to become due from Lessee and or any sublessee or a third party shall secure all indebtedness of the Lessee under this Lease Agreement and any and all indebtedness of the Lessee to Lessor.

23. **LESSEE'S WARRANTIES.** Lessee warrants that (i) Lessee is and shall at all times hereafter be duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and it has duly authorized the execution, delivery and performance of this Lease Agreement; (ii) this Lease Agreement has been duly and validly executed and delivered by Lessee and constitutes the valid and binding obligation of Lessee; and (iii) all financial statements presented to Lessor have been prepared in conformity with generally accepted accounting principles consistently applied and fairly and accurately present Lessee's financial condition and income as of the date given and since the date of such financial statements there has been no material adverse change in the financial condition of Lessee or any guarantor of Lessee's obligation hereunder.

24. **INSPECTION; FINANCIAL-STATEMENTS.** During normal business hours, Lessor and its authorized representatives may inspect each Leased Vehicle and the books and records of Lessee relative

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thereto. Lessor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection. In addition, at the request of Lessor, Lessee shall furnish Lessor any financial statements of Lessee, including, without limitation, balance sheets and income statements.

25. SECURITY INTEREST. In the event any court determines that this Lease is not a true lease, then Lessee hereby grants Lessor a security interest in the Leased Vehicles and this Lease Agreement, together with all accessions, replacements and substitutions therefor or thereto and proceeds thereof. Lessor is authorized to file this Lease Agreement or any financing statements with respect to this Lease Agreement or the Leased Vehicles. Any such filing shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee authorizes Lessor to insert in this

Lease Agreement serial numbers, other identification data of the Leased Vehicles when determined by Lessor and dates or other unintentionally omitted non-substantive items to render this Lease Agreement complete. Lessor is hereby appointed by Lessee as its true and lawful attorney to cause this Lease Agreement, or any statement or other instrument in respect of this Lease Agreement showing the interest of Lessor in the Leased Vehicles including Uniform Commercial Code Financing Statements, to be filed or recorded and re-filed and re-recorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any searches, filings, recordings or stamp fees or taxes arising from the filing or recording of any such instrument or statement.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 16 day of FEBRUARY, 19 98.

LESSOR

FORD MOTOR CREDIT COMPANY

By: [Signature]

Title: [Signature]

LESSEE

TOM MERRYMAN TRUCKING INC

By: [Signature]

Title: PRESIDENT

MODIFICATION: This Lease Agreement sets forth all of the agreements of the Lessor and Lessee for the lease of the Leased Vehicles. There is no other agreement. Any change in this Lease Agreement must be in writing and signed by the Lessee and Ford Credit.

Lessee: TOM MERRYMAN TRUCKING INC

By: [Signature]

Title: PRESIDENT

GUARANTEE

In consideration of the Lessor leasing to Lessee and other good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, the undersigned guarantor unconditionally guarantees payment of all amounts due or to become due to the Lessor named in the above Lease Agreement, including without limitation, all lease charges and any amounts owing following surrender and sale of a Leased Vehicle.

(Guarantor)

ROBERT T MERRYMAN JR

[Signature]

(Guarantor)

EXHIBIT

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 1 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

1. **Lease Vehicles.** Pursuant to the Lease Agreement, all of the terms and conditions of which are incorporated by reference herein, Lessee agrees to lease from the Lessor the Leased Vehicles described in the Vehicle Description Section below, **which vehicles have been delivered to and accepted by Lessee in good condition with mileage shown below** in the Vehicle Description Section.

2. **Lease Term; Charges.** The lease term for the Leased Vehicles shall be the number of consecutive months specified below, and will commence on the date as indicated. The rental charges are due on the Payment Due Day of each month as specified below. The rental charges exclude any applicable taxes or other charges for which Lessee may be liable. An interim rent will be assessed for the period between the "Delivery Date" and the "Commencement Date" and will be shown on the billing statement.

3. **Certificate of Vehicle Use.** Lessee, a CORPORATION, hereby certified under penalty of perjury that: (a) Lessee intends that more than 50 percent of the use of each motor vehicle subject to such Lease Agreement is to be used in a trade or business of Lessee, and (b) Lessee has been advised that it will not be treated as the owner of any motor vehicle subject to such Lease Agreement for Federal income tax purposes.

4. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 lbs and higher. TGW is generally defined as the unloaded weight of the truck plus trailer, plus the load customarily carried by the vehicle or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of vehicle **must** file a heavy vehicle use tax return (IRS Form 2290) and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor such tax when billed.

LEASE TERM AND CHARGES					
<p style="text-align: center;">CONTRACT</p> <p>Lease Program Type: TRAC Term: 60 Months Commencement Date: ____/____/____ Payment Due Day: 1st day of the month Payment Timing: Advance</p>	<p style="text-align: center;">RENT</p> <table style="width: 100%;"> <tr> <td style="width: 40%;">No. of Rental Payments</td> <td style="width: 60%;">Rental Amount</td> </tr> <tr> <td style="text-align: center;">60</td> <td style="text-align: center;">@ \$1,634.93</td> </tr> </table>	No. of Rental Payments	Rental Amount	60	@ \$1,634.93
No. of Rental Payments	Rental Amount				
60	@ \$1,634.93				

VEHICLE DESCRIPTION			
<p style="text-align: center;">Vehicle/Unit Information</p> <p>Unit No.: 112679 Lessee Unit Reference: _____ Description: 2000 New VEHICLE OVER THE R Vin: 1FUPCDZBXLYB97413 Cap Cost: \$91,485.00 Residual: \$18,297.00 (20.00%) Asset Rental: \$1,634.93 Mileage at Delivery: _____ Delivery Date: ____/____/____</p>	<table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> <p style="text-align: center;">Tax Information</p> <p>Garaging Location: City: PHILIPSBURG County: CENTRE State: PA</p> <p>Property Tax Location: RR #3 BOX 428A PHILIPSBURG, CENTRE, PA</p> </td> <td style="width: 50%; vertical-align: top;"> <p>Tax Type, Present Rate RENTAL TAX, 0.00% RENTAL TAX, 0.00% RENTAL TAX, 6.00% <i>RTMK</i></p> <p style="text-align: center; font-size: 1.2em;"><i>Exempt</i></p> </td> </tr> </table>	<p style="text-align: center;">Tax Information</p> <p>Garaging Location: City: PHILIPSBURG County: CENTRE State: PA</p> <p>Property Tax Location: RR #3 BOX 428A PHILIPSBURG, CENTRE, PA</p>	<p>Tax Type, Present Rate RENTAL TAX, 0.00% RENTAL TAX, 0.00% RENTAL TAX, 6.00% <i>RTMK</i></p> <p style="text-align: center; font-size: 1.2em;"><i>Exempt</i></p>
<p style="text-align: center;">Tax Information</p> <p>Garaging Location: City: PHILIPSBURG County: CENTRE State: PA</p> <p>Property Tax Location: RR #3 BOX 428A PHILIPSBURG, CENTRE, PA</p>	<p>Tax Type, Present Rate RENTAL TAX, 0.00% RENTAL TAX, 0.00% RENTAL TAX, 6.00% <i>RTMK</i></p> <p style="text-align: center; font-size: 1.2em;"><i>Exempt</i></p>		

FORD MOTOR CREDIT COMPANY
COMMERCIAL LEASE
SUPPLEMENT TO MASTER LEASE AGREEMENT (TRAC)

Page 1 of 2

THIS IS A SUPPLEMENT (this "Supplement") to the MASTER LEASE AGREEMENT (TRAC) DATED 02/16/98 (the "Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") and TOM MERRYMAN TRUCKING INC ("Lessee"). The capitalized terms used in this Supplement shall have the same meaning as in the Lease Agreement, unless otherwise defined herein. Subject to the terms and conditions of the Lease Agreement, which are incorporated herein by reference, Lessor and Lessee agree as follows:

1. **Leased Vehicles.** The Leased Vehicles described in the Vehicle Description section below have been delivered to and accepted by Lessee in good condition with mileage shown below in the Vehicle Description section. The terms and conditions of this Supplement shall apply solely to the Lease Vehicles described herein. Lessee hereby certifies, under penalty of perjury, that Lessee intends that more than fifty percent (50%) of the use of each Leased Vehicle is to be used in a trade or business of Lessee. Lessee is hereby advised that Lessee will not be treated as the owner of the Leased Vehicles for Federal income tax purposes.

2. **Lease Terms and Charges.** Commencing on the Commencement Date indicated below, Lessee will pay Lessor the Monthly Lease Charge on the Payment Due Date of each month of the Term specified below. Interim Monthly Lease Charges will be assessed for the period between the Delivery Date and the Commencement Date and will be shown on the billing statement.

3. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 pounds and higher. TGW is generally defined as the unloaded weight of the truck and trailer, plus the load customarily carried by the truck or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of the Leased Vehicle must file a heavy vehicle use tax return and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor for such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: 05/11/00
Payment Due Day: 1st day of the month
Payment Timing: Advance

MONTHLY LEASE CHARGES

60 Monthly Lease Charges @ \$1,540.23

Excludes all taxes and other Charges.

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 148476
Lessee Unit Reference: _____
Description: 1999 Used VEHICLE HEAVY TRUC
Vin: 1FUPCXZB8XL885857
Cap Cost: \$84,000.00
Assumed Residual: \$16,800.00 (20.00%)
Monthly Lease Charge: \$1,540.23
Mileage at Delivery: 132,114
Delivery Date: 05/11/00

Tax Information

Garaging Location:
City: CHESTER HILL
County: CLEARFIELD
State: PA

Property Tax Location:
RT 322 WEST PO BOX 99
CHESTER HILL, CLEARFIELD, PA

Tax Type, Present Rate

EXEMPT, 0.00%

EXEMPT, 0.00%

EXEMPT 0.00% *PKMVR*

FORD MOTOR CREDIT COMPANY
CommercialLease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By

Title

Date

JRC
B.O.M.
2/12/99

Lessee

By

Title

Date

T.Merryman
Pres.
10-18-99

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By [Signature]
Title B.O.M.
Date 10/18/99

Lessee

By [Signature]
Title Pres.
Date 10-18-99

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. §4904 relating

to unsworn falsifications to authorities, that he/she is _____
_____, plaintiff herein, that
(Name)
_____, of _____,
(Title) (Company)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint are true and correct to the best of his/her knowledge, information and belief.

(Signature)

WWR# 043 64385

FILED

JUL 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CD

vs.

PRAECIPE FOR DEFAULT JUDGMENT
AS TO COUNT II ONLY

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

Benjamin R. Bibler, Esquire
PA I.D.#93598
Weltman, Weinberg & Reis Co., L.P.A.
2718 Koppers Bldg.
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#04364385
Judgment Amount \$ 71,140.51

FILED Atty pd.
m 11:49 AM 20.00
MAR 21 2007 ICC Notice
to Def.
Robert Merryman
William A. Shaw
Prothonotary/Clerk of Courts
Statement to Atty
@

**THIS LAW FIRM IS ATTEMPTING TO COLLECT THIS DEBT FOR ITS CLIENT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

Civil Action No. 2006-1207-CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

PRAECIPE FOR DEFAULT JUDGMENT AS TO COUNT II ONLY

TO THE PROTHONOTARY:

Kindly enter Judgment against the Defendant, Robert Merryman, individually, above named, in the default of an Answer, in the amount of \$71,140.51 computed as follows:

Amount claimed in Complaint	\$66,796.69
Interest from June 13, 2006 to February 27, 2007 at the legal interest rate of 6.00% per annum	\$2,843.82
Attorney's fees	\$1,500.00
TOTAL	\$71,140.51

I hereby certify that appropriate Notices of Default, as attached have been mailed in accordance with PA R.C.P. 237.1 on the dates indicated on the Notices.

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 

Benjamin R. Babler, Esquire

PA I.D.#93598

Weltman, Weinberg & Reis Co., L.P.A.

2718 Koppers Bldg.

436 Seventh Avenue

Pittsburgh, PA 15219

(412) 434-7955

WWR#04364385

Plaintiff's address is:

c/o Weltman, Weinberg & Reis Co., L.P.A., 2718 Koppers Building, 436 7th Avenue, Pittsburgh, PA 15219

And that the last known address of the Defendant is: 2457 OLD ERIE PIKE, WEST DECATUR, PA 16878.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

2006 1207 CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendant

IMPORTANT NOTICE

TO:

Robert T Merryman
2457 Old Erie Pike
West Decatur, Pa 16878

Date of Notice: 2/8/07

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: William T. Molczan

William T. Molczan, Esquire

PA. I.D.#47437

WELTMAN, WEINBERG & REIS CO., L.P.A.

2718 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

(412) 434-7955

WWR #04364385

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

2006 1207 CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendant

IMPORTANT NOTICE

TO:
Tom Merryman Trucking Inc
2457 Old Erie Pike
West Decatur, Pa 16878

Date of Notice: 2/8/07

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: William T. Molczan
William T. Molczan, Esquire
PA. I.D.#47437

WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR #04364385

IN THE COMMON PLEAS COURT OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Case no: 2006-1207-CD

Plaintiff

NON-MILITARY AFFIDAVIT

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

The undersigned, who first being duly sworn, according to law, deposes and states as follows:

That he/she is the duly authorized agent of the Plaintiff in the within matter.

Affiant further states that the within Affidavit is made pursuant to and in accordance with the Servicemembers' Civil Relief Act (SCRA), 50 U.S.C. App. § 521.

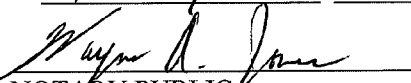
Affiant further states that based upon investigation it is the affiant's belief that the Defendant, TOM MERRYMAN TRUCKING INC., AND ROBERT MERRYMAN AS PERSONAL GUARANTOR is not in the military service.

Affiant further states that this belief is supported by the attached certificate from the Defense Manpower Data Center (DMDC), which states that the Defendant, TOM MERRYMAN TRUCKING INC., AND ROBERT MERRYMAN AS PERSONAL GUARANTOR is not in the military service.

Further Affiant sayeth naught.


AFFIANT

SWORN TO AND SUBSCRIBED in my presence this 28 day
of February, 2007.


NOTARY PUBLIC

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Wayne A. Jones, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires June 29, 2010
Member, Pennsylvania Association of Notaries

This law firm is a debt collector attempting to collect this debt for our client and any information obtained will be used for that purpose.

Department of Defense Manpower Data Center

FEB-27-2007 10:41:40



Military Status Report
Pursuant to the Servicemembers Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
MERRYMAN	ROBERT	Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. #167;#167; 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenselink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided

by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

*Report ID: **BWMKKLHYSUS***

Department of Defense Manpower Data Center

FEB-27-2007 10:41:07



Military Status Report
Pursuant to the Servicemembers Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
MERRYMAN	TOM		Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.	

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

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If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided

by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID: BWMKEZLQWVP

FILED

MAR 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COPY

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

Civil Action No. 2006-1207-CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

NOTICE OF JUDGMENT OR ORDER

TO: ☐ Plaintiff
 ☒ Defendant
 ☐ Garnishee

You are hereby notified that the following
Order or Judgment was entered against you
on 3/21/07

(xx) Assumpsit Judgment in the amount
 of \$71,140.51 plus costs.

() Trespass Judgment in the amount
 of \$_____ plus costs.

() If not satisfied within sixty (60)
days, your motor vehicle operator's license and/or registration
will be suspended by the Department of Transportation, Bureau
of Traffic Safety, Harrisburg, PA.

(xx) Entry of Judgment of
 ☐ Court Order
 ☐ Non-Pros
 ☐ Confession
 ☒ Default
 ☐ Verdict
 ☐ Arbitration
 Award

Prothonotary

By: William L. Hargrove
PROTHONOTARY (OR DEPUTY)

ROBERT T MERRYMAN
2457 OLD ERIE PIKE
WEST DECATUR, PA 16878

Plaintiff's address is:

c/o Weltman, Weinberg & Reis Co., L.P.A., 2718 Koppers Building, 436 7th Avenue, Pittsburgh, PA 15219
1-888-434-0085

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Ford Motor Credit Company
Plaintiff(s)

No.: 2006-01207-CD

Real Debt: \$71,140.51

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Robert Merryman
Tom Merryman Trucking, Inc.
Defendant(s)

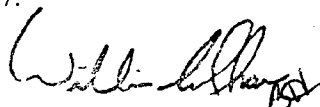
Entry: \$20.00

Instrument: Default Judgment as to Count II
ONLY

Date of Entry: March 21, 2007

Expires: March 21, 2012

Certified from the record this 21st day of March, 2007.



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102197
NO: 06-1207-CD
SERVICE # 1 OF 2
PRAECIPE & COMPLAINT

PLAINTIFF: FORD MOTOR CREDIT COMPANY
vs.
DEFENDANT: TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN

FILED
03:00 PM
MAR 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF RETURN

NOW, December 27, 2006 AT 9:59 AM SERVED THE WITHIN PRAECIPE & COMPLAINT ON TOM MERRYMAN TRUCKING INC. DEFENDANT AT 2457 OLD ERIE PIKE, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ROBERT MERRYMAN, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102197
NO: 06-1207-CD
SERVICE # 2 OF 2
PRAECIPE & COMPLAINT

PLAINTIFF: FORD MOTOR CREDIT COMPANY

vs.

DEFENDANT: TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN

SHERIFF RETURN

NOW, December 28, 2006 AT 9:59 AM SERVED THE WITHIN PRAECIPE & COMPLAINT ON ROBERT T. MERRYMAN As personal guarantor DEFENDANT AT 2457 OLD ERIE PIKE, WEST DECATUR, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ROBERT T. MERRYMAN, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 102197
NO: 06-1207-CD
SERVICES 2
PRAECIPE & COMPLAINT

PLAINTIFF: FORD MOTOR CREDIT COMPANY

VS.

DEFENDANT: TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	WELTMAN	8368044	20.00
SHERIFF HAWKINS	WELTMAN	8368044	73.74

Sworn to Before Me This

_____ Day of _____ 2007

So Answers,



Chester A. Hawkins
Sheriff

FILED

MAR 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 1 of 2 Services

Sheriff Docket # **101772**

FORD MOTOR CREDIT COMPANY

Case # 06-1207-CD

VS.

TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN AS
PERSONAL GUARANTOR

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW August 30, 2006 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT "NOT FOUND" AS TO TOM MERRYMAN TRUCKING INC., DEFENDANT. ADDRESS IS IN CENTRE COUNTY.

SERVED BY: /

FILED

AUG 30 2006

m/2:15
William A. Shaw

Prothonotary/Clerk of Courts

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 2 of 2 Services

Sheriff Docket # **101772**

FORD MOTOR CREDIT COMPANY

Case # 06-1207-CD

vs.

TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN AS
PERSONAL GUARANTOR

TYPE OF SERVICE COMPLAINT

SHERIFF RETURNS

NOW August 30, 2006 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN COMPLAINT "NOT FOUND" AS TO ROBERT MERRYMAN, IND., DEFENDANT. ADDRESS IS IN CENTRE COUNTY.

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101772
NO: 06-1207-CD
SERVICES 2
COMPLAINT

PLAINTIFF: FORD MOTOR CREDIT COMPANY

vs.

DEFENDANT: TOM MERRYMAN TRUCKING INC. and ROBERT MERRYMAN AS
PERSONAL GUARANTOR

SHERIFF RETURN

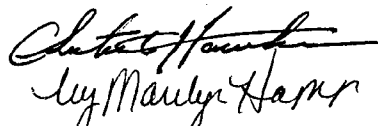
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	WELTMAN	8334637	20.00
SHERIFF HAWKINS	WELTMAN	8334637	26.50

Sworn to Before Me This

_____ Day of _____ 2006

So Answers,



Chester A. Hawkins
Sheriff

PIT
7/5/6
04364385-

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CD

vs.

COMPLAINT IN CIVIL ACTION

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
PA I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 27 2006

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

Kew

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No.

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation with offices at PO Box 6508, Mesa, AZ 85216-6548.
2. Defendant, Robert Merryman, is an adult individual residing at 501 Alder Street, Phillipsburg, PA 16866.
3. Defendant, Tom Merryman Trucking, Inc., is a Pennsylvania corporation with a last known address of 501 Alder Street, Phillipsburg, PA 16866 .
4. On or about February 16, 1998, the parties entered into a written Closed-End Lease Agreement (hereinafter referred to as the "Agreement") for the lease of a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413, more particularly identified in the Agreement, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.
5. By the terms of the Agreement, Defendant was to make 60 (monthly) payments of \$1,540.23, commencing May 11, 2000, and to pay certain license fees due at the inception of the lease and during the lease term.
6. The terms of said Agreement provide for termination upon satisfaction by Defendant of all obligations provided thereunder and upon the return of the vehicle by Defendant to Plaintiff at the end of the lease term, which term would end 60 (monthly) months after it commenced.

7. Plaintiff avers that Defendant defaulted under the terms of the Lease Agreement by failing to make payment to Plaintiff as promised.

8. Due to the Defendant's default under the Agreement, Plaintiff exercised its right to terminate the Lease.

9. After calculating the early termination charges due Plaintiff pursuant to the terms of the Lease, Plaintiff avers that a balance of \$66,796.69 as of June 13, 2006 is due from Defendant.

10. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

11. Plaintiff avers that such attorneys' fees will amount to \$1,500.00.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, Tom Merryman Trucking Inc., individually, in the amount of \$66,796.69 with continuing interest thereon at the legal rate 6.00% per annum from June 13, 2006 plus attorneys' fees of \$1,500.00 and costs.

COUNT II – AGAINST ROBERT MERRYMAN - PERSONAL GUARANTY

13. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if the same were set forth more fully at length herein.

14. On or about February 16, 1998, Robert Merryman executed a Closed-End Lease Agreement (hereinafter the "Agreement") in favor of Plaintiff, a true and correct copy of said Agreement is attached hereto, marked as Exhibit "1" and made a part hereof.

15. As further inducement for the extension of credit, Defendant, Robert Merryman, executed and delivered to Plaintiff his personal guaranty.

16. Pursuant to said Agreement, Robert Merryman took possession of the vehicle more particularly identified in the Agreement as a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413.

17. Plaintiff avers that Defendant is in default of the Agreement by having not made payment to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

18. Plaintiff avers that a payoff balance of \$66,796.69 is due from Defendant as of June 13, 2006.

19. Plaintiff avers that the Agreement between the parties provides that Plaintiff is entitled to interest at the rate of 6% per annum.

20. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's reasonable attorneys' fees.

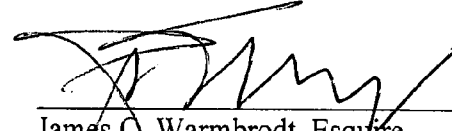
21. Plaintiff avers that such attorneys' fees amount to \$1,500.00.

22. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment on Count II against Defendant, Robert Merryman, individually, in the amount of \$66,796.69 with continuing interest thereon at the Contract rate of 6% per annum from June 13, 2006, plus attorneys' fees of \$1,500.00, and costs.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED SHALL BE USED FOR THAT PURPOSE.

WELTMAN, WEINBERG & REIS, CO., L.P.A.



James C. Warmbrodt, Esquire

PA/I.D. #42524

WELTMAN, WEINBERG & REIS CO., L.P.A.

2718 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

(412) 434-7955

WWR#04364385

COMMERCIAL LEASE AGREEMENT (TRAC)

TOM MERRYMAN TRUCKING INC ("Lessee") of RR3 BOX 428A, PHILIPSBURG, PA 16866, a CORPORATION organized under the laws of the State of PA, hereby leases from Ford Motor Credit Company, a Delaware corporation ("Lessor"), and Lessor hereby leases to Lessee, vehicles (hereinafter called "Leased Vehicles") designated and described from time to time in one or more Supplements ("Supplement(s)") hereto for use in lease service upon the following terms and conditions:

- 1. USAGE.** All Leased Vehicles shall be leased by Lessee for use in Lessee's business in accordance with all applicable governmental and insurer requirements and limitations. All Leased Vehicles shall be inspected, prepared and equipped by Lessee in a manner approved by Lessor. No Leased Vehicle shall be removed from the United States for more than ninety (90) days during any (12) month period.
- 2. TERM.** The term of lease as to each Leased Vehicle shall be as designated in the applicable Supplement.
- 3. LEASE CHARGE.** (a) From time to time, Lessor will establish a lease rate which shall be expressed as a percentage of the Capitalized Cost of a Leased Vehicle. "Capitalized Cost" shall be the amount Lessor advanced to purchase the vehicle including all add-on equipment and service as well as applicable capitalized taxes. The monthly lease charge for each Leased Vehicle shall be based on the lease rate for such Leased Vehicle set forth in the Supplement(s). Lessee shall pay the monthly lease charge to Lessor for each Leased Vehicle in the amounts and on the dates set forth in the Supplement(s) to this Lease Agreement. In the event any monthly or other lease charges hereunder are not paid promptly when due, Lessee shall pay to Lessor, as an additional lease charge, interest on such overdue payment from the due date of such payment at a rate equal to the lesser of (i) 15% per annum or (ii) the maximum rate permitted by applicable law. All lease charges are due on the first day of each calendar month of the lease term. Lessee shall pay promptly to Lessor or its assignee as directed by Lessor all lease charges payable by it under this Lease Agreement without notice or demand and shall not be entitled to assert any setoff, counterclaim, deduction, recoupment or other defense for any reason.

(b) Lessor understands that Lessee may receive from manufacturers and vendors of the Leased Vehicles volume discounts, fleet rebates and dealer holdbacks ("Dealer Incentives") with respect to the Leased Vehicles, and Lessor has agreed that Lessee may retain any and all Dealer Incentives Lessee may receive as a result of leasing such Leased Vehicles with no duty to account to Lessor for such Dealer Incentives, except as may otherwise be agreed by the parties under a separate agreement.

- 4. REGISTRATION AND TAXES.** Lessee shall, at Lessee's own expense, register, title and license each Leased Vehicle in the manner prescribed by Lessor so as to maintain Lessor's ownership and insurable interest in the Leased Vehicle and forward such title to Lessor at FORD MOTOR CREDIT COMPANY COMMERCIAL LENDING SERVICES P.O. BOX 1581 KING OF PRUSSIA, PA 19406. Lessee shall provide to Lessor any documentation pertaining to a Leased Vehicle as Lessor may from time to time request including but not limited to the Federal Highway Use Declaration Form. Lessee shall be responsible for determining taxes due and shall pay all taxes and other charges and expenses whatsoever with respect to each Leased Vehicle, and file all reports attendant thereto; except for the Federal Highway Use Tax which the Lessor shall pay. The cost of this tax will be charged to Lessee annually. Lessee shall promptly pay such charge when billed.
- 5. OPERATING EXPENSES, MODIFICATIONS.** (a) Lessee shall pay, or provide for the payment of, all operating expenses of each Leased Vehicle, including without limitation, gasoline, oil, grease, antifreeze, adjustments and repairs (except those covered by Ford Motor Company's warranty and policy adjustments), and storage, fines, towing and servicing. All replacement parts must be Ford Authorized Replacement Parts. (b) Lessee shall not make any additions, alterations or modifications to the Leased Vehicle; provided, however, that Lessee may make additions to a Leased Vehicle so long as Lessee

obtains Lessor's prior written consent and such additions are readily removable without any damage to the Leased Vehicle. Any dealer installed modifications, alterations or additions, the cost of which are included in the Capitalized Cost of a Leased Vehicle, shall be the property of the Lessor.

- 6. RISK OF LOSS, MAINTENANCE AND INSPECTION.** Lessee shall bear, and indemnify Lessor against, any damage, loss, theft or destruction of each Leased Vehicle and shall maintain and repair each Leased Vehicle in accordance with manufacturer requirements and recommendations. Lessee shall permit representatives of Lessor to inspect each Leased Vehicle from time to time at reasonable intervals.
- 7. INSURANCE.** Lessee shall provide, or cause to be provided, on each Leased Vehicle during the lease term thereof insurance with coverage and amounts not less than the following:

Cars and Light Trucks

bodily injury, \$300,000 bodily injury per accident,
\$50,000 property damage. Collision and Comprehensive
Coverage with deductible not to exceed \$1,000.00

Medium and Heavy Truck

A minimum of \$500,000 Combined Single Limit Liability per
occurrence. Collision and Comprehensive Coverage with
deductible not to exceed \$2,500.00

Tractors

A minimum of \$1,000,000 Combined Single Limit Liability
coverage per occurrence. Collision and Comprehensive
coverage with deductible not to exceed \$2,500.00.

Lessee shall cause each insurance policy issued pursuant to this Paragraph 7 to provide that (i) Lessor, as owner and Lessor of the Leased Vehicles, shall be insured as its interest may appear and (ii) if such policy is to be canceled or materially changed for any reason, such insurer will promptly notify Lessor, and such cancellation or change will not be effective as to Lessor for 20 days after receipt by Lessor of such notice. Lessee shall deliver to Lessor copies of each insurance policy required by this Paragraph 7 upon execution hereof and copies of each renewal policy not less than 30 days prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid. Lessee shall bear the entire risk of the Leased Vehicle being lost, destroyed, damaged or otherwise rendered permanently unfit or unavailable for use. Lessee, at Lessee's own expense, shall provide, or cause to be provided, any other insurance and post any bonds required by any governmental authority with respect to the operation of any Leased Vehicle. All such insurance shall protect Lessor, Lessee, any other person having an interest in the Leased Vehicle (if desired) and, except for any additional blanket liability insurance, any person leasing or driving the Leased Vehicle with valid permission. If any claim is made or action commenced for personal injury or death or property damage in connection with any Leased Vehicle, Lessee shall promptly notify Lessor, any other person known to have an interest in the Leased Vehicle and the insurance carrier thereof and furnish each of them with a copy of each process and pleading received in connection therewith and diligently defend against such claim or action and/or cooperate in the defense thereof. Lessee shall promptly furnish to the insurance carrier a report of any accident involving a Leased Vehicle on the form furnished by such carrier.

- 8. FINANCE LEASE.** Lessee hereby acknowledges and agrees that it has read this Lease Agreement and to signing this Lease Agree-

EXHIBIT

COMMERCIAL LEASE AGREEMENT

ment. (i) Lessee is entitled under Article 2A of the Uniform Commercial Code to the promises and warranties, including those of any third party, provided to the Lessor by the Selling Dealer; and (ii) the Lessee may communicate with the Dealer and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

9. **PERFORMANCE BY LESSOR.** If Lessee fails for any reason to perform any provision of this agreement to be performed by Lessee, Lessor may (but shall not be obligated to) perform the same without relieving Lessee of its obligation to do so and Lessee shall reimburse Lessor upon demand for any costs and expenses incurred by Lessor in connection with such performance.

10. **INDEMNITY.** Lessee shall indemnify and hold Lessor, its agents and employees, harmless against any and all losses, claims, damages or expenses (including attorney's fees) connected with or arising out of the management, control, use, storage condition (including, without limitation, defects, whether or not discoverable by Lessor or Lessee) or operation of any Leased Vehicle, or any default by Lessee in the performance of any of its obligations hereunder. Lessee shall promptly notify Lessor of any such claim.

11. **EXPIRATION OF LEASE.** Upon the expiration of the lease of any Leased Vehicle hereunder.

(a) Lessor may at its option, sell such Leased Vehicle in an arm's length transaction within 30 days after expiration of this lease or may appoint Lessee as Lessor's agent to sell such Leased Vehicle on Lessor's behalf. The sale may be public or private and with or without notice to Lessee, shall be at wholesale, and shall be only for cash payable in full upon delivery of the Leased Vehicle and its title papers to the purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee will not be entitled to any compensation for serving as Lessor's agent in connection with such sale. If Lessee, as Lessor's agent, sells the Leased Vehicle, Lessee shall remit to Lessor the sale price of such Leased Vehicle, any monthly or other lease charges for such Leased Vehicle due under this Lease Agreement and any additional lease charges as specified below.

(b) If the Net Proceeds of such sale are less than the Assumed Residual for such Leased Vehicle, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the Assumed Residual for such Leased Vehicle, Lessor shall pay or credit the excess to Lessee as a refund of lease charges. For purposes of this Lease Agreement, (i) "Net Proceeds" shall mean the amount received on the sale of a Leased Vehicle less all expenses incurred by Lessor in selling the Leased Vehicle and all debts incurred by Lessee which, if not paid, might constitute a lien on the Leased Vehicle or a liability of Lessor, and (ii) "Assumed Residual" shall mean the assumed residual for such Leased Vehicle expressed as a percentage of Capitalized Cost as set forth in the Supplement.

12. **RETURN OF LEASED VEHICLE.** Upon the expiration or termination of the lease of any Leased Vehicle, Lessee shall provide written notice thereof to Lessor and shall return such Leased Vehicle to Lessor at the location to which it was originally delivered or at a location otherwise agreed to by Lessee and Lessor. At Lessor's request and on behalf of Lessor, Lessee shall store any Leased Vehicle for a period not to exceed thirty (30) days at Lessee's own expense, other than for insurance coverage, which shall be provided by Lessor, or at the request of Lessor, Lessee shall assemble the Leased Vehicles and make them available to Lessor at such place or places as Lessor shall reasonably request.

13. **LOSS OF LEASED VEHICLE.** In the event that the Leased Vehicle suffers a total loss or is stolen prior to the end of its lease term, Lessee shall pay the monthly lease charge for the month in which such loss or theft occurs and the applicable early termination value ("Early Termination Value") for such Leased Vehicle determined by Lessor at

the commencement of the lease for such Leased Vehicle in accordance with Lessor's procedures with respect thereto in effect at such time and set forth in a schedule maintained by Lessor. The Early Termination Value for a Leased Vehicle applicable for a particular month during the term of the lease of such Leased Vehicle will be set forth in a statement corresponding to such month provided to Lessee by Lessor. Such statements will be provided to Lessee each month during the term of the lease of such Leased Vehicle. To the extent of payment by the Lessee pursuant to this Paragraph 13, any insurance proceeds shall be for the account of Lessee.

14. **TERMINATION.** (a) Lessor may terminate this Lease Agreement at any time with respect to any or all of the Leased Vehicles by written notice to Lessee upon the occurrence of any of the following events of default: (i) failure to pay any monthly lease charge or any other sum payable to Lessor hereunder, or (ii) failure or refusal by Lessee to perform any other provision hereof to be performed by Lessee, or (iii) any representation or warranty made by Lessee shall prove to be false or misleading in any material respect as of the date on which the same was made, or (iv) the filing of any petition by or against Lessee under any bankruptcy or insolvency law or the making by Lessee of any assignment for the benefit of creditors or the appointment of any trustee or receiver for all or part of Lessee's business or assets or the assignment (voluntary or involuntary) of Lessee's interest in any Leased Vehicle or the attachment of any lien or levy on any Leased Vehicle (unless such petition, assignment, appointment, or attachment is withdrawn or nullified within two days). Upon such termination, the Leased Vehicle(s) shall be delivered to Lessor as provided in Paragraph 12 hereof and Lessee shall be responsible for any additional lease charges calculated in accordance with Paragraph 15(c) hereof. If Lessee fails to return the Leased Vehicle(s), Lessor may repossess the same at any time wherever the same may be located and may enter upon the premises of Lessee for the purpose of repossessing the Leased Vehicle(s), and shall hold the same when so repossessed free and clear of this Lease Agreement and any rights of Lessee therein. Lessee agrees to pay to Lessor reasonable attorney fees (in an amount equal to 15% of the aggregate sum of all lease charges due or such other amount as may be permitted by law) if this Lease Agreement is placed with an attorney other than an employee of Lessor for collection.

(b) Upon notice to Lessee, which shall be effective immediately upon receipt thereof, Lessor may at any time, at its sole discretion, terminate Lessee's right to lease additional Leased Vehicles under this Lease Agreement.

15. **EARLY TERMINATION OF LEASE.** (a) Lessee may terminate the lease of any Leased Vehicle prior to the expiration of the term thereof by giving Lessor 30 days prior written notice of its election to terminate such lease. The effective date of such termination shall be determined in accordance with this Paragraph 15.

(b) After giving such notice of termination with respect to a Leased Vehicle, Lessee shall attempt to sell such Leased Vehicle, as agent for Lessor, in an arm's length transaction to an unrelated purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS, WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee shall not be entitled to any compensation for serving as Lessor's agent in connection with such sale. Upon such sale, the lease of such Leased Vehicle shall terminate and Lessee shall promptly notify Lessor and remit to Lessor any proceeds of the sale, any monthly or other lease charges due and owing to the date of termination and any additional lease charges calculated in accordance with this Paragraph 15(b). If the Net Proceeds of such sale are less than the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessor shall pay or credit the excess to Lessee as a refund of lease charges.

(c) If Lessee is unable to sell the Leased Vehicle on behalf of Lessor

COMMERCIAL LEASE AGREEMENT (TRAC)

within thirty (30) days of the date of such notice of termination, the Leased Vehicle shall be promptly delivered to Lessor as provided in Paragraph 12 hereof, whereupon Lessor shall attempt to sell such Leased Vehicle in an arm's length transaction. The lease of such Leased Vehicle shall terminate upon the earlier to occur of (I) the date of such sale by Lessor or (II) the date that is thirty (30) days after the date of delivery of the Leased Vehicle to Lessor. Upon such date of termination, Lessee shall pay Lessor any monthly or other lease charges then due and owing to the date of termination and either (x) the excess, if any, of the applicable Early Termination Value for such Leased Vehicle over the Net Proceeds of any sale or (y) if Lessor was unable to sell such Leased Vehicle prior to such date of termination, such Early Termination Value.

(d) In lieu of attempting to sell the Leased Vehicle pursuant to Paragraph 15(b) hereof or in lieu of returning the Leased Vehicle pursuant to Paragraph 15(c) hereof, Lessee, with the consent of Lessor, may dispose of such Leased Vehicle for its own account, and the lease of such Leased Vehicle shall terminate upon Lessee paying to Lessor the applicable Early Termination Value for such Leased Vehicle, plus any monthly or other lease charges due and owing to the date of termination.

15. **FORCE MAJEURE AND NO CONSEQUENTIAL DAMAGES.** Lessor shall not be liable for any failure or delay in delivering any Leased Vehicle ordered for lease pursuant to this Lease Agreement, or for any failure to perform any provision thereof, resulting from fire or other casualty, riot, strike or other labor difficulty, governmental regulation or restriction, or any cause beyond Lessor's control. **IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCONVENIENCES, LOSS OF PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES RESULTING FROM ANY DEFECT IN OR ANY THEFT, DAMAGE, LOSS OR FAILURE OF ANY LEASED VEHICLE, AND THERE SHALL BE NO ABATEMENT OR SET-OFF OF MONTHLY LEASE CHARGES BECAUSE OF THE SAME.**

17. **ASSIGNMENT; SUBLEASE.** Neither this Lease Agreement nor any right hereunder may be assigned by Lessee, in whole or in part, without the prior written consent of Lessor. Lessee will not, without the prior written consent of Lessor, sublease or otherwise deliver, transfer or relinquish possession of a Leased Vehicle. If Lessor so consents to a sublease of a Leased Vehicle (i) the term of such sublease (including any renewal term) shall not extend beyond the term of lease for such Leased Vehicle provided herein, (ii) such sublease shall prohibit any further subleasing by the sublessee, (iii) such sublease shall provide that the rights of any sublessee thereunder shall be subject and subordinate to the terms of this Lease Agreement and rights and interests of Lessor in such Leased Vehicle, including, without limitation, the right of Lessor to repossess such Leased Vehicle and to void such sublease upon any repossession, (iv) Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease Agreement to the same extent as if such sublease had not occurred, (v) such sublease shall contain appropriate provisions for the maintenance and insurance of such Leased Vehicle, (vi) such sublease shall provide that it is assigned to Lessor for security purposes and (vii) such sublease shall provide that Lessor shall be permitted to proceed directly against the sublessee to enforce the sublessee's obligations thereunder. The review or approval by Lessor of a sublease agreement shall not constitute a waiver of any of the foregoing conditions or an acknowledgment that any of such conditions have been met. In the event of termination of this Lease Agreement pursuant to Paragraph 14 hereof, Lessor may require that all rentals or other proceeds of any sublease be endorsed or remitted to Lessor or deposited to Lessor's account in the same form received by Lessee, or may require that sublessee make such payments directly to Lessor. Lessee will obtain the execution of a consent to assignment by sublessee to Lessor and Lessee shall furnish such other documents to perfect such assignment as Lessor shall require. Lessor may assign all or any part of Lessor's right, title and interest in this Lease.

18. NO WARRANTIES. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER, OR THE DISTRIBUTOR OF THE LEASED VEHICLES HEREUNDER. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE FITNESS, SAFENESS, DESIGN, MERCHANTABILITY, CONDITION, QUALITY, CAPACITY OR WORKMANSHIP OF THE LEASED VEHICLES NOR ANY WARRANTY THAT THE LEASED VEHICLES WILL SATISFY THE REQUIREMENTS OF ANY LAW OR ANY CONTRACT SPECIFICATION, AND AS BETWEEN LESSOR AND LESSEE, LESSEE AGREES TO BEAR ALL SUCH RISKS AT ITS SOLE RISK AND EXPENSE. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST LESSOR AND ANY LEASED VEHICLE FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER AND AS TO LESSOR, LESSEE LEASES THE LEASED VEHICLES "AS IS." IN NO EVENT SHALL LESSOR BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHATSOEVER OR HOWSOEVER CAUSED. CALIFORNIA LESSEES WAIVE THE PROVISIONS OF SECTIONS 1955 AND 1957 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA.

19. **NOTICES.** Any notice required or permitted by this Lease Agreement shall be in writing and given by personal delivery or sent by United States mail, postage prepaid, addressed to the intended recipient at the Lessee's current billing address.
20. **NO IMPLIED WAIVERS.** The waiver by either party of, or failure to claim, a breach of any provision of this Lease Agreement shall not be deemed to be a waiver of any subsequent breach or to affect in any way the effectiveness of such provision.
21. **MISCELLANEOUS.** This Lease Agreement shall constitute the entire agreement between the parties and may not be changed except by an instrument in writing, signed by the party against whom the change is to be enforced. This Lease Agreement is a Michigan agreement and shall be governed by and construed in accordance with the laws of the State of Michigan.
22. **WAIVER OF DEFENSES, SECURITY.** Lessee's obligations to Lessor under the terms of this Lease Agreement shall not be subject to any reduction, abatement, defense, counterclaim, set off or recoupment which Lessee may now or hereafter claim against Lessor. The Leased Vehicles, including all attachments and accessories thereto, whether now or hereafter installed thereon, and the proceeds thereof, including, but not limited to the lease charges, proceeds of sale, exchange or other disposition thereof, and the proceeds of any damage claim and or insurance covering the Leased Vehicles, or any part thereof, and the proceeds due or to become due from Lessee and or any sublessee or a third party shall secure all indebtedness of the Lessee under this Lease Agreement and any and all indebtedness of the Lessee to Lessor.
23. **LESSEE'S WARRANTIES.** Lessee warrants that (i) Lessee is and shall at all times hereafter be duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and it has duly authorized the execution, delivery and performance of this Lease Agreement; (ii) this Lease Agreement has been duly and validly executed and delivered by Lessee and constitutes the valid and binding obligation of Lessee; and (iii) all financial statements presented to Lessor have been prepared in conformity with generally accepted accounting principles consistently applied and fairly and accurately present Lessee's financial condition and income as of the date given and since the date of such financial statements there has been no material adverse change in the financial condition of Lessee or any guarantor of Lessee's obligation hereunder.
24. **INSPECTION; FINANCIAL-STATEMENTS.** During normal business hours, Lessor and its authorized representatives may inspect each Leased Vehicle and the books and records of Lessee relative

COMMERCIAL LEASE AGREEMENT (TRAC)

thereto. Lessor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection. In addition, at the request of Lessor, Lessee shall furnish Lessor any financial statements of Lessee, including, without limitation, balance sheets and income statements.

25. **SECURITY INTEREST.** In the event any court determines that this Lease is not a true lease, then Lessee hereby grants Lessor a security interest in the Leased Vehicles and this Lease Agreement, together with all accessions, replacements and substitutions therefor or thereto and proceeds thereof. Lessor is authorized to file this Lease Agreement or any financing statements with respect to this Lease Agreement or the Leased Vehicles. Any such filing shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee authorizes Lessor to insert in this

Lease Agreement serial numbers, other identification data of the Leased Vehicles when determined by Lessor and dates or other unintentionally omitted non-substantive items to render this Lease Agreement complete. Lessor is hereby appointed by Lessee as its true and lawful attorney to cause this Lease Agreement, or any statement or other instrument in respect of this Lease Agreement showing the interest of Lessor in the Leased Vehicles including Uniform Commercial Code Financing Statements, to be filed or recorded and re-filed and re-recorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any searches, filings, recordings or stamp fees or taxes arising from the filing or recording of any such instrument or statement.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 16 day of FEBRUARY, 19 98.

LESSOR

FORD MOTOR CREDIT COMPANY

By: _____

Title: _____

LESSEE

TOM MERRYMAN TRUCKING INC

By: _____

Title: _____

MODIFICATION: This Lease Agreement sets forth all of the agreements of the Lessor and Lessee for the lease of the Leased Vehicles. There is no other agreement. Any change in this Lease Agreement must be in writing and signed by the Lessee and Ford Credit.

Lessee: TOM MERRYMAN TRUCKING INC

By: _____

Title: _____

GUARANTEE

In consideration of the Lessor leasing to Lessee and other good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, the undersigned guarantor unconditionally guarantees payment of all amounts due or to become due to the Lessor named in the above Lease Agreement, including without limitation, all lease charges and any amounts owing following surrender and sale of a Leased Vehicle.

(Guarantor)

ROBERT T MERRYMAN JR

(Guarantor)

EXHIBIT

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 1 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

1. **Lease Vehicles.** Pursuant to the Lease Agreement, all of the terms and conditions of which are incorporated by reference herein, Lessee agrees to lease from the Lessor the Leased Vehicles described in the Vehicle Description Section below, **which vehicles have been delivered to and accepted by Lessee in good condition with mileage shown below** in the Vehicle Description Section.

2. **Lease Term; Charges.** The lease term for the Leased Vehicles shall be the number of consecutive months specified below, and will commence on the date as indicated. The rental charges are due on the Payment Due Day of each month as specified below. The rental charges exclude any applicable taxes or other charges for which Lessee may be liable. An interim rent will be assessed for the period between the "Delivery Date" and the "Commencement Date" and will be shown on the billing statement.

3. **Certificate of Vehicle Use.** Lessee, a CORPORATION, hereby certified under penalty of perjury that: (a) Lessee intends that more than 50 percent of the use of each motor vehicle subject to such Lease Agreement is to be used in a trade or business of Lessee, and (b) Lessee has been advised that it will not be treated as the owner of any motor vehicle subject to such Lease Agreement for Federal income tax purposes.

4. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 lbs and higher. TGW is generally defined as the unloaded weight of the truck plus trailer, plus the load customarily carried by the vehicle or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of vehicle **must** file a heavy vehicle use tax return (IRS Form 2290) and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: ____/____/____
Payment Due Day: 1st day of
the month
Payment Timing: Advance

RENT

No. of Rental Payments
Rental Amount

60 @ \$1,634.93

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 112679
Lessee Unit Reference: _____
Description: 2000 New VEHICLE OVER THE R
Vin: 1FUPCDZBXYLB97413
Cap Cost: \$91,485.00
Residual: \$18,297.00 (20.00%)
Asset Rental: \$1,634.93
Mileage at Delivery: _____
Delivery Date: ____/____/____

Tax Information

Garaging Location:
City: PHILIPSBURG
County: CENTRE
State: PA

Property Tax Location:
RR #3 BOX 428A
PHILIPSBURG, CENTRE, PA

Tax Type, Present Rate
RENTAL TAX, 0.00%
RENTAL TAX, 0.00%
RENTAL TAX, 6.00% *RMK*

Exempt

FORD MOTOR CREDIT COMPANY
COMMERCIAL LEASE
SUPPLEMENT TO MASTER LEASE AGREEMENT (TRAC)

Page 1 of 2

THIS IS A SUPPLEMENT (this "Supplement") to the MASTER LEASE AGREEMENT (TRAC) DATED 02/16/98 (the "Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") and TOM MERRYMAN TRUCKING INC ("Lessee"). The capitalized terms used in this Supplement shall have the same meaning as in the Lease Agreement, unless otherwise defined herein. Subject to the terms and conditions of the Lease Agreement, which are incorporated herein by reference, Lessor and Lessee agree as follows:

1. **Leased Vehicles.** The Leased Vehicles described in the Vehicle Description section below have been delivered to and accepted by Lessee in good condition with mileage shown below in the Vehicle Description section. The terms and conditions of this Supplement shall apply solely to the Lease Vehicles described herein. Lessee hereby certifies, under penalty of perjury, that Lessee intends that more than fifty percent (50%) of the use of each Leased Vehicle is to be used in a trade or business of Lessee. Lessee is hereby advised that Lessee will not be treated as the owner of the Leased Vehicles for Federal income tax purposes.

2. **Lease Terms and Charges.** Commencing on the Commencement Date indicated below, Lessee will pay Lessor the Monthly Lease Charge on the Payment Due Date of each month of the Term specified below. Interim Monthly Lease Charges will be assessed for the period between the Delivery Date and the Commencement Date and will be shown on the billing statement.

3. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 pounds and higher. TGW is generally defined as the unloaded weight of the truck and trailer, plus the load customarily carried by the truck or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of the Leased Vehicle must file a heavy vehicle use tax return and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor for such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: 05/11/00
Payment Due Day: 1st day of the month
Payment Timing: Advance

MONTHLY LEASE CHARGES

60 Monthly Lease Charges @ \$1,540.23

Excludes all taxes and other Charges.

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 148476
Lessee Unit Reference: _____
Description: 1999 Used VEHICLE HEAVY TRUC
Vin: 1FUPCXZB8XL885857
Cap Cost: \$84,000.00
Assumed Residual: \$16,800.00 (20.00%)
Monthly Lease Charge: \$1,540.23
Mileage at Delivery: 132,114
Delivery Date: 05/11/00

Tax Information

Garaging Location:
City: CHESTER HILL
County: CLEARFIELD
State: PA

Property Tax Location:
RT 322 WEST PO BOX 99
CHESTER HILL, CLEARFIELD, PA

Tax Type, Present Rate

EXEMPT, 0.00%

EXEMPT, 0.00%

EXEMPT 0.00% *PKMVR*

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By [Signature]
Title B.O.M.
Date 10/18/99

Lessee

By [Signature]
Title Pres.
Date 10-18-99

FORD MOTOR CREDIT COMPANY
CommercialLease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/18/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By

Title

Date

[Signature]
B.O.M.
10/18/99

Lessee

By

Title

Date

[Signature]
Pres.
10-18-99

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. §4904
relating

to unsworn falsifications to authorities, that he/she is _____
_____, (Name)
_____, of _____, plaintiff herein, that
(Title) (Company)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing
Complaint are true and correct to the best of his/her knowledge, information and belief.

(Signature)

WWR# 043 64385

PIF
7/5/6
04364385-

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CO

vs.

COMPLAINT IN CIVIL ACTION

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
PA I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUL 27 2006

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts

KW

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No.

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation with offices at PO Box 6508, Mesa, AZ 85216-6548.
2. Defendant, Robert Merryman, is an adult individual residing at 501 Alder Street, Phillipsburg, PA 16866.
3. Defendant, Tom Merryman Trucking, Inc., is a Pennsylvania corporation with a last known address of 501 Alder Street, Phillipsburg, PA 16866 .
4. On or about February 16, 1998, the parties entered into a written Closed-End Lease Agreement (hereinafter referred to as the "Agreement") for the lease of a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413, more particularly identified in the Agreement, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.
5. By the terms of the Agreement, Defendant was to make 60 (monthly) payments of \$1,540.23, commencing May 11, 2000, and to pay certain license fees due at the inception of the lease and during the lease term.
6. The terms of said Agreement provide for termination upon satisfaction by Defendant of all obligations provided thereunder and upon the return of the vehicle by Defendant to Plaintiff at the end of the lease term, which term would end 60 (monthly) months after it commenced.

7. Plaintiff avers that Defendant defaulted under the terms of the Lease Agreement by failing to make payment to Plaintiff as promised.

8. Due to the Defendant's default under the Agreement, Plaintiff exercised its right to terminate the Lease.

9. After calculating the early termination charges due Plaintiff pursuant to the terms of the Lease, Plaintiff avers that a balance of \$66,796.69 as of June 13, 2006 is due from Defendant.

10. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

11. Plaintiff avers that such attorneys' fees will amount to \$1,500.00.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, Tom Merryman Trucking Inc., individually, in the amount of \$66,796.69 with continuing interest thereon at the legal rate 6.00% per annum from June 13, 2006 plus attorneys' fees of \$1,500.00 and costs.

COUNT II – AGAINST ROBERT MERRYMAN - PERSONAL GUARANTY

13. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if the same were set forth more fully at length herein.

14. On or about February 16, 1998, Robert Merryman executed a Closed-End Lease Agreement (hereinafter the "Agreement") in favor of Plaintiff, a true and correct copy of said Agreement is attached hereto, marked as Exhibit "1" and made a part hereof.

15. As further inducement for the extension of credit, Defendant, Robert Merryman, executed and delivered to Plaintiff his personal guaranty.

16. Pursuant to said Agreement, Robert Merryman took possession of the vehicle more particularly identified in the Agreement as a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413.

17. Plaintiff avers that Defendant is in default of the Agreement by having not made payment to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

18. Plaintiff avers that a payoff balance of \$66,796.69 is due from Defendant as of June 13, 2006.

19. Plaintiff avers that the Agreement between the parties provides that Plaintiff is entitled to interest at the rate of 6% per annum.

20. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's reasonable attorneys' fees.

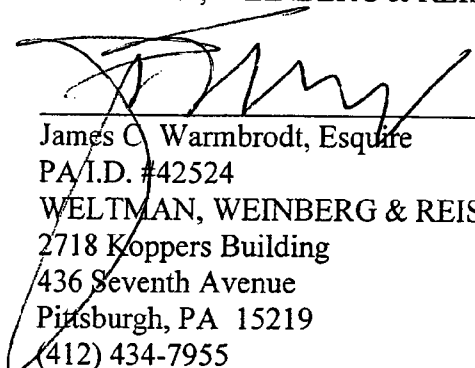
21. Plaintiff avers that such attorneys' fees amount to \$1,500.00.

22. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment on Count II against Defendant, Robert Merryman, individually, in the amount of \$66,796.69 with continuing interest thereon at the Contract rate of 6% per annum from June 13, 2006, plus attorneys' fees of \$1,500.00, and costs.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED SHALL BE USED FOR THAT PURPOSE.

WELTMAN, WEINBERG & REIS, CO., L.P.A.



James C. Warmbrodt, Esquire
PA/I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

COMMERCIAL LEASE AGREEMENT (TRAC)

TOM MERRYMAN TRUCKING INC ("Lessee") of RR3 BOX 428A, PHILIPSBURG, PA 16866, a CORPORATION organized under the laws of the State of PA, hereby leases from Ford Motor Credit Company, a Delaware corporation ("Lessor"), and Lessor hereby leases to Lessee, vehicles (hereinafter called "Leased Vehicles") designated and described from time to time in one or more Supplements ("Supplement(s)") hereto for use in lease service upon the following terms and conditions:

1. **USAGE.** All Leased Vehicles shall be leased by Lessee for use in Lessee's business in accordance with all applicable governmental and insurer requirements and limitations. All Leased Vehicles shall be inspected, prepared and equipped by Lessee in a manner approved by Lessor. No Leased Vehicle shall be removed from the United States for more than ninety (90) days during any (12) month period.
2. **TERM.** The term of lease as to each Leased Vehicle shall be as designated in the applicable Supplement.
3. **LEASE CHARGE.** (a) From time to time, Lessor will establish a lease rate which shall be expressed as a percentage of the Capitalized Cost of a Leased Vehicle. "Capitalized Cost" shall be the amount Lessor advanced to purchase the vehicle including all add-on equipment and service as well as applicable capitalized taxes. The monthly lease charge for each Leased Vehicle shall be based on the lease rate for such Leased Vehicle set forth in the Supplement(s). Lessee shall pay the monthly lease charge to Lessor for each Leased Vehicle in the amounts and on the dates set forth in the Supplement(s) to this Lease Agreement. In the event any monthly or other lease charges hereunder are not paid promptly when due, Lessee shall pay to Lessor, as an additional lease charge, interest on such overdue payment from the due date of such payment at a rate equal to the lesser of (i) 15% per annum or (ii) the maximum rate permitted by applicable law. All lease charges are due on the first day of each calendar month of the lease term. Lessee shall pay promptly to Lessor or its assignee as directed by Lessor all lease charges payable by it under this Lease Agreement without notice or demand and shall not be entitled to assert any setoff, counterclaim, deduction, recoupment or other defense for any reason.

(b) Lessor understands that Lessee may receive from manufacturers and vendors of the Leased Vehicles volume discounts, fleet rebates and dealer holdbacks ("Dealer Incentives") with respect to the Leased Vehicles, and Lessor has agreed that Lessee may retain any and all Dealer Incentives Lessee may receive as a result of leasing such Leased Vehicles with no duty to account to Lessor for such Dealer Incentives, except as may otherwise be agreed by the parties under a separate agreement.

4. **REGISTRATION AND TAXES.** Lessee shall, at Lessee's own expense, register, title and license each Leased Vehicle in the manner prescribed by Lessor so as to maintain Lessor's ownership and insurable interest in the Leased Vehicle and forward such title to Lessor at FORD MOTOR CREDIT COMPANY COMMERCIAL LENDING SERVICES P.O. BOX 1581 KING OF PRUSSIA, PA 19406. Lessee shall provide to Lessor any documentation pertaining to a Leased Vehicle as Lessor may from time to time request including but not limited to the Federal Highway Use Declaration Form. Lessee shall be responsible for determining taxes due and shall pay all taxes and other charges and expenses whatsoever with respect to each Leased Vehicle, and file all reports attendant thereto; except for the Federal Highway Use Tax which the Lessor shall pay. The cost of this tax will be charged to Lessee annually. Lessee shall promptly pay such charge when billed.
5. **OPERATING EXPENSES, MODIFICATIONS.** (a) Lessee shall pay, or provide for the payment of, all operating expenses of each Leased Vehicle, including without limitation, gasoline, oil, grease, anti-freeze, adjustments and repairs (except those covered by Ford Motor Company's warranty and policy adjustments), and storage, fines, towing and servicing. All replacement parts must be Ford Authorized Replacement Parts. (b) Lessee shall not make any additions, alterations or modifications to the Leased Vehicle; provided, however, that Lessee may make additions to a Leased Vehicle so long as Lessee

obtains Lessor's prior written consent and such additions are readily removable without any damage to the Leased Vehicle. Any dealer installed modifications, alterations or additions, the cost of which are included in the Capitalized Cost of a Leased Vehicle, shall be the property of the Lessor.

6. **RISK OF LOSS, MAINTENANCE AND INSPECTION.** Lessee shall bear, and indemnify Lessor against, any damage, loss, theft or destruction of each Leased Vehicle and shall maintain and repair each Leased Vehicle in accordance with manufacturer requirements and recommendations. Lessee shall permit representatives of Lessor to inspect each Leased Vehicle from time to time at reasonable intervals.
7. **INSURANCE.** Lessee shall provide, or cause to be provided, on each Leased Vehicle during the lease term thereof insurance with coverage and amounts not less than the following:

Cars and Light Trucks

bodily injury, \$300,000 bodily injury per accident,
\$50,000 property damage. Collision and Comprehensive
Coverage with deductible not to exceed \$1,000.00

Medium and Heavy Truck

A minimum of \$500,000 Combined Single Limit Liability per
occurrence. Collision and Comprehensive Coverage with
deductible not to exceed \$2,500.00

Tractors

A minimum of \$1,000,000 Combined Single Limit Liability
coverage per occurrence. Collision and Comprehensive
coverage with deductible not to exceed \$2,500.00.

Lessee shall cause each insurance policy issued pursuant to this Paragraph 7 to provide that (i) Lessor, as owner and Lessor of the Leased Vehicles, shall be insured as its interest may appear and (ii) if such policy is to be canceled or materially changed for any reason, such insurer will promptly notify Lessor, and such cancellation or change will not be effective as to Lessor for 20 days after receipt by Lessor of such notice. Lessee shall deliver to Lessor copies of each insurance policy required by this Paragraph 7 upon execution hereof and copies of each renewal policy not less than 30 days prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid. Lessee shall bear the entire risk of the Leased Vehicle being lost, destroyed, damaged or otherwise rendered permanently unfit or unavailable for use. Lessee, at Lessee's own expense, shall provide, or cause to be provided, any other insurance and post any bonds required by any governmental authority with respect to the operation of any Leased Vehicle. All such insurance shall protect Lessor, Lessee, any other person having an interest in the Leased Vehicle (if desired) and, except for any additional blanket liability insurance, any person leasing or driving the Leased Vehicle with valid permission. If any claim is made or action commenced for personal injury or death or property damage in connection with any Leased Vehicle, Lessee shall promptly notify Lessor, any other person known to have an interest in the Leased Vehicle and the insurance carrier thereof and furnish each of them with a copy of each process and pleading received in connection therewith and diligently defend against such claim or action and/or cooperate in the defense thereof. Lessee shall promptly furnish to the insurance carrier a report of any accident involving a Leased Vehicle on the form furnished by such carrier.

8. **FINANCE LEASE.** Lessee hereby acknowledges and agrees that it has read this Lease Agreement and is signing this Lease Agree-

EXHIBIT

COMMERCIAL LEASE AGREEMENT (T.C. 10)

ment. (i) Lessee is entitled under Article 2A of the Uniform Commercial Code to the promises and warranties, including those of any third party, provided to the Lessor by the Selling Dealer; and (ii) the Lessee may communicate with the Dealer and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

9. **PERFORMANCE BY LESSOR.** If Lessee fails for any reason to perform any provision of this agreement to be performed by Lessee, Lessor may (but shall not be obligated to) perform the same without relieving Lessee of its obligation to do so and Lessee shall reimburse Lessor upon demand for any costs and expenses incurred by Lessor in connection with such performance.

10. **INDEMNITY.** Lessee shall indemnify and hold Lessor, its agents and employees, harmless against any and all losses, claims, damages or expenses (including attorney's fees) connected with or arising out of the management, control, use, storage condition (including, without limitation, defects, whether or not discoverable by Lessor or Lessee) or operation of any Leased Vehicle, or any default by Lessee in the performance of any of its obligations hereunder. Lessee shall promptly notify Lessor of any such claim.

11. **EXPIRATION OF LEASE.** Upon the expiration of the lease of any Leased Vehicle hereunder.

(a) Lessor may at its option, sell such Leased Vehicle in an arm's length transaction within 30 days after expiration of this lease or may appoint Lessee as Lessor's agent to sell such Leased Vehicle on Lessor's behalf. The sale may be public or private and with or without notice to Lessee, shall be at wholesale, and shall be only for cash payable in full upon delivery of the Leased Vehicle and its title papers to the purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee will not be entitled to any compensation for serving as Lessor's agent in connection with such sale. If Lessee, as Lessor's agent, sells the Leased Vehicle, Lessee shall remit to Lessor the sale price of such Leased Vehicle, any monthly or other lease charges for such Leased Vehicle due under this Lease Agreement and any additional lease charges as specified below.

(b) If the Net Proceeds of such sale are less than the Assumed Residual for such Leased Vehicle, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the Assumed Residual for such Leased Vehicle, Lessor shall pay or credit the excess to Lessee as a refund of lease charges. For purposes of this Lease Agreement, (i) "Net Proceeds" shall mean the amount received on the sale of a Leased Vehicle less all expenses incurred by Lessor in selling the Leased Vehicle and all debts incurred by Lessee which, if not paid, might constitute a lien on the Leased Vehicle or a liability of Lessor, and (ii) "Assumed Residual" shall mean the assumed residual for such Leased Vehicle expressed as a percentage of Capitalized Cost as set forth in the Supplement.

12. **RETURN OF LEASED VEHICLE.** Upon the expiration or termination of the lease of any Leased Vehicle, Lessee shall provide written notice thereof to Lessor and shall return such Leased Vehicle to Lessor at the location to which it was originally delivered or at a location otherwise agreed to by Lessee and Lessor. At Lessor's request and on behalf of Lessor, Lessee shall store any Leased Vehicle for a period not to exceed thirty (30) days at Lessee's own expense, other than for insurance coverage, which shall be provided by Lessor, or at the request of Lessor, Lessee shall assemble the Leased Vehicles and make them available to Lessor at such place or places as Lessor shall reasonably request.

13. **LOSS OF LEASED VEHICLE.** In the event that the Leased Vehicle suffers a total loss or is stolen prior to the end of its lease term, Lessee shall pay the monthly lease charge for the month in which such loss or theft occurs and the applicable early termination value ("Early Termination Value") for such Leased Vehicle determined by Lessor at

the commencement of the lease for such Leased Vehicle in accordance with Lessor's procedures with respect thereto in effect at such time and set forth in a schedule maintained by Lessor. The Early Termination Value for a Leased Vehicle applicable for a particular month during the term of the lease of such Leased Vehicle will be set forth in a statement corresponding to such month provided to Lessee by Lessor. Such statements will be provided to Lessee each month during the term of the lease of such Leased Vehicle. To the extent of payment by the Lessee pursuant to this Paragraph 13, any insurance proceeds shall be for the account of Lessee.

14. **TERMINATION.** (a) Lessor may terminate this Lease Agreement at any time with respect to any or all of the Leased Vehicles by written notice to Lessee upon the occurrence of any of the following events of default: (i) failure to pay any monthly lease charge or any other sum payable to Lessor hereunder, or (ii) failure or refusal by Lessee to perform any other provision hereof to be performed by Lessee, or (iii) any representation or warranty made by Lessee shall prove to be false or misleading in any material respect as of the date on which the same was made, or (iv) the filing of any petition by or against Lessee under any bankruptcy or insolvency law or the making by Lessee of any assignment for the benefit of creditors or the appointment of any trustee or receiver for all or part of Lessee's business or assets or the assignment (voluntary or involuntary) of Lessee's interest in any Leased Vehicle or the attachment of any lien or levy on any Leased Vehicle (unless such petition, assignment, appointment, or attachment is withdrawn or nullified within two days). Upon such termination, the Leased Vehicle(s) shall be delivered to Lessor as provided in Paragraph 12 hereof and Lessee shall be responsible for any additional lease charges calculated in accordance with Paragraph 15(c) hereof. If Lessee fails to return the Leased Vehicle(s), Lessor may repossess the same at any time wherever the same may be located and may enter upon the premises of Lessee for the purpose of repossessing the Leased Vehicle(s), and shall hold the same when so repossessed free and clear of this Lease Agreement and any rights of Lessee therein. Lessee agrees to pay to Lessor reasonable attorney fees (in an amount equal to 15% of the aggregate sum of all lease charges due or such other amount as may be permitted by law) if this Lease Agreement is placed with an attorney other than an employee of Lessor for collection.

(b) Upon notice to Lessee, which shall be effective immediately upon receipt thereof, Lessor may at any time, at its sole discretion, terminate Lessee's right to lease additional Leased Vehicles under this Lease Agreement.

15. **EARLY TERMINATION OF LEASE.** (a) Lessee may terminate the lease of any Leased Vehicle prior to the expiration of the term thereof by giving Lessor 30 days prior written notice of its election to terminate such lease. The effective date of such termination shall be determined in accordance with this Paragraph 15.

(b) After giving such notice of termination with respect to a Leased Vehicle, Lessee shall attempt to sell such Leased Vehicle, as agent for Lessor, in an arm's length transaction to an unrelated purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS, WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee shall not be entitled to any compensation for serving as Lessor's agent in connection with such sale. Upon such sale, the lease of such Leased Vehicle shall terminate and Lessee shall promptly notify Lessor and remit to Lessor any proceeds of the sale, any monthly or other lease charges due and owing to the date of termination and any additional lease charges calculated in accordance with this Paragraph 15(b). If the Net Proceeds of such sale are less than the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessor shall pay or credit the excess to Lessee as a refund of lease charges.

(c) If Lessee is unable to sell the Leased Vehicle on behalf of Lessor

COMMERCIAL LEASE AGREEMENT (TRAC)

within thirty (30) days of the date of such notice of termination, the Leased Vehicle shall be promptly delivered to Lessor as provided in Paragraph 12 hereof, whereupon Lessor shall attempt to sell such Leased Vehicle in an arm's length transaction. The lease of such Leased Vehicle shall terminate upon the earlier to occur of (i) the date of such sale by Lessor or (ii) the date that is thirty (30) days after the date of delivery of the Leased Vehicle to Lessor. Upon such date of termination, Lessee shall pay Lessor any monthly or other lease charges then due and owing to the date of termination and either (x) the excess, if any, of the applicable Early Termination Value for such Leased Vehicle over the Net Proceeds of any sale or (y) if Lessor was unable to sell such Leased Vehicle prior to such date of termination, such Early Termination Value.

(d) In lieu of attempting to sell the Leased Vehicle pursuant to Paragraph 15(b) hereof or in lieu of returning the Leased Vehicle pursuant to Paragraph 15(c) hereof, Lessee, with the consent of Lessor, may dispose of such Leased Vehicle for its own account, and the lease of such Leased Vehicle shall terminate upon Lessee paying to Lessor the applicable Early Termination Value for such Leased Vehicle, plus any monthly or other lease charges due and owing to the date of termination.

16. **FORCE MAJEURE AND NO CONSEQUENTIAL DAMAGES.** Lessor shall not be liable for any failure or delay in delivering any Leased Vehicle ordered for lease pursuant to this Lease Agreement, or for any failure to perform any provision thereof, resulting from fire or other casualty, riot, strike or other labor difficulty, governmental regulation or restriction, or any cause beyond Lessor's control. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCONVENIENCES, LOSS OF PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES RESULTING FROM ANY DEFECT IN OR ANY THEFT, DAMAGE, LOSS OR FAILURE OF ANY LEASED VEHICLE, AND THERE SHALL BE NO ABATEMENT OR SET-OFF OF MONTHLY LEASE CHARGES BECAUSE OF THE SAME.

17. **ASSIGNMENT; SUBLEASE.** Neither this Lease Agreement nor any right hereunder may be assigned by Lessee, in whole or in part, without the prior written consent of Lessor. Lessee will not, without the prior written consent of Lessor, sublease or otherwise deliver, transfer or relinquish possession of a Leased Vehicle. If Lessor so consents to a sublease of a Leased Vehicle (i) the term of such sublease (including any renewal term) shall not extend beyond the term of lease for such Leased Vehicle provided herein, (ii) such sublease shall prohibit any further subleasing by the sublessee, (iii) such sublease shall provide that the rights of any sublessee thereunder shall be subject and subordinate to the terms of this Lease Agreement and rights and interests of Lessor in such Leased Vehicle, including, without limitation, the right of Lessor to repossess such Leased Vehicle and to void such sublease upon any repossession, (iv) Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease Agreement to the same extent as if such sublease had not occurred, (v) such sublease shall contain appropriate provisions for the maintenance and insurance of such Leased Vehicle, (vi) such sublease shall provide that it is assigned to Lessor for security purposes and (vii) such sublease shall provide that Lessor shall be permitted to proceed directly against the sublessee to enforce the sublessee's obligations thereunder. The review or approval by Lessor of a sublease agreement shall not constitute a waiver of any of the foregoing conditions or an acknowledgment that any of such conditions have been met. In the event of termination of this Lease Agreement pursuant to Paragraph 14 hereof, Lessor may require that all rentals or other proceeds of any sublease be endorsed or remitted to Lessor or deposited to Lessor's account in the same form received by Lessee, or may require that sublessee make such payments directly to Lessor. Lessee will obtain the execution of a consent to assignment by sublessee to Lessor and Lessee shall furnish such other documents to perfect such assignment as Lessor shall require. Lessor may assign all or any part of Lessor's right, title and interest in this Lease.

18. **NO WARRANTIES.** LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER, OR THE DISTRIBUTOR OF THE LEASED VEHICLES HEREUNDER. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE FITNESS, SAFENESS, DESIGN, MERCHANTABILITY, CONDITION, QUALITY, CAPACITY OR WORKMANSHIP OF THE LEASED VEHICLES NOR ANY WARRANTY THAT THE LEASED VEHICLES WILL SATISFY THE REQUIREMENTS OF ANY LAW OR ANY CONTRACT SPECIFICATION, AND AS BETWEEN LESSOR AND LESSEE, LESSEE AGREES TO BEAR ALL SUCH RISKS AT ITS SOLE RISK AND EXPENSE. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST LESSOR AND ANY LEASED VEHICLE FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER AND AS TO LESSOR, LESSEE LEASES THE LEASED VEHICLES "AS IS." IN NO EVENT SHALL LESSOR BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHATSOEVER OR HOWSOEVER CAUSED. CALIFORNIA LESSEES WAIVE THE PROVISIONS OF SECTIONS 1955 AND 1957 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA.

19. **NOTICES.** Any notice required or permitted by this Lease Agreement shall be in writing and given by personal delivery or sent by United States mail, postage prepaid, addressed to the intended recipient at the Lessee's current billing address.

20. **NO IMPLIED WAIVERS.** The waiver by either party of, or failure to claim, a breach of any provision of this Lease Agreement shall not be deemed to be a waiver of any subsequent breach or to affect in any way the effectiveness of such provision.

21. **MISCELLANEOUS.** This Lease Agreement shall constitute the entire agreement between the parties and may not be changed except by an instrument in writing, signed by the party against whom the change is to be enforced. This Lease Agreement is a Michigan agreement and shall be governed by and construed in accordance with the laws of the State of Michigan.

22. **WAIVER OF DEFENSES, SECURITY.** Lessee's obligations to Lessor under the terms of this Lease Agreement shall not be subject to any reduction, abatement, defense, counterclaim, set off or recoupment which Lessee may now or hereafter claim against Lessor. The Leased Vehicles, including all attachments and accessories thereto, whether now or hereafter installed thereon, and the proceeds thereof, including, but not limited to the lease charges, proceeds of sale, exchange or other disposition thereof, and the proceeds of any damage claim and or insurance covering the Leased Vehicles, or any part thereof, and the proceeds due or to become due from Lessee and or any sublessee or a third party shall secure all indebtedness of the Lessee under this Lease Agreement and any and all indebtedness of the Lessee to Lessor.

23. **LESSEE'S WARRANTIES.** Lessee warrants that (i) Lessee is and shall at all times hereafter be duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and it has duly authorized the execution, delivery and performance of this Lease Agreement; (ii) this Lease Agreement has been duly and validly executed and delivered by Lessee and constitutes the valid and binding obligation of Lessee; and (iii) all financial statements presented to Lessor have been prepared in conformity with generally accepted accounting principles consistently applied and fairly and accurately present Lessee's financial condition and income as of the date given and since the date of such financial statements there has been no material adverse change in the financial condition of Lessee or any guarantor of Lessee's obligation hereunder.

24. **INSPECTION; FINANCIAL STATEMENTS.** During normal business hours, Lessor and its authorized representatives may inspect each Leased Vehicle and the books and records of Lessee relative

COMMERCIAL LEASE AGREEMENT (TRAC)

there to. Lessor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection. In addition, at the request of Lessor, Lessee shall furnish Lessor any financial statements of Lessee, including, without limitation, balance sheets and income statements.

25. **SECURITY INTEREST.** In the event any court determines that this Lease is not a true lease, then Lessee hereby grants Lessor a security interest in the Leased Vehicles and this Lease Agreement, together with all accessions, replacements and substitutions therefor or thereto and proceeds thereof. Lessor is authorized to file this Lease Agreement or any financing statements with respect to this Lease Agreement or the Leased Vehicles. Any such filing shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee authorizes Lessor to insert in this

Lease Agreement serial numbers, other identification data of the Leased Vehicles when determined by Lessor and dates or other unintentionally omitted non-substantive items to render this Lease Agreement complete. Lessor is hereby appointed by Lessee as its true and lawful attorney to cause this Lease Agreement, or any statement or other instrument in respect of this Lease Agreement showing the interest of Lessor in the Leased Vehicles including Uniform Commercial Code Financing Statements, to be filed or recorded and re-filed and re-recorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any searches, filings, recordings or stamp fees or taxes arising from the filing or recording of any such instrument or statement.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 16 day of FEBRUARY, 19 98

LESSOR

FORD MOTOR CREDIT COMPANY

By: [Signature]
Title: [Signature]

LESSEE

TOM MERRYMAN TRUCKING INC

By: [Signature]
Title: PRESIDENT

MODIFICATION: This Lease Agreement sets forth all of the agreements of the Lessor and Lessee for the lease of the Leased Vehicles. There is no other agreement. Any change in this Lease Agreement must be in writing and signed by the Lessee and Ford Credit.

Lessee: TOM MERRYMAN TRUCKING INC

By: [Signature]

Title: PRESIDENT

GUARANTEE

In consideration of the Lessor leasing to Lessee and other good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, the undersigned guarantor unconditionally guarantees payment of all amounts due or to become due to the Lessor named in the above Lease Agreement, including without limitation, all lease charges and any amounts owing following surrender and sale of a Leased Vehicle.

(Guarantor)

ROBERT T MERRYMAN JR

[Signature]

(Guarantor)

EXHIBIT

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 1 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

1. **Lease Vehicles.** Pursuant to the Lease Agreement, all of the terms and conditions of which are incorporated by reference herein, Lessee agrees to lease from the Lessor the Leased Vehicles described in the Vehicle Description Section below, **which vehicles have been delivered to and accepted by Lessee in good condition with mileage shown below** in the Vehicle Description Section.

2. **Lease Term; Charges.** The lease term for the Leased Vehicles shall be the number of consecutive months specified below, and will commence on the date as indicated. The rental charges are due on the Payment Due Day of each month as specified below. The rental charges exclude any applicable taxes or other charges for which Lessee may be liable. An interim rent will be assessed for the period between the "Delivery Date" and the "Commencement Date" and will be shown on the billing statement.

3. **Certificate of Vehicle Use.** Lessee, a CORPORATION, hereby certified under penalty of perjury that: (a) Lessee intends that more than 50 percent of the use of each motor vehicle subject to such Lease Agreement is to be used in a trade or business of Lessee, and (b) Lessee has been advised that it will not be treated as the owner of any motor vehicle subject to such Lease Agreement for Federal income tax purposes.

4. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 lbs and higher. TGW is generally defined as the unloaded weight of the truck plus trailer, plus the load customarily carried by the vehicle or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of vehicle must file a heavy vehicle use tax return (IRS Form 2290) and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: ____/____/____
Payment Due Day: 1st day of
the month
Payment Timing: Advance

RENT

No. of Rental
Rental Amount
Payments

60 @ \$1,634.93

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 112679
Lessee Unit Reference: _____
Description: 2000 New VEHICLE OVER THE R
Vin: 1FUPCDZBXYLB97413
Cap Cost: \$91,485.00
Residual: \$18,297.00 (20.00%)
Asset Rental: \$1,634.93
Mileage at Delivery: _____
Delivery Date: ____/____/____

Tax Information

Garaging Location:
City: PHILIPSBURG
County: CENTRE
State: PA

Property Tax Location:
RR #3 BOX 428A
PHILIPSBURG, CENTRE, PA

Tax Type, Present Rate
RENTAL TAX, 0.00%
RENTAL TAX, 0.00%
RENTAL TAX, 6.00% *ETMX*

Exempt

FORD MOTOR CREDIT COMPANY
COMMERCIAL LEASE
SUPPLEMENT TO MASTER LEASE AGREEMENT (TRAC)

Page 1 of 2

THIS IS A SUPPLEMENT (this "Supplement") to the MASTER LEASE AGREEMENT (TRAC) DATED 02/16/98 (the "Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") and TOM MERRYMAN TRUCKING INC ("Lessee"). The capitalized terms used in this Supplement shall have the same meaning as in the Lease Agreement, unless otherwise defined herein. Subject to the terms and conditions of the Lease Agreement, which are incorporated herein by reference, Lessor and Lessee agree as follows:

1. **Leased Vehicles.** The Leased Vehicles described in the Vehicle Description section below have been delivered to and accepted by Lessee in good condition with mileage shown below in the Vehicle Description section. The terms and conditions of this Supplement shall apply solely to the Lease Vehicles described herein. Lessee hereby certifies, under penalty of perjury, that Lessee intends that more than fifty percent (50%) of the use of each Leased Vehicle is to be used in a trade or business of Lessee. Lessee is hereby advised that Lessee will not be treated as the owner of the Leased Vehicles for Federal income tax purposes.

2. **Lease Terms and Charges.** Commencing on the Commencement Date indicated below, Lessee will pay Lessor the Monthly Lease Charge on the Payment Due Date of each month of the Term specified below. Interim Monthly Lease Charges will be assessed for the period between the Delivery Date and the Commencement Date and will be shown on the billing statement.

3. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 pounds and higher. TGW is generally defined as the unloaded weight of the truck and trailer, plus the load customarily carried by the truck or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of the Leased Vehicle must file a heavy vehicle use tax return and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor for such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: 05/11/00
Payment Due Day: 1st day of the month
Payment Timing: Advance

MONTHLY LEASE CHARGES

60 Monthly Lease Charges @ \$1,540.23

Excludes all taxes and other Charges.

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 148476
Lessee Unit Reference: _____
Description: 1999 Used VEHICLE HEAVY TRUC
Vin: 1FUPCXZB8XL885857
Cap Cost: \$84,000.00
Assumed Residual: \$16,800.00 (20.00%)
Monthly Lease Charge: \$1,540.23
Mileage at Delivery: 132,114
Delivery Date: 05/11/00

Tax Information

Garaging Location:
City: CHESTER HILL
County: CLEARFIELD
State: PA

Tax Type, Present Rate
EXEMPT, 0.00%
EXEMPT, 0.00%
EXEMPT 0.00% *PKMVR*

Property Tax Location:
RT 322 WEST PO BOX 99
CHESTER HILL, CLEARFIELD, PA

FORD MOTOR CREDIT COMPANY
CommercialLease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By

Title

Date

[Signature]
B.O.M.
10/18/99

Lessee

By

Title

Date

[Signature]
Pres.
10-18-99

FORD MOTOR CREDIT COMPANY
CommercialLease
SUPPLEMENT TO LEASE AGREEMENT

Page 2 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

FORD MOTOR CREDIT COMPANY

By

Title

Date

[Signature]
B.O.M.
10/15/99

Lessee

By

Title

Date

[Signature]
Pres.
10-18-99

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. §4904 relating

to unsworn falsifications to authorities, that he/she is _____
_____, plaintiff herein, that
(Name)
_____ of _____
(Title) (Company)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint are true and correct to the best of his/her knowledge, information and belief.

(Signature)

WWR# 043 64385

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CD

vs.

PRAECIPE TO REINSTATE COMPLAINT

TOM MERRYMAN TRUCKING INC.,
AND ROBERT T MERRYMAN AS
PERSONAL GUARANTOR

Defendant

FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

William T. Molczan, Esquire
PA I.D. #47437
WELTMAN, WEINBERG & REIS, CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#04364385

FILED

NOV 29 2006

M/3:06/06

William A. Shaw
Prothonotary/Clerk of Courts

2 CERT to ATT
SHR

1 CERT to ATT

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

Civil Action No. 2006-1207-CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT T MERRYMAN AS
PERSONAL GUARANTOR

Defendant

PRAECIPE TO REINSTATE COMPLAINT

Kindly reinstate the Complaint in the above captioned matter.

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 

William T. Molczan, Esquire

PA I.D. #47437

WELTMAN, WEINBERG & REIS CO., L.P.A.

2718 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

(412) 434-7955

WWR #04364385

FILED

NOV 29 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No. 2006-1207-CY

vs.

COMPLAINT IN CIVIL ACTION

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants


FILED ON BEHALF OF
Plaintiff

COUNSEL OF RECORD OF
THIS PARTY:

James C. Warmbrodt, Esquire
PA I.D. #42524
WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955
WWR#04364385

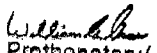
I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

Nov. 29, 2006 Document
Reinstated/Reissued to Sheriff/Attorney
for service.


Deputy Prothonotary

NOV 29 2006

Attest.


Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

No.

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

COMPLAINT IN CIVIL ACTION AND NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

COMPLAINT

1. Plaintiff is a corporation with offices at PO Box 6508, Mesa, AZ 85216-6548.
2. Defendant, Robert Merryman, is an adult individual residing at 501 Alder Street, Phillipsburg, PA 16866.
3. Defendant, Tom Merryman Trucking, Inc., is a Pennsylvania corporation with a last known address of 501 Alder Street, Phillipsburg, PA 16866 .
4. On or about February 16, 1998, the parties entered into a written Closed-End Lease Agreement (hereinafter referred to as the "Agreement") for the lease of a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413, more particularly identified in the Agreement, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.
5. By the terms of the Agreement, Defendant was to make 60 (monthly) payments of \$1,540.23, commencing May 11, 2000, and to pay certain license fees due at the inception of the lease and during the lease term.
6. The terms of said Agreement provide for termination upon satisfaction by Defendant of all obligations provided thereunder and upon the return of the vehicle by Defendant to Plaintiff at the end of the lease term, which term would end 60 (monthly) months after it commenced.

7. Plaintiff avers that Defendant defaulted under the terms of the Lease Agreement by failing to make payment to Plaintiff as promised.

8. Due to the Defendant's default under the Agreement, Plaintiff exercised its right to terminate the Lease.

9. After calculating the early termination charges due Plaintiff pursuant to the terms of the Lease, Plaintiff avers that a balance of \$66,796.69 as of June 13, 2006 is due from Defendant.

10. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's attorneys' fees.

11. Plaintiff avers that such attorneys' fees will amount to \$1,500.00.

12. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment in its favor and against Defendant, Tom Merryman Trucking Inc., individually, in the amount of \$66,796.69 with continuing interest thereon at the legal rate 6.00% per annum from June 13, 2006 plus attorneys' fees of \$1,500.00 and costs.

COUNT II – AGAINST ROBERT MERRYMAN - PERSONAL GUARANTY

13. Plaintiff incorporates by reference each of the preceding paragraphs of this Complaint as if the same were set forth more fully at length herein.

14. On or about February 16, 1998, Robert Merryman executed a Closed-End Lease Agreement (hereinafter the "Agreement") in favor of Plaintiff, a true and correct copy of said Agreement is attached hereto, marked as Exhibit "1" and made a part hereof.

15. As further inducement for the extension of credit, Defendant, Robert Merryman, executed and delivered to Plaintiff his personal guaranty.

16. Pursuant to said Agreement, Robert Merryman took possession of the vehicle more particularly identified in the Agreement as a 1999 Freightliner VIN #1FUPCXZB8XLB85857 and a 2000 Freightliner VIN # 1FUPCDXBXYLB97413.

17. Plaintiff avers that Defendant is in default of the Agreement by having not made payment to Plaintiff as promised, thereby rendering the entire balance immediately due and payable.

18. Plaintiff avers that a payoff balance of \$66,796.69 is due from Defendant as of June 13, 2006.

19. Plaintiff avers that the Agreement between the parties provides that Plaintiff is entitled to interest at the rate of 6% per annum.

20. Plaintiff avers that the Agreement between the parties provides that Defendant will pay Plaintiff's reasonable attorneys' fees.

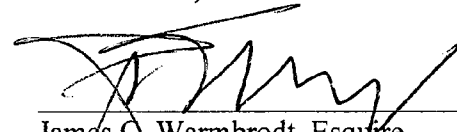
21. Plaintiff avers that such attorneys' fees amount to \$1,500.00.

22. Although repeatedly requested to do so by Plaintiff, Defendant has willfully failed and/or refused to pay the principal balance, interest, attorneys' fees or any part thereof to Plaintiff.

WHEREFORE, Plaintiff demands Judgment on Count II against Defendant, Robert Merryman, individually, in the amount of \$66,796.69 with continuing interest thereon at the Contract rate of 6% per annum from June 13, 2006, plus attorneys' fees of \$1,500.00, and costs.

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED
SHALL BE USED FOR THAT PURPOSE.**

WELTMAN, WEINBERG & REIS, CO., L.P.A.



James C. Warmbrodt, Esquire

PA/I.D. #42524

WELTMAN, WEINBERG & REIS CO., L.P.A.

2718 Koppers Building

436 Seventh Avenue

Pittsburgh, PA 15219

(412) 434-7955

WWR#04364385

COMMERCIAL LEASE AGREEMENT (TRAC)

TOM MERRYMAN TRUCKING INC ("Lessee") of RR3 BOX 428A, PHILIPSBURG, PA 16866, a CORPORATION organized under the laws of the State of PA, hereby leases from Ford Motor Credit Company, a Delaware corporation ("Lessor"), and Lessor hereby leases to Lessee, vehicles (hereinafter called "Leased Vehicles") designated and described from time to time in one or more Supplements ("Supplement(s)") hereto for use in lease service upon the following terms and conditions:

1. **USAGE.** All Leased Vehicles shall be leased by Lessee for use in Lessee's business in accordance with all applicable governmental and insurer requirements and limitations. All Leased Vehicles shall be inspected, prepared and equipped by Lessee in a manner approved by Lessor. No Leased Vehicle shall be removed from the United States for more than ninety (90) days during any (12) month period.
2. **TERM.** The term of lease as to each Leased Vehicle shall be as designated in the applicable Supplement.
3. **LEASE CHARGE.** (a) From time to time, Lessor will establish a lease rate which shall be expressed as a percentage of the Capitalized Cost of a Leased Vehicle. "Capitalized Cost" shall be the amount Lessor advanced to purchase the vehicle including all add-on equipment and service as well as applicable capitalized taxes. The monthly lease charge for each Leased Vehicle shall be based on the lease rate for such Leased Vehicle set forth in the Supplements. Lessee shall pay the monthly lease charge to Lessor for each Leased Vehicle in the amounts and on the dates set forth in the Supplement(s) to this Lease Agreement. In the event any monthly or other lease charges hereunder are not paid promptly when due, Lessee shall pay to Lessor, as an additional lease charge, interest on such overdue payment from the due date of such payment at a rate equal to the lesser of (i) 15% per annum or (ii) the maximum rate permitted by applicable law. All lease charges are due on the first day of each calendar month of the lease term. Lessee shall pay promptly to Lessor or its assignee as directed by Lessor all lease charges payable by it under this Lease Agreement without notice or demand and shall not be entitled to assert any setoff, counterclaim, deduction, recoupment or other defense for any reason.

(b) Lessor understands that Lessee may receive from manufacturers and vendors of the Leased Vehicles volume discounts, fleet rebates and dealer holdbacks ("Dealer Incentives") with respect to the Leased Vehicles, and Lessor has agreed that Lessee may retain any and all Dealer Incentives Lessee may receive as a result of leasing such Leased Vehicles with no duty to account to Lessor for such Dealer Incentives, except as may otherwise be agreed by the parties under a separate agreement.

4. **REGISTRATION AND TAXES.** Lessee shall, at Lessee's own expense, register, title and license each Leased Vehicle in the manner prescribed by Lessor so as to maintain Lessor's ownership and insurable interest in the Leased Vehicle and forward such title to Lessor at FORD MOTOR CREDIT COMPANY COMMERCIAL LENDING SERVICES P.O. BOX 1581 KING OF PRUSSIA, PA 19406. Lessee shall provide to Lessor any documentation pertaining to a Leased Vehicle as Lessor may from time to time request including but not limited to the Federal Highway Use Declaration Form. Lessee shall be responsible for determining taxes due and shall pay all taxes and other charges and expenses whatsoever with respect to each Leased Vehicle, and file all reports attendant thereto; except for the Federal Highway Use Tax which the Lessor shall pay. The cost of this tax will be charged to Lessee annually. Lessee shall promptly pay such charge when billed.
5. **OPERATING EXPENSES, MODIFICATIONS.** (a) Lessee shall pay, or provide for the payment of, all operating expenses of each Leased Vehicle, including without limitation, gasoline, oil, grease, anti-freeze, adjustments and repairs (except those covered by Ford Motor Company's warranty and policy adjustments), and storage, fines, towing and servicing. All replacement parts must be Ford Authorized Replacement Parts. (b) Lessee shall not make any additions, alterations or modifications to the Leased Vehicle; provided, however, that Lessee may make additions to a Leased Vehicle so long as Lessee

obtains Lessor's prior written consent and such additions are readily removable without any damage to the Leased Vehicle. Any dealer installed modifications, alterations or additions, the cost of which are included in the Capitalized Cost of a Leased Vehicle, shall be the property of the Lessor.

6. **RISK OF LOSS, MAINTENANCE AND INSPECTION.** Lessee shall bear, and indemnify Lessor against, any damage, loss, theft or destruction of each Leased Vehicle and shall maintain and repair each Leased Vehicle in accordance with manufacturer requirements and recommendations. Lessee shall permit representatives of Lessor to inspect each Leased Vehicle from time to time at reasonable intervals.
7. **INSURANCE.** Lessee shall provide, or cause to be provided, on each Leased Vehicle during the lease term thereof with coverage and amounts not less than the following:

Cars and Light Trucks

bodily injury, \$300,000 bodily injury per accident,
\$50,000 property damage. Collision and Comprehensive
Coverage with deductible not to exceed \$1,000.00

Medium and Heavy Truck

A minimum of \$500,000 Combined Single Limit Liability per
occurrence. Collision and Comprehensive Coverage with
deductible not to exceed \$2,500.00

Tractors

A minimum of \$1,000,000 Combined Single Limit Liability
coverage per occurrence. Collision and Comprehensive
coverage with deductible not to exceed \$2,500.00.

Lessee shall cause each insurance policy issued pursuant to this Paragraph 7 to provide that (i) Lessor, as owner and Lessor of the Leased Vehicles, shall be insured as its interest may appear and (ii) if such policy is to be canceled or materially changed for any reason, such insurer will promptly notify Lessor, and such cancellation or change will not be effective as to Lessor for 20 days after receipt by Lessor of such notice. Lessee shall deliver to Lessor copies of each insurance policy required by this Paragraph 7 upon execution hereof and copies of each renewal policy not less than 30 days prior to the expiration of the original policy or preceding renewal policy, as the case may be, and Lessee shall deliver to Lessor receipts or other evidence that the premiums thereon have been paid. Lessee shall bear the entire risk of the Leased Vehicle being lost, destroyed, damaged or otherwise rendered permanently unfit or unavailable for use. Lessee, at Lessee's own expense, shall provide, or cause to be provided, any other insurance and post any bonds required by any governmental authority with respect to the operation of any Leased Vehicle. All such insurance shall protect Lessor, Lessee, any other person having an interest in the Leased Vehicle (if desired) and, except for any additional blanket liability insurance, any person leasing or driving the Leased Vehicle with valid permission. If any claim is made or action commenced for personal injury or death or property damage in connection with any Leased Vehicle, Lessee shall promptly notify Lessor, any other person known to have an interest in the Leased Vehicle and the insurance carrier thereof and furnish each of them with a copy of each process and pleading received in connection therewith and diligently defend against such claim or action and/or cooperate in the defense thereof. Lessee shall promptly furnish to the insurance carrier a report of any accident involving a Leased Vehicle on the form furnished by such carrier.

8. **FINANCE LEASE.** Lessee hereby acknowledges and agrees that it has read this Lease Agreement and agrees to signing this Lease Agree-

EXHIBIT

COMMERCIAL LEASE AGREEMENT (TC 10)

ment. (i) Lessee is entitled under Article 2A of the Uniform Commercial Code to the promises and warranties, including those of any third party, provided to the Lessor by the Selling Dealer; and (ii) the Lessee may communicate with the Dealer and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

9. **PERFORMANCE BY LESSOR.** If Lessee fails for any reason to perform any provision of this agreement to be performed by Lessee, Lessor may (but shall not be obligated to) perform the same without relieving Lessee of its obligation to do so and Lessee shall reimburse Lessor upon demand for any costs and expenses incurred by Lessor in connection with such performance.

10. **INDEMNITY.** Lessee shall indemnify and hold Lessor, its agents and employees, harmless against any and all losses, claims, damages or expenses (including attorney's fees) connected with or arising out of the management, control, use, storage condition (including, without limitation, defects, whether or not discoverable by Lessor or Lessee) or operation of any Leased Vehicle, or any default by Lessee in the performance of any of its obligations hereunder. Lessee shall promptly notify Lessor of any such claim.

11. **EXPIRATION OF LEASE.** Upon the expiration of the lease of any Leased Vehicle hereunder.

(a) Lessor may at its option, sell such Leased Vehicle in an arm's length transaction within 30 days after expiration of this lease or may appoint Lessee as Lessor's agent to sell such Leased Vehicle on Lessor's behalf. The sale may be public or private and with or without notice to Lessee, shall be at wholesale, and shall be only for cash payable in full upon delivery of the Leased Vehicle and its title papers to the purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee will not be entitled to any compensation for serving as Lessor's agent in connection with such sale. If Lessee, as Lessor's agent, sells the Leased Vehicle, Lessee shall remit to Lessor the sale price of such Leased Vehicle, any monthly or other lease charges for such Leased Vehicle due under this Lease Agreement and any additional lease charges as specified below.

(b) If the Net Proceeds of such sale are less than the Assumed Residual for such Leased Vehicle, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the Assumed Residual for such Leased Vehicle, Lessor shall pay or credit the excess to Lessee as a refund of lease charges. For purposes of this Lease Agreement, (i) "Net Proceeds" shall mean the amount received on the sale of a Leased Vehicle less all expenses incurred by Lessor in selling the Leased Vehicle and all debts incurred by Lessee which, if not paid, might constitute a lien on the Leased Vehicle or a liability of Lessor, and (ii) "Assumed Residual" shall mean the assumed residual for such Leased Vehicle expressed as a percentage of Capitalized Cost as set forth in the Supplement.

12. **RETURN OF LEASED VEHICLE.** Upon the expiration or termination of the lease of any Leased Vehicle, Lessee shall provide written notice thereof to Lessor and shall return such Leased Vehicle to Lessor at the location to which it was originally delivered or at a location otherwise agreed to by Lessee and Lessor. At Lessor's request and on behalf of Lessor, Lessee shall store any Leased Vehicle for a period not to exceed thirty (30) days at Lessee's own expense, other than for insurance coverage, which shall be provided by Lessor, or at the request of Lessor, Lessee shall assemble the Leased Vehicles and make them available to Lessor at such place or places as Lessor shall reasonably request.

13. **LOSS OF LEASED VEHICLE.** In the event that the Leased Vehicle suffers a total loss or is stolen prior to the end of its lease term, Lessee shall pay the monthly lease charge for the month in which such loss or theft occurs and the applicable early termination value ("Early Termination Value") for such Leased Vehicle determined by Lessor at

the commencement of the lease for such Leased Vehicle in accordance with Lessor's procedures with respect thereto in effect at such time and set forth in a schedule maintained by Lessor. The Early Termination Value for a Leased Vehicle applicable for a particular month during the term of the lease of such Leased Vehicle will be set forth in a statement corresponding to such month provided to Lessee by Lessor. Such statements will be provided to Lessee each month during the term of the lease of such Leased Vehicle. To the extent of payment by the Lessee pursuant to this Paragraph 13, any insurance proceeds shall be for the account of Lessee.

14. **TERMINATION.** (a) Lessor may terminate this Lease Agreement at any time with respect to any or all of the Leased Vehicles by written notice to Lessee upon the occurrence of any of the following events of default: (i) failure to pay any monthly lease charge or any other sum payable to Lessor hereunder, or (ii) failure or refusal by Lessee to perform any other provision hereof to be performed by Lessee, or (iii) any representation or warranty made by Lessee shall prove to be false or misleading in any material respect as of the date on which the same was made, or (iv) the filing of any petition by or against Lessee under any bankruptcy or insolvency law or the making by Lessee of any assignment for the benefit of creditors or the appointment of any trustee or receiver for all or part of Lessee's business or assets or the assignment (voluntary or involuntary) of Lessee's interest in any Leased Vehicle or the attachment of any lien or levy on any Leased Vehicle (unless such petition, assignment, appointment, or attachment is withdrawn or nullified within two days). Upon such termination, the Leased Vehicle(s) shall be delivered to Lessor as provided in Paragraph 12 hereof and Lessee shall be responsible for any additional lease charges calculated in accordance with Paragraph 15(c) hereof. If Lessee fails to return the Leased Vehicle(s), Lessor may repossess the same at any time wherever the same may be located and may enter upon the premises of Lessee for the purpose of repossessing the Leased Vehicle(s), and shall hold the same when so repossessed free and clear of this Lease Agreement and any rights of Lessee therein. Lessee agrees to pay to Lessor reasonable attorney fees (in an amount equal to 15% of the aggregate sum of all lease charges due or such other amount as may be permitted by law) if this Lease Agreement is placed with an attorney other than an employee of Lessor for collection.

(b) Upon notice to Lessee, which shall be effective immediately upon receipt thereof, Lessor may at any time, at its sole discretion, terminate Lessee's right to lease additional Leased Vehicles under this Lease Agreement.

15. **EARLY TERMINATION OF LEASE.** (a) Lessee may terminate the lease of any Leased Vehicle prior to the expiration of the term thereof by giving Lessor 30 days prior written notice of its election to terminate such lease. The effective date of such termination shall be determined in accordance with this Paragraph 15.

(b) After giving such notice of termination with respect to a Leased Vehicle, Lessee shall attempt to sell such Leased Vehicle, as agent for Lessor, in an arm's length transaction to an unrelated purchaser. Any such sale shall be on an "AS IS, WHERE IS" BASIS, WITH NO RECOURSE OR WARRANTY BY LESSOR. Lessee shall not be entitled to any compensation for serving as Lessor's agent in connection with such sale. Upon such sale, the lease of such Leased Vehicle shall terminate and Lessee shall promptly notify Lessor and remit to Lessor any proceeds of the sale, any monthly or other lease charges due and owing to the date of termination and any additional lease charges calculated in accordance with this Paragraph 15(b). If the Net Proceeds of such sale are less than the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessee shall pay the deficiency as additional lease charges to Lessor. If the Net Proceeds of such sale exceed the applicable Early Termination Value for such Leased Vehicle on the date of termination, Lessor shall pay or credit the excess to Lessee as a refund of lease charges.

(c) If Lessee is unable to sell the Leased Vehicle on behalf of Lessor

COMMERCIAL LEASE AGREEMENT (TRAC)

within thirty (30) days of the date of such notice of termination, the Leased Vehicle shall be promptly delivered to Lessor as provided in Paragraph 12 hereof, whereupon Lessor shall attempt to sell such Leased Vehicle in an arm's length transaction. The lease of such Leased Vehicle shall terminate upon the earlier to occur of (i) the date of such sale by Lessor or (ii) the date that is thirty (30) days after the date of delivery of the Leased Vehicle to Lessor. Upon such date of termination, Lessee shall pay Lessor any monthly or other lease charges then due and owing to the date of termination and either (x) the excess, if any, of the applicable Early Termination Value for such Leased Vehicle over the Net Proceeds of any sale or (y) if Lessor was unable to sell such Leased Vehicle prior to such date of termination, such Early Termination Value.

(d) In lieu of attempting to sell the Leased Vehicle pursuant to Paragraph 15(b) hereof or in lieu of returning the Leased Vehicle pursuant to Paragraph 15(c) hereof, Lessee, with the consent of Lessor, may dispose of such Leased Vehicle for its own account, and the lease of such Leased Vehicle shall terminate upon Lessee paying to Lessor the applicable Early Termination Value for such Leased Vehicle, plus any monthly or other lease charges due and owing to the date of termination.

16. **FORCE MAJEURE AND NO CONSEQUENTIAL DAMAGES.** Lessor shall not be liable for any failure or delay in delivering any Leased Vehicle ordered for lease pursuant to this Lease Agreement, or for any failure to perform any provision thereof, resulting from fire or other casualty, riot, strike or other labor difficulty, governmental regulation or restriction, or any cause beyond Lessor's control. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY INCONVENIENCES, LOSS OF PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES RESULTING FROM ANY DEFECT IN OR ANY THEFT, DAMAGE, LOSS OR FAILURE OF ANY LEASED VEHICLE, AND THERE SHALL BE NO ABATEMENT OR SET-OFF OF MONTHLY LEASE CHARGES BECAUSE OF THE SAME.

17. **ASSIGNMENT; SUBLEASE.** Neither this Lease Agreement nor any right hereunder may be assigned by Lessee, in whole or in part, without the prior written consent of Lessor. Lessee will not, without the prior written consent of Lessor, sublease or otherwise deliver, transfer or relinquish possession of a Leased Vehicle. If Lessor so consents to a sublease of a Leased Vehicle (i) the term of such sublease (including any renewal term) shall not extend beyond the term of lease for such Leased Vehicle provided herein, (ii) such sublease shall prohibit any further subleasing by the sublessee, (iii) such sublease shall provide that the rights of any sublessee thereunder shall be subject and subordinate to the terms of this Lease Agreement and rights and interests of Lessor in such Leased Vehicle, including, without limitation, the right of Lessor to repossess such Leased Vehicle and to void such sublease upon any repossession, (iv) Lessee shall remain primarily liable hereunder for the performance of all the terms of this Lease Agreement to the same extent as if such sublease had not occurred, (v) such sublease shall contain appropriate provisions for the maintenance and insurance of such Leased Vehicle, (vi) such sublease shall provide that it is assigned to Lessor for security purposes and (vii) such sublease shall provide that Lessor shall be permitted to proceed directly against the sublessee to enforce the sublessee's obligations thereunder. The review or approval by Lessor of a sublease agreement shall not constitute a waiver of any of the foregoing conditions or an acknowledgment that any of such conditions have been met. In the event of termination of this Lease Agreement pursuant to Paragraph 14 hereof, Lessor may require that all rentals or other proceeds of any sublease be endorsed or remitted to Lessor or deposited to Lessor's account in the same form received by Lessee, or may require that sublessee make such payments directly to Lessor. Lessee will obtain the execution of a consent to assignment by sublessee to Lessor and Lessee shall furnish such other documents to perfect such assignment as Lessor shall require. Lessor may assign all or any part of Lessor's right, title and interest in this Lease.

18. **NO WARRANTIES.** LESSEE ACKNOWLEDGES THAT LESSOR IS NOT THE MANUFACTURER, THE AGENT OF THE MANUFACTURER, OR THE DISTRIBUTOR OF THE LEASED VEHICLES HEREUNDER. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE FITNESS, SAFENESS, DESIGN, MERCHANTABILITY, CONDITION, QUALITY, CAPACITY OR WORKMANSHIP OF THE LEASED VEHICLES NOR ANY WARRANTY THAT THE LEASED VEHICLES WILL SATISFY THE REQUIREMENTS OF ANY LAW OR ANY CONTRACT SPECIFICATION, AND AS BETWEEN LESSOR AND LESSEE, LESSEE AGREES TO BEAR ALL SUCH RISKS AT ITS SOLE RISK AND EXPENSE. LESSEE SPECIFICALLY WAIVES ALL RIGHTS TO MAKE CLAIM AGAINST LESSOR AND ANY LEASED VEHICLE FOR BREACH OF ANY WARRANTY OF ANY KIND WHATSOEVER AND AS TO LESSOR, LESSEE LEASES THE LEASED VEHICLES "AS IS." IN NO EVENT SHALL LESSOR BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHATSOEVER OR HOWSOEVER CAUSED. CALIFORNIA LESSEES WAIVE THE PROVISIONS OF SECTIONS 1955 AND 1957 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA.

19. **NOTICES.** Any notice required or permitted by this Lease Agreement shall be in writing and given by personal delivery or sent by United States mail, postage prepaid, addressed to the intended recipient at the Lessee's current billing address.

20. **NO IMPLIED WAIVERS.** The waiver by either party of, or failure to claim, a breach of any provision of this Lease Agreement shall not be deemed to be a waiver of any subsequent breach or to affect in any way the effectiveness of such provision.

21. **MISCELLANEOUS.** This Lease Agreement shall constitute the entire agreement between the parties and may not be changed except by an instrument in writing, signed by the party against whom the change is to be enforced. This Lease Agreement is a Michigan agreement and shall be governed by and construed in accordance with the laws of the State of Michigan.

22. **WAIVER OF DEFENSES, SECURITY.** Lessee's obligations to Lessor under the terms of this Lease Agreement shall not be subject to any reduction, abatement, defense, counterclaim, set off or recoupment which Lessee may now or hereafter claim against Lessor. The Leased Vehicles, including all attachments and accessories thereto, whether now or hereafter installed thereon, and the proceeds thereof, including, but not limited to the lease charges, proceeds of sale, exchange or other disposition thereof, and the proceeds of any damage claim and or insurance covering the Leased Vehicles, or any part thereof, and the proceeds due or to become due from Lessee and or any sublessee or a third party shall secure all indebtedness of the Lessee under this Lease Agreement and any and all indebtedness of the Lessee to Lessor.

23. **LESSEE'S WARRANTIES.** Lessee warrants that (i) Lessee is and shall at all times hereafter be duly organized, validly existing and in good standing under the laws of the jurisdiction under which it is organized and it has duly authorized the execution, delivery and performance of this Lease Agreement; (ii) this Lease Agreement has been duly and validly executed and delivered by Lessee and constitutes the valid and binding obligation of Lessee; and (iii) all financial statements presented to Lessor have been prepared in conformity with generally accepted accounting principles consistently applied and fairly and accurately present Lessee's financial condition and income as of the date given and since the date of such financial statements there has been no material adverse change in the financial condition of Lessee or any guarantor of Lessee's obligation hereunder.

24. **INSPECTION; FINANCIAL STATEMENTS.** During normal business hours, Lessor and its authorized representatives may inspect each Leased Vehicle and the books and records of Lessee relative

COMMERCIAL LEASE AGREEMENT (TRAC)

therein. Lessor shall have no duty to make any such inspection and shall not incur any liability or obligation by reason of making or not making any such inspection. In addition, at the request of Lessor, Lessee shall furnish Lessor any financial statements of Lessee, including, without limitation, balance sheets and income statements.

25. **SECURITY INTEREST.** In the event any court determines that this Lease is not a true lease, then Lessee hereby grants Lessor a security interest in the Leased Vehicles and this Lease Agreement, together with all accessions, replacements and substitutions therefor or thereto and proceeds thereof. Lessor is authorized to file this Lease Agreement or any financing statements with respect to this Lease Agreement or the Leased Vehicles. Any such filing shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code. Lessee authorizes Lessor to insert in this

Lease Agreement serial numbers, other identification data of the Leased Vehicles when determined by Lessor and dates or other unintentionally omitted non-substantive items to render this Lease Agreement complete. Lessor is hereby appointed by Lessee as its true and lawful attorney to cause this Lease Agreement, or any statement or other instrument in respect of this Lease Agreement showing the interest of Lessor in the Leased Vehicles including Uniform Commercial Code Financing Statements, to be filed or recorded and re-filled and re-recorded, and grants Lessor the right to execute Lessee's name thereto. Lessee agrees to execute and deliver any statement or instrument requested by Lessor for such purpose, and agrees to pay or reimburse Lessor for any searches, filings, recordings or stamp fees or taxes arising from the filing or recording of any such instrument or statement.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 16 day of FEBRUARY, 19 98.

LESSOR

FORD MOTOR CREDIT COMPANY

By: [Signature]

Title: [Signature]

LESSEE

TOM MERRYMAN TRUCKING INC

By: [Signature]

Title: PRESIDENT

MODIFICATION: This Lease Agreement sets forth all of the agreements of the Lessor and Lessee for the lease of the Leased Vehicles. There is no other agreement. Any change in this Lease Agreement must be in writing and signed by the Lessee and Ford Credit.

Lessee: TOM MERRYMAN TRUCKING INC

By: [Signature]

Title: PRESIDENT

GUARANTEE

In consideration of the Lessor leasing to Lessee and other good and valuable consideration, the receipt of which is hereby acknowledged by the undersigned, the undersigned guarantor unconditionally guarantees payment of all amounts due or to become due to the Lessor named in the above Lease Agreement, including without limitation, all lease charges and any amounts owing following surrender and sale of a Leased Vehicle.

(Guarantor)

ROBERT T MERRYMAN JR

(Guarantor)

EXHIBIT

FORD MOTOR CREDIT COMPANY
Commercial Lease
SUPPLEMENT TO LEASE AGREEMENT

Page 1 of 2

SUPPLEMENT TO THE LEASE AGREEMENT DATED 02/16/98 ("Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") AND TOM MERRYMAN TRUCKING INC ("Lessee").

1. **Lease Vehicles.** Pursuant to the Lease Agreement, all of the terms and conditions of which are incorporated by reference herein, Lessee agrees to lease from the Lessor the Leased Vehicles described in the Vehicle Description Section below, **which vehicles have been delivered to and accepted by Lessee in good condition with mileage shown below** in the Vehicle Description Section.

2. **Lease Term; Charges.** The lease term for the Leased Vehicles shall be the number of consecutive months specified below, and will commence on the date as indicated. The rental charges are due on the Payment Due Day of each month as specified below. The rental charges exclude any applicable taxes or other charges for which Lessee may be liable. An interim rent will be assessed for the period between the "Delivery Date" and the "Commencement Date" and will be shown on the billing statement.

3. **Certificate of Vehicle Use.** Lessee, a CORPORATION, hereby certified under penalty of perjury that: (a) Lessee intends that more than 50 percent of the use of each motor vehicle subject to such Lease Agreement is to be used in a trade or business of Lessee, and (b) Lessee has been advised that it will not be treated as the owner of any motor vehicle subject to such Lease Agreement for Federal income tax purposes.

4. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 lbs and higher. TGW is generally defined as the unloaded weight of the truck plus trailer, plus the load customarily carried by the vehicle or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of vehicle must file a heavy vehicle use tax return (IRS Form 2290) and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: ____/____/____
Payment Due Day: 1st day of
the month
Payment Timing: Advance

RENT

No. of Rental
Rental Amount
Payments

60 @ \$1,634.93

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 112679
Lessee Unit Reference: _____
Description: 2000 New VEHICLE OVER THE R
Vin: 1FUPCDZBXYLB97413
Cap Cost: \$91,485.00
Residual: \$18,297.00 (20.00%)
Asset Rental: \$1,634.93
Mileage at Delivery: _____
Delivery Date: ____/____/____

Tax Information

Garaging Location:
City: PHILIPSBURG
County: CENTRE
State: PA

Property Tax Location:
RR #3 BOX 428A
PHILIPSBURG, CENTRE, PA

Tax Type, Present Rate
RENTAL TAX, 0.00%
RENTAL TAX, 0.00%
RENTAL TAX, 6.00%

Exempt

FORD MOTOR CREDIT COMPANY
COMMERCIAL LEASE
SUPPLEMENT TO MASTER LEASE AGREEMENT (TRAC)

Page 1 of 2

THIS IS A SUPPLEMENT (this "Supplement") to the MASTER LEASE AGREEMENT (TRAC) DATED 02/16/98 (the "Lease Agreement") BETWEEN FORD MOTOR CREDIT COMPANY ("Lessor") and TOM MERRYMAN TRUCKING INC ("Lessee"). The capitalized terms used in this Supplement shall have the same meaning as in the Lease Agreement, unless otherwise defined herein. Subject to the terms and conditions of the Lease Agreement, which are incorporated herein by reference, Lessor and Lessee agree as follows:

1. **Leased Vehicles.** The Leased Vehicles described in the Vehicle Description section below have been delivered to and accepted by Lessee in good condition with mileage shown below in the Vehicle Description section. The terms and conditions of this Supplement shall apply solely to the Lease Vehicles described herein. Lessee hereby certifies, under penalty of perjury, that Lessee intends that more than fifty percent (50%) of the use of each Leased Vehicle is to be used in a trade or business of Lessee. Lessee is hereby advised that Lessee will not be treated as the owner of the Leased Vehicles for Federal income tax purposes.

2. **Lease Terms and Charges.** Commencing on the Commencement Date indicated below, Lessee will pay Lessor the Monthly Lease Charge on the Payment Due Date of each month of the Term specified below. Interim Monthly Lease Charges will be assessed for the period between the Delivery Date and the Commencement Date and will be shown on the billing statement.

3. **Federal Highway Use Tax (FHUT) on Heavy Vehicles.** FHUT applies to vehicles with a taxable gross weight (TGW) of 55,000 pounds and higher. TGW is generally defined as the unloaded weight of the truck and trailer, plus the load customarily carried by the truck or trailer. The TGW of all heavy vehicles must be listed on the Federal Highway Use Tax Declaration form. Lessor as owner of the Leased Vehicle must file a heavy vehicle use tax return and pay related tax in a single payment. Lessee agrees to promptly reimburse Lessor for such tax when billed.

LEASE TERM AND CHARGES

CONTRACT

Lease Program Type: TRAC
Term: 60 Months
Commencement Date: 05/11/00
Payment Due Day: 1st day of the month
Payment Timing: Advance

MONTHLY LEASE CHARGES

60 Monthly Lease Charges @ \$1,540.23

Excludes all taxes and other Charges.

VEHICLE DESCRIPTION

Vehicle/Unit Information

Unit No.: 148476
Lessee Unit Reference: _____
Description: 1999 Used VEHICLE HEAVY TRUC
Vin: 1FUPCXZB8XL885857
Cap Cost: \$84,000.00
Assumed Residual: \$16,800.00 (20.00%)
Monthly Lease Charge: \$1,540.23
Mileage at Delivery: 132,114
Delivery Date: 05/11/00

Tax Information

Garaging Location:
City: CHESTER HILL
County: CLEARFIELD
State: PA

Property Tax Location:
RT 322 WEST PO BOX 99
CHESTER HILL, CLEARFIELD, PA

Tax Type, Present Rate

EXEMPT, 0.00%

EXEMPT, 0.00%

EXEMPT 0.00% *P. L. M. V. R.*

VERIFICATION

The undersigned does hereby verify subject to the penalties of 18 PA.C.S. §4904 relating

to unsworn falsifications to authorities, that he/she is Barbara Buckwalter
Account Rep. of FORD MOTOR CREDIT CO. plaintiff herein, that
(Title) (Company) (Name)

he/she is duly authorized to make this Verification, and that the facts set forth in the foregoing Complaint are true and correct to the best of his/her knowledge, information and belief.

Barbara Buckwalter
(Signature)

WWR# 043 64385

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

No. 2006-1207-CD

PRAECIPE FOR DEFAULT JUDGMENT
AS TO COUNT 1 ONLY

FILED Atty
m 11:49 AM pd.
MAR 21 2007 00.00
Statement
to Atty
William A. Shaw
Prothonotary/Clerk of Courts
ICC Notice to Tom
Merryman Trucking Inc.
(CP)

FILED ON BEHALF OF
Plaintiff

FILED
MAR 22 2007
William A. Shaw
Prothonotary/Clerk of Courts

COUNSEL OF RECORD OF
THIS PARTY:

Benjamin R. Bibler, Esquire
PA I.D.#93598
Weltman, Weinberg & Reis Co., L.P.A.
2718 Koppers Bldg.
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#04364385
Judgment Amount \$ 71,140.51

**THIS LAW FIRM IS ATTEMPTING TO COLLECT THIS DEBT FOR ITS CLIENT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

Civil Action No. 2006-1207-CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

PRAECIPE FOR DEFAULT JUDGMENT AS TO COUNT 1 ONLY

TO THE PROTHONOTARY:

Kindly enter Judgment against the Defendant, Tom Merryman Trucking Inc., individually, above named, in the default of an Answer, in the amount of \$71,140.51 computed as follows:

Amount claimed in Complaint	\$66,796.69
Interest from June 13, 2006 to February 27, 2007 at the legal interest rate of 6.00% per annum	\$2,843.82
Attorney's fees	\$1,500.00
TOTAL	\$71,140.51

I hereby certify that appropriate Notices of Default, as attached have been mailed in accordance with PA R.C.P. 237.1 on the dates indicated on the Notices.

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 

Benjamin R. Bibler, Esquire
PA I.D.#93598

Weltman, Weinberg & Reis Co., L.P.A.
2718 Koppers Bldg.
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR#04364385

Plaintiff's address is:

c/o Weltman, Weinberg & Reis Co., L.P.A., 2718 Koppers Building, 436 7th Avenue, Pittsburgh, PA 15219
And that the last known address of the Defendant is: 2457 OLD ERIE PIKE, WEST DECATUR, PA 16878.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

2006 1207 CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendant

IMPORTANT NOTICE

TO:

Tom Merryman Trucking Inc
2457 Old Erie Pike
West Decatur, Pa 16878

Date of Notice: 2/8/07

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET ST., SUITE 228
CLEARFIELD, PA 16830
(814) 765-2641, ext. 1300-1301

WELTMAN, WEINBERG & REIS CO., L.P.A.

By: 

William T. Molczan, Esquire
PA. I.D.#47437

WELTMAN, WEINBERG & REIS CO., L.P.A.
2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR #04364385

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Plaintiff

2006 1207 CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendant

IMPORTANT NOTICE

TO:

Robert T Merryman
2457 Old Erie Pike
West Decatur, Pa 16878

Date of Notice: 2/8/07

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By: William T. Molczan

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WELTMAN, WEINBERG & REIS CO., L.P.A.

2718 Koppers Building
436 Seventh Avenue
Pittsburgh, PA 15219
(412) 434-7955

WWR #04364385

IN THE COMMON PLEAS COURT OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FORD MOTOR CREDIT COMPANY

Case no: 2006-1207-CD

Plaintiff

NON-MILITARY AFFIDAVIT

vs.

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

The undersigned, who first being duly sworn, according to law, deposes and states as follows:

That he/she is the duly authorized agent of the Plaintiff in the within matter.

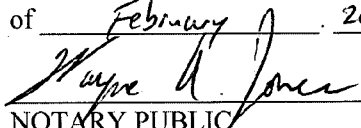
Affiant further states that the within Affidavit is made pursuant to and in accordance with the Servicemembers' Civil Relief Act (SCRA), 50 U.S.C. App. § 521.

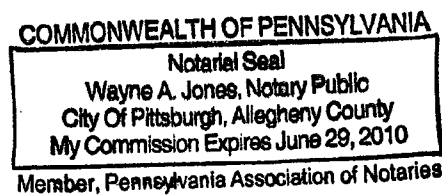
Affiant further states that based upon investigation it is the affiant's belief that the Defendant, TOM MERRYMAN TRUCKING INC., AND ROBERT MERRYMAN AS PERSONAL GUARANTOR is not in the military service.

Affiant further states that this belief is supported by the attached certificate from the Defense Manpower Data Center (DMDC), which states that the Defendant, TOM MERRYMAN TRUCKING INC., AND ROBERT MERRYMAN AS PERSONAL GUARANTOR is not in the military service.

Further Affiant sayeth naught.


AFFIANT

SWORN TO AND SUBSCRIBED in my presence this 28 day
of February, 2007.

NOTARY PUBLIC



This law firm is a debt collector attempting to collect this debt for our client and any information obtained will be used for that purpose.

Department of Defense Manpower Data Center

FEB-27-2007 10:41:07



Military Status Report
Pursuant to the Servicemembers Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
MERRYMAN	TOM	Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. #167;#167; 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenseink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided

by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

*Report ID: **BWMKEZLQWVP***

Department of Defense Manpower Data Center

FEB-27-2007 10:41:40



Military Status Report
Pursuant to the Servicemembers Civil Relief Act

◀ Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
MERRYMAN	ROBERT	Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary M. Snavelly-Dixon

Mary M. Snavelly-Dixon, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

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*Report ID: **BWMKKLHYSUS***

FILED

MAR 21 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

COPY

FORD MOTOR CREDIT COMPANY

Plaintiff

vs.

Civil Action No. 2006-1207-CD

TOM MERRYMAN TRUCKING INC.,
AND ROBERT MERRYMAN AS
PERSONAL GUARANTOR

Defendants

NOTICE OF JUDGMENT OR ORDER

TO: ☐ Plaintiff
 ☒ Defendant
 ☐ Garnishee

You are hereby notified that the following
Order or Judgment was entered against you
on 3/27/07

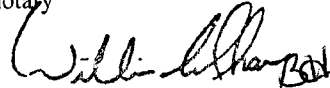
(xx) Assumpsit Judgment in the amount
 of \$71,140.51 plus costs.

() Trespass Judgment in the amount
 of \$_____ plus costs.

() If not satisfied within sixty (60)
days, your motor vehicle operator's license and/or registration
will be suspended by the Department of Transportation, Bureau
of Traffic Safety, Harrisburg, PA.

(xx) Entry of Judgment of
 ☐ Court Order
 ☐ Non-Pros
 ☐ Confession
 ☒ Default
 ☐ Verdict
 ☐ Arbitration
 Award

Prothonotary



By: _____
PROTHONOTARY (OR DEPUTY)

TOM MERRYMAN TRUCKING INC
2457 OLD ERIE PIKE
WEST DECATUR, PA 16878

Plaintiff's address is:

c/o Weltman, Weinberg & Reis Co., L.P.A., 2718 Koppers Building, 436 7th Avenue, Pittsburgh, PA 15219
1-888-434-0085

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
STATEMENT OF JUDGMENT

COPY

Ford Motor Credit Company
Plaintiff(s)

No.: 2006-01207-CD

Real Debt: \$71,140.51

Atty's Comm: \$

Vs.

Costs: \$

Int. From: \$

Robert Merryman
Tom Merryman Trucking, Inc.
Defendant(s)

Entry: \$20.00

Instrument: Default Judgment as to Count 1
ONLY

Date of Entry: March 21, 2007

Expires: March 21, 2012

Certified from the record this 21st day of March, 2007.



William A. Shaw, Prothonotary

SIGN BELOW FOR SATISFACTION

Received on _____, _____, of defendant full satisfaction of this Judgment,
Debt, Interest and Costs and Prothonotary is authorized to enter Satisfaction on the same.

Plaintiff/Attorney