

# RECEIPT

DATE

09/25/74

No.

654573

RECEIVED FROM

American Time Distributors, Inc. \$75.00

Seventy five and  $\frac{00}{100}$ 

DOLLARS

 FOR RENT FOR

DE-SW-1947

ACCOUNT	
PAYMENT	
BAL. DUE	

 CASH CHECK MONEY  
ORDER CREDIT  
CARD

FROM

807041

TO

BY

M.M.



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
DIVISION OF WASTE AND HAZARDOUS SUBSTANCES  
COMPLIANCE AND PERMITTING SECTION

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

**RECEIVED**  
**SEP 25 2024**  
**DNREC - WHS**  
TELEPHONE: (302) 739-9403  
FAX: (302) 739-5060

**SOLID WASTE TRANSPORTER PERMIT APPLICATION**

**Instructions:** You must complete this application in its entirety and attach all applicable documentation. (Note: For applicants renewing an existing permit, this application requires the submission of updated information and documentation. References to material submitted under previous applications are no longer accepted.)

The application must be signed by the company owner or a corporate officer. A check or money order payable to the **“State of Delaware”** must accompany this application and be sent to:

Delaware Department of Natural Resources and Environmental Control  
Compliance and Permitting Section  
89 Kings Highway  
Dover, DE 19901

**1. Type of Permit**

- New – **SCRAP TIRES ONLY** Submit a check or money order, payable to the “State of Delaware,” in the amount of \$75.00.
- New – **ALL OTHERS** Submit a check or money order, payable to the “State of Delaware” in the amount of \$350.00.
- Renewal: Permit # DE-SW- 1947 Expiration Date 12/31/24

Please indicate the term for which you desire your permit to be issued. Submit a check or money order, payable to the “State of Delaware,” for the indicated permit fee.

**SCRAP TIRES ONLY**

**ALL OTHERS**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> One Year - \$75.00 | <input type="checkbox"/> One Year - \$350.00    |
| <input type="checkbox"/> Two Years - \$125.00          | <input type="checkbox"/> Two Years - \$650.00   |
| <input type="checkbox"/> Three Years - \$175.00        | <input type="checkbox"/> Three Years - \$950.00 |
| <input type="checkbox"/> Four Years - \$225.00         | <input type="checkbox"/> Four Years - \$1250.00 |
| <input type="checkbox"/> Five Years - \$275.00         | <input type="checkbox"/> Five Years - \$1550.00 |

Solid Waste Transporter Application  
Page 2 of 6

**2. Release to Public**

Do you wish to be included on the list of transporters that is provided to persons requesting a list of Delaware permitted solid waste transporters?  Yes  No

**3. Company Information**

Company Name American Tire Distributors, Inc.

Location Address:	Mailing Address:
12200 Herbert Wayne Court, Ste 150	Attn: Legal Dept, 12200 Herbert Wayne Court, Ste 150
Huntersville	Huntersville
NC 28078	NC 28078

Contact: Brian Miller Title: VP of Operations and Sustainable Ecosystem

Business Phone: 704-632-1905 Fax: \_\_\_\_\_

E-mail: esg@atd-us.com

24 hr Emergency Contact Phone: 708-698-1170

**4. Company Ownership Information**

(a). Please indicate the company type:

- Proprietorship
- Partnership
- Corporation - If company is a corporation, indicate city, state, and date of incorporation.

City: Wilmington State: DE Date: 12/29/1998

- Municipality
- Public institution
- Limited Liability Corporation (LLC) State: \_\_\_\_\_
- Other: (must specify) \_\_\_\_\_

(b). For each Owner, Partner, or Corporate Officer, attach a list with name, title, mailing address, date of birth, and % ownership. Include all stockholders owning greater than 5% outstanding shares.

Attachment A

(c). If company is owned by or affiliated with a parent company, attach parent company name, address & mailing address, and % ownership.

- Attachment B
- No parent company

**5. Company locations in Delaware**

List name and street address of each company location, including freight terminals, within the State of Delaware.

- Attachment \_\_\_\_\_
- No Delaware locations

**6. Company Affiliates**

List name, location and mailing addresses, nature of business relationship of all company Affiliates, which affiliates are engaged in the business of waste transport, treatment, storage, disposal, recovery or reclamation. (Affiliated companies are defined as those companies owned by the same owners, corporate officers, or parent company.)

- Attachment C
- No affiliates

**7. Type of Waste to be Transported**

(a). Check all that apply. Refer to Delaware's *Regulations Governing Solid Waste* for definitions of waste categories.

- Residential waste
- Commercial waste (from **non-manufacturing, non-processing** businesses and offices)
- Industrial waste (from a manufacturing or industrial process)
- Dry waste:  construction/demolition debris  
 trees/stumps  
 other (must specify) \_\_\_\_\_
- Ash:  municipal incinerator  
 coal ash  
 other (must specify) \_\_\_\_\_
- Infectious waste
- Non-hazardous petroleum-hydrocarbon contaminated soils
- Asbestos-containing waste
- Scrap Tires

(b). Does your company collect and transport residential (household) waste from single family homes, condominiums and apartment complexes in Delaware?  Yes  No

(c). If you answered "YES" to question 7.b., above, does your company provide recycling services to those customers?  Yes  No  N/A

(d). If you offer recycling services, does your company collect and transport the recyclables separately from the waste generated by your customers?  Yes  No ATD does not provide recycling services. ATD is a scrap tire transporter.

(e). If you offer recycling services, are the recyclables ultimately taken to an incinerator (waste-to-energy) or landfill?  Yes  No

**8. Treatment, Storage, and Disposal Facilities**

- (a). Do you cross state lines with the waste?  Yes  No
- (b). Identify in an attachment **all** solid waste Treatment, Storage, Disposal Facilities, Reclamation Facilities and Transfer Stations to which the waste will be transported.
  - Delaware Solid Waste Authority locations: (attachment) \_\_\_\_\_
  - Clean Earth of New Castle, Inc. (thermal treatment facility for PHC-soils)
  - Delaware Recyclable Products, Inc. (dry waste, commercial, industrial, and PHC-soils )
  - Other in-state solid waste facilities, including private facilities: (attachment) \_\_\_\_\_
  - Out of state solid waste TSD facilities: (attachment) D \_\_\_\_\_

**9. Other Transporter Permits**

- (a). Attach a copy of your home state solid waste transporter permit. (N/A if Delaware is your home state.)
  - Attachment E \_\_\_\_\_
  - Not applicable-No transporter permit required for these solid waste types in our home state.
- (b). List solid waste transporter permits held in other states.
  - Attachment F \_\_\_\_\_
  - No transporter permits in other states
- (c). Indicate your Federal DOT number and Motor Carrier number:  
DOT# 175882 \_\_\_\_\_ MC# 1028767 \_\_\_\_\_
  - N/A If N/A, please provide an explanation, on the following page, as to why you are not required to have a DOT or MC number.

**10. Proof of Financial Responsibility**

The transporter must submit proof of financial responsibility as established in section 7.2.4 of Delaware's *Regulations Governing Solid Waste*. This proof may be established by a Certificate of Insurance, with MCS-90 endorsement where applicable, or by other means approved by the Department. (The Certificate of Insurance must identify the **Department of Natural Resources and Environmental Control, Compliance and Permitting Section** as the certificate holder.)

- (a). Are you for-hire in interstate commerce?  Yes  No (For-Hire means you are in the business of transporting, for compensation or payment, wastes generated by a company other than your own.)
- (b). Do you transport in the State of Delaware Only (Intrastate)?  Yes  No
- (c). Do you transport Interstate?  Yes  No

- (d). Certificate of Insurance must be attached and include minimum automobile liability coverage as follows:

	<b>FOR-HIRE INTERSTATE</b>	<b>ALL OTHERS</b>
Residential Waste	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Commercial Waste	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Industrial Waste	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Dry Waste	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Ash	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Infectious Waste	\$1,000,000.00 + MCS-90 <input type="checkbox"/>	\$750,000.00 + MCS-90 <input type="checkbox"/>
Non-Hazardous Petroleum Contaminated Soils	\$750,000.00 + MCS-90 <input type="checkbox"/>	\$350,000.00 <input type="checkbox"/>
Asbestos	\$1,000,000.00 + MCS-90 <input type="checkbox"/> (For Hire & Private)	\$350,000.00 <input type="checkbox"/>
Scrap Tires Only	\$350,000.00 <input checked="" type="checkbox"/>	\$350,000.00 <input type="checkbox"/>

### 11. Spill Control and Safety

List all spill control and safety equipment which will be carried on each vehicle. (**Note:** Separate lists by type of vehicle and type of waste may be required.) Attach a copy of the Spill Control Plan. The Spill Control Plan **must** contain the following elements: (1) List of safety and spill control equipment carried in the vehicle, (2) Driver preventive measures, (3) Driver immediate corrective actions, (4) Company internal communications, (5) Company external communications including the **Delaware Emergency Reporting Numbers: 1-800-662-8802 and 302-739-9401**, and (6) Cleanup and decontamination measures.

- ✓ Spill Control Plan: Attachment H

### 12. Driver Training

**IN SUMMARY OR OUTLINE FORM**, describe the procedures that your company takes to ensure that all company drivers are safe and competent drivers. Small owner-operators may describe their years of experience and driving record in lieu of a formal program.

- (a). Include requirements for special licenses (e.g. CDL, including any special endorsements), any special training received, including dates training was received (e.g. asbestos training), and any ongoing company programs. (e.g. weekly safety meetings or annual refresher courses);
- (b). Include your company procedure for periodic checks of the driver's records for moving violations, and your company policy on progressive counseling/discipline based on points;
- (c). Describe how drivers are instructed in the following:
- (i) Knowledge of proper handling procedures for the type of solid waste being transported.
  - (ii) Familiarity with the approved accidental discharge containment plan. (Spill Control Plan)
  - (iii) Familiarity with the conditions of the solid waste transporter's permit.

- ✓ Driver Training, attachment I

**13. Vehicle Identification**

On the form provided with this application, list **MAKE, MODEL, YEAR, SERIAL NUMBER, LICENSE PLATE NUMBER, STATE OF REGISTRATION, MANUFACTURER'S GVWR and OWNERSHIP** of all vehicles used for the transportation of solid waste. You must list both motorized and container units. (If you maintain a list of company vehicles in a computer database you may submit a print out of the vehicles provided it contains the information requested herein.)

**NOTE: You must notify CAPS in writing of any changes to information contained within this application, such as additions or deletions of vehicles, in accordance with conditions of the issued permit.**

Vehicle List Attached Attachment J

**14. Vehicle Operator Information**

Is a list of all vehicle operators attached?  Yes Attachment K

What tax form do you submit to the IRS for your vehicle operators?

- Form W-2
- Form 1099-Misc
- Other

**15. Environmental Record**

List all criminal citations, arrests, convictions, civil or administrative violations, and civil or administrative enforcement actions, and the disposition(s) thereof for the violation or alleged violation of any environmental statute, regulation, permit, license, approval, or order, regardless of the state in which it occurred. Indicate whether it was a local, state, or federal violation or alleged violation. List all such items for the applicant, and if the applicant is other than an individual, for any employee while employed by the applicant, or any partner, officer, or director of the applicant as an individual or for any former business of such partner, officer, or director. For civil or administrative violations or alleged violations, list all such items for the last five (5) years from the date of the application. Information submitted under this section is subject to verification. **Failure to submit complete and accurate information may lead to permit denial or revocation.**

- Attachment \_\_\_\_\_
- No violations within the specified time period

**16. Certification**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attachments and that, upon personal knowledge and information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

signed by  
 \*\*Signature Rebecca Sinclair Date 9/18/2024  
F A A A A A S F B B 4 4 5 F

Print Name Rebecca Sinclair Title Chief People Officer

**\*\*A legal owner or corporate officer must sign the application\*\***





**Attachment A  
Corporate Officers**

<b>Name</b>	<b>Title</b>	<b>Mailing Address</b>	<b>% Ownership</b>
Stuart Schuette	President & Chief Executive Officer	12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078	N/A
Rebecca Sinclair	Chief People Officer	12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078	N/A

**Attachment B**  
**Parent Company Name**

ATD New Holdings, Inc., 12200 Herbert Wayne Court, Ste 150, Huntersville, NC 28078.  
American Tire Distributors, Inc. is a wholly owned subsidiary.

**Attachment C**  
**Company Affiliates**

ATD does not have affiliates engaged in the business of waste transport, treatment, storage, disposal, recovery or reclamation.

**Attachment D**  
**Treatment, Storage and Disposal Facilities**

1. Proco Company  
2640 Roxbury Rd  
Charles City, VA 23030
2. Geiter Done of WNY  
300 Green Street  
Buffalo, NY 14206

Department of Environmental Quality  
Division of Waste Management  
Solid Waste Section



# Scrap Tire Hauling Identification Certificate

Hauler ID#: NCT03518

Date Issued: 4/3/2023  
Business Name: AMERICAN TIRE DISTRIBUTORS, INC.  
Owner: STUART SCHUETTE  
Contact: BRIAN MILLER  
Mailing Address: 12200 HERBERT WAYNE COURT, SUITE 150  
HUNTERSVILLE, NC 28078

THIS CERTIFICATION PROVIDES AUTHORIZATION TO OPERATE IN THE FOLLOWING NC COUNTY(S):

Statewide

Scrap tires that originate from outside of NC shall not be accepted for free disposal. Counties are encouraged to audit businesses that obtain scrap tires.  
Scrap tires that were not obtained in the normal course of business shall not be accepted for free disposal.

This identification certificate references the Scrap Tire Hauler Registration Application submitted to the Division of Waste Management – Solid Waste Section by the scrap tire hauler.

**Hauling and disposal of scrap tires in violation of this certificate, the Scrap Tire Management Rules (15A N.C.A.C. 13B .1100), or the Scrap Tire Disposal Act (N.C.G.S. Chapter 130A – Article 9, Part 2B) is subject to civil or criminal penalties (N.C.G.S. 130A-22; N.C.G.S. 130A-309.62; N.C.G.S. 14-399).**

This certificate must be presented to the tire retailer or other person(s) when scrap tires are acquired by the hauler. The scrap tire hauler must also present this certificate to the operator of the scrap tire collection or disposal site. A scrap tire hauling identification certificate is required to be renewed. It is valid for five years from the date of issuance and must be updated if the hauler contact information has changed.

1646 Mail Service Center, Raleigh, North Carolina 27699-1646  
Phone: 919-707-8200 \ e-mail: [john.patrone@ncdenr.gov](mailto:john.patrone@ncdenr.gov)  
Internet: <https://deq.nc.gov/about/divisions/waste-management/solid-waste-section>

**Attachment F**  
**Solid Waste Transporter Permits Held in Other States**

ATD is in the process of obtaining required permits for scrap tire transportation nationwide. As of September 16, 2024, transporter permits had been obtained (or are not required) in:

Alabama	Wisconsin
Arizona	West Virginia
California	Wyoming
Colorado	
Connecticut	
Florida	
Georgia	
Iowa	
Idaho	
Illinois	
Indiana	
Kentucky	
Louisiana	
Massachusetts	
Maryland	
Maine	
Michigan	
Minnesota	
Missouri	
Mississippi	
North Carolina	
North Dakota	
Nebraska	
New Hampshire	
New Jersey	
New Mexico	
Nevada	
New York	
Ohio	
Oregon	
Pennsylvania	
South Dakota	
Tennessee	
Texas	
Utah	
Virginia	
Washington	



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
09/18/2023

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> Aon Risk Services South, Inc. Charlotte NC Office 1111 Metropolitan Avenue, Suite 400 Charlotte NC 28204 USA	<b>CONTACT NAME:</b> PHONE (A.C. No. Ext): (866) 283-7122      FAX (A.C. No.): (800) 363-0105		
	<b>E-MAIL ADDRESS:</b>		
<b>INSURED</b> American Tire Distributors, Inc. 12200 Herbert Wayne Court, Suite 150 Huntersville NC 28078-3145 USA	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	INSURER A: National Union Fire Ins Co of Pittsburgh		19445
	INSURER B: AIU Insurance Company		19399
	INSURER C: National Fire & Marine Ins Co		20079
	INSURER D: Navigators Insurance Co		42307
INSURER E:			
INSURER F:			

**COVERAGES      CERTIFICATE NUMBER: 570101548069      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	GL1729013 SIR applies per policy terms & conditions	10/01/2023	10/01/2024	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$10,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 SIR \$500,000
A	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	AL 4594462 AOS AL 4594463 MA	10/01/2023	10/01/2024	COMBINED SINGLE LIMIT (Ea accident) \$5,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Comp/Coil Deductible \$250,000
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$100,000			42UM031229704	10/01/2023	10/01/2024	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC049154366 AOS WC049154368 WI	10/01/2023	10/01/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 A waiver of Subrogation is granted in favor of ATD in accordance with the policy provisions of the General Liability, Automobile Liability and workers' Compensation policies Certificate Holder is included as Additional Insured in accordance with the policy provisions of the General Liability and Automobile Liability policies.

<b>CERTIFICATE HOLDER</b>  ATD 17230 N. Green Mountain Road San Antonio TX 78247 USA	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  
--	--

Holder Identifier :

Certificate No : 570101548069





# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services South, Inc.		NAMED INSURED American Tire Distributors, Inc.	
POLICY NUMBER See Certificate Number: 570101548069			
CARRIER See Certificate Number: 570101548069	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,  
FORM NUMBER: ACORD 25 FORM TITLE: Certificate of Liability Insurance**

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	EXCESS LIABILITY							
D				NY23AXSZ0ERGRIV \$10M X \$10M	10/01/2023	10/01/2024	Aggregate	\$10,000,000
							Each Occurrence	\$10,000,000
	WORKERS COMPENSATION							
B		N/A		WC049154367 CA	10/01/2023	10/01/2024		





# ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services South, Inc.		NAMED INSURED American Tire Distributors, Inc.	
POLICY NUMBER See Certificate Number: 570101548069			
CARRIER See Certificate Number: 570101548069	NAIC CODE	EFFECTIVE DATE:	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance  
Excess Liability

Policy Number: 140001220  
Dates: 10/1/2023-10/1/2024  
Limits: \$5M X \$20M  
Underwriting Company: QBE Specialty Insurance Company

## **Attachment H Spill Control and Safety**

### **List all spill control and safety equipment which will be carried on the vehicle**

ATD trucks are equipped with fire extinguishers. No other spill control or safety equipment is required to transport scrap tires.

### **Spill control Plan**

#### **List of safety and spill control equipment**

ATD trucks are equipped with fire extinguishers. No other spill control or safety equipment is required to transport scrap tires.

### **Driver preventative measures**

ATD driver training programs include assuring vehicles are properly loaded, assuring all contents of the truck are properly secured, and assuring that truck doors are properly latched prior to exiting the facility.

### **Driver immediate corrective actions**

ATD drivers' immediate corrective actions consist of securing an accident site with emergency lights and reporting the accident to Emergency Services.

### **Company internal communications**

Following immediate reporting to Emergency Services, ATD drivers will report any incident to the District Manager of their home facility and their insurance carrier.

### **Company external communications**

Delaware Emergency Reporting Numbers  
1-800-662-8802  
1-302-739-94010

Clean Harbors – 800-645-8265

### **Cleanup and decontamination measures**

In the event of an accident and release of scrap tires, ATD personnel or specialty contractor will mobilize to the location of the accident and retrieve all scrap tires released.

## **Attachment I Driver Training**

### **Requirements for special licenses**

ATD drivers hold a Commercial Driver's License as required by vehicle type or size. No other special licenses are required.

### **Special training received**

None.

### **Dates, weekly safety meetings, refresher courses**

All ATD personnel have periodic team meetings to review procedures for proper handling of tires and safety precautions. These meetings are scheduled only on an as-needed basis. Safety huddles are generally held on a daily basis both to provide ATD personnel with up to date information and to allow personnel to express any observations or concerns they have.

### **Company procedures for periodic checks of driving records**

ATD checks driving records of personnel when making hiring decisions, annually, and otherwise as necessary.

### **Progressive counseling/discipline based on points**

ATD does not assign "points" to driving records but disqualifies drivers with more than a single at-fault incident or moving violation in the previous 12 months, or more than a combination of two of those in the previous 36 months. A single occurrence of certain significant incidents or moving violations may result in revocation of driving privileges.

### **Instruction in: Proper handling procedures for the type of waste**

All ATD drivers are fully trained in handling procedures for new tires. These same procedures are fully applicable to handling scrap tires.

### **Spill Control Plan**

Described in Attachment G. ATD does not have a physical location in Delaware; consequently, no facility-level spill control plan is required.

### **Conditions of permit**

ATD drivers are fully trained in Delaware's scrap tire transportation compliance requirements before being allowed to transport scrap tires through the State.

**Attachment J  
Vehicle List**

MAKE/MODEL	YEAR	TYPE	VIN	LICENSE PLATE	DC STATE	GVW	LEASE PROVIDER	OWNER'S ADDRESS	DOMICILE ADDRESS
18' INTERNATIONAL 4300	2023	HEAVY TRUCK	3HAEUMMLXPL221832	ZVZ9878	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL 4300	2023	HEAVY TRUCK	3HAEUMML1PL221833	3521789	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
26' INTERNATIONAL 4300	2023	HEAVY TRUCK	3HAEUMML1PL229057	ZVX3108	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
26' INTERNATIONAL 4300	2023	HEAVY TRUCK	3HAEUMML3PL229058	ZWA0186	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL MV607	2024	HEAVY TRUCK	3HAEUMML6RL041668	ZXG9801	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL MV607	2024	HEAVY TRUCK	3HAEUMML0RL041665	ZXC0477	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL MV607	2024	HEAVY TRUCK	3HAEUMML4RL041667	ZXC0492	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL MV607	2024	HEAVY TRUCK	3HAEUMML2RL041666	ZXC0628	PA	25999	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
20' FREIGHTLINER M2	2019	HEAVY TRUCK	3ALACWFCXKDKV9755	ZMD3517	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
20' FREIGHTLINER M2	2019	HEAVY TRUCK	3ALACWFC1KDKV9756	ZMD3515	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL 4300	2022	HEAVY TRUCK	3ALACWFC3NDNS9798	ZVA0093	PA	26000	RYDER	11690 NW 105th St Miami, FL 33178	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL 4300	2022	HEAVY TRUCK	3ALACWFC5NDNS9799	ZVA0305	PA	26000	RYDER	11690 NW 105th St Miami, FL 33178	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
18' INTERNATIONAL 4300	2022	HEAVY TRUCK	3HAEUMML2NL169206	ZRY5597	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
26' INTERNATIONAL 4300	2022	HEAVY TRUCK	3HAEUMMLXNL170281	ZRY5658	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
26' INTERNATIONAL 4300	2022	HEAVY TRUCK	3HAEUMML1NL170282	ZRY5659	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
26' INTERNATIONAL 4300	2022	HEAVY TRUCK	3HAEUMML3NL170283	ZRY5660	PA	26000	PENSKE	2675 Morgantown Rd Reading, PA 19607	2291 Sweeney Drive, Bldg # 1 Clinton, PA 15026
16' CHEVY 4500HD	2023	MEDIUM TRUCK	JALCDW163P7014871	1GB6577	MD	14500	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
16' CHEVY 4500HD	2023	MEDIUM TRUCK	JALCDW164P7014958	6GA7017	MD	14500	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
14' FREIGHTLINER SPRINTER VAN 170" HI ROOF	2022	VAN	W1Y5DCHY7NT104038	1GB5671	MD	9900	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
14' FREIGHTLINER SPRINTER VAN 170" HI ROOF	2022	VAN	W1Y5DCHY6NT103172	6FD9520	MD	9900	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
18' INTERNATIONAL 4300	2022	HEAVY TRUCK	3ALACWFC8PDUE3868	8FD7310	MD	26000	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
18' INTERNATIONAL 4300	2022	HEAVY TRUCK	3ALACWFCXPDU3869	8FG3903	MD	26000	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801

16' CHEVY 4500HD	2021	MEDIUM TRUCK	JALCDW160M7006187	1EL1361	MD	14500	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
16' CHEVY 4500HD	2022	MEDIUM TRUCK	JALCDW164N7015458	7EZ2033	MD	14500	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801
26' INTERNATIONAL 4300	2022	HEAVY TRUCK	3HAEUMML2PL251116	5FB1145	MD	26000	RYDER	11690 NW 105th St Miami, FL 33178	530 Marvel Rd Salisbury, MD 21801

**Attachment K**  
**List of Vehicle Operators**

1. Jeremy Daniel
2. Ronald Davis
3. Wayne Gardner
4. David Gladding
5. Shaun Hambleton
6. David Linder
7. Ashton Taylor
8. Carlos Vega
9. Roy White
10. Alexander Jones
11. Javon Dinkins
12. Jason Erickson
13. Brian Fitzpatrick
14. Steve Gandee
15. Dennis Hofler
16. Mike Kosut
17. Joe Koteles
18. Mike Heasley
19. Cam Moore
20. Steve Nolte
21. Eddie Bey
22. Tom Sidick
23. Dewayne Spiker
24. Rodney Parchman
25. Justin Vallera
26. John Lamkin
27. Samuel Johnson
28. David Richardson
29. Richard lane
30. Randell Kubik

## Davis, DaQuan (DNREC)

---

**From:** Smith, Kassie L. <Kassie.Smith@troutman.com>  
**Sent:** Wednesday, October 9, 2024 9:55 AM  
**To:** Davis, DaQuan (DNREC)  
**Subject:** RE: Missing Information on Delaware Solid Waste Transporter Permit Application  
**Attachments:** 2024-205 Certificate of Liability Insurance (DNREC Certificate Holder).pdf

Hi DaQuan, attached is the updated Certificate of Insurance. It's past the 10/3 deadline though. Do I need to mail in a new application?

Thanks!

---

**From:** Smith, Kassie L.  
**Sent:** Wednesday, October 2, 2024 12:18 PM  
**To:** Davis, DaQuan (DNREC) <daquan.davis@delaware.gov>  
**Subject:** RE: Missing Information on Delaware Solid Waste Transporter Permit Application

Thanks DaQuan! I'm still waiting on the updated Certificate of Insurance, but please see the attached updated Corporate Officer Attachment. I was notified that Stuart Schuette is no longer a corporate officer for ATD, so I've removed him from the list and added Rebecca Sinclair's date of birth.

Thank you!

---

**From:** Davis, DaQuan (DNREC) <[daquan.davis@delaware.gov](mailto:daquan.davis@delaware.gov)>  
**Sent:** Friday, September 27, 2024 11:03 AM  
**To:** Smith, Kassie L. <[Kassie.Smith@troutman.com](mailto:Kassie.Smith@troutman.com)>  
**Subject:** RE: Missing Information on Delaware Solid Waste Transporter Permit Application

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Thank you, I will review the lease agreements and its business days.

DaQuan Davis



## DaQuan L. Davis

Environmental Scientist I

**Division of Waste and Hazardous Substances**

☎ 302-739-9403

✉ [daquan.davis@delaware.gov](mailto:daquan.davis@delaware.gov)

📍 89 Kings Hwy SW, Dover, DE 19901

🌐 [dnrec.delaware.gov](http://dnrec.delaware.gov)



**From:** Smith, Kassie L. <[Kassie.Smith@troutman.com](mailto:Kassie.Smith@troutman.com)>  
**Sent:** Friday, September 27, 2024 10:22 AM  
**To:** Davis, DaQuan (DNREC) <[daquan.davis@delaware.gov](mailto:daquan.davis@delaware.gov)>  
**Subject:** RE: Missing Information on Delaware Solid Waste Transporter Permit Application

Hi DaQuan, I received your request for additional information from ATD. Please see the attached lease agreements for the vehicles on their vehicle list.

I am working with ATD to get the remaining information to you shortly. When you say the information is due in 5 days (from yesterday), are those calendar days (10/1) or business days (10/3)?

Thank you!

**From:** ESG <[esg@atd-us.com](mailto:esg@atd-us.com)>  
**Sent:** Thursday, September 26, 2024 2:14 PM  
**To:** Smith, Kassie L. <[Kassie.Smith@troutman.com](mailto:Kassie.Smith@troutman.com)>  
**Subject:** FW: Missing Information on Delaware Solid Waste Transporter Permit Application

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Hi Kassie,

Can you help here?



## Eric Brown

Director of Operations – Sustainable Ecosystems

+704 898 1739 | [ebrown@atd.com](mailto:ebrown@atd.com)

4047 Perimeter West Dr  
Charlotte, NC 28214

**From:** Davis, DaQuan (DNREC) <[daquan.davis@delaware.gov](mailto:daquan.davis@delaware.gov)> **On Behalf Of** WHStranporters  
**Sent:** Thursday, September 26, 2024 9:49 AM  
**To:** ESG <[esg@atd-us.com](mailto:esg@atd-us.com)>  
**Subject:** Missing Information on Delaware Solid Waste Transporter Permit Application

-----EXTERNAL EMAIL – USE CAUTION -----

Hi Mr. Miller,

Thank you for submitting your renewal application however upon review I found that information was missing. Please see the missing items below:

- Section 4(b)- Please provide the two corporate officers' dates of birth.



- Section 10- The Certificate of Insurance needs to have the Department of Natural Resources and Environmental Control as the Certificate Holder our address is 89 Kings HWY, Dover, DE 19901. Also please provide a new certificate of Insurance when your current insurance expires on 10/1/24.
- Section 13- Please provide all lease agreements for all lease vehicles in your vehicle list.

This information is due via email in 5 days.

Thank you,  
DaQuan Davis



## DaQuan L. Davis

Environmental Scientist I

**Division of Waste and Hazardous Substances**

☎ 302-739-9403

✉ [daquan.davis@delaware.gov](mailto:daquan.davis@delaware.gov)

📍 89 Kings Hwy SW, Dover, DE 19901

🌐 [dnrec.delaware.gov](http://dnrec.delaware.gov)



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**Attachment A  
Corporate Officers**

<b>Name</b>	<b>Title</b>	<b>Date of Birth</b>	<b>Mailing Address</b>	<b>% Ownership</b>
Rebecca Sinclair	Chief People Officer	[REDACTED]	12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078	N/A



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
10/08/2024

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services South, Inc. Charlotte NC Office MSC# 17693 PO Box 551343 Atlanta GA 30355 USA	<b>CONTACT NAME:</b> PHONE (A/C. No. Ext): (866) 283-7122      FAX (A/C. No.): (800) 363-0105	
	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b> American Tire Distributors, Inc. 12200 Herbert Wayne Court, Suite 150 Huntersville NC 28078-3145 USA	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> National Union Fire Ins Co of Pittsburgh	NAIC # 19445
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	

Holder Identifier :

**COVERAGES**      **CERTIFICATE NUMBER:** 570108819332      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
A	<b>AUTOMOBILE LIABILITY</b>  <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY  <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			AL 4594462 AOS AL 4594463 MA	10/01/2024	10/01/2025	COMBINED SINGLE LIMIT (Ea accident)      \$5,000,000  BODILY INJURY ( Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Comp/Coll Deductible      \$250,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION						EACH OCCURRENCE AGGREGATE
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N	N / A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT

Certificate No : 570108819332

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>  Delaware Department of Natural Resources and Environmental Control Compliance and Permitting Section 89 Kings Highway Dover DE 19901 USA	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services South Inc.</i>
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**RYDER**<sup>®</sup>**RYDER TRUCK RENTAL, INC.  
TRUCK LEASE AND SERVICE AGREEMENT**

THIS AGREEMENT is made as of the 14th day of March, 19 97, between  
RYDER TRUCK RENTAL, INC., 3600 N. W. 82nd Avenue, Miami, Florida 33166 (Ryder) and  
ITCO HOLDING COMPANY, INC., whose address is  
2708 Commerce Road, Wilson, NC 27893 (Customer).

**1. EQUIPMENT COVERED AND TERM:**

A. Ryder agrees to lease to Customer and Customer agrees to lease from Ryder the Vehicles on Schedules A hereafter made a part of this Agreement (Vehicle(s)). Execution of a Schedule A constitutes Customer's authorization to Ryder to acquire the Vehicles selected by Customer. The Agreement will become effective with respect to each Vehicle on the date tendered by Ryder and continue for the term specified on Schedule A unless terminated earlier as provided in this Agreement.

B. Acceptance of Vehicles in service constitutes Customer's acknowledgement of compliance with Customer's specifications. Customer agrees to pay for any structural alterations (not to be made without Ryder's prior written consent), special equipment, or material alteration in painting, lettering or art work thereafter required by Customer. In the event that, subsequent to the date of execution of this Agreement by Ryder, any federal, state or local law, ordinance, or regulation requires the installation of any additional equipment, Customer will be responsible for all costs including installation expenses. Ryder agrees to either install or arrange for such installation and Customer agrees to pay Ryder the full cost.

C. Where a Vehicle is operated by Customer with a trailer or other equipment not included on a Schedule A, or not maintained by Ryder under a separate agreement, Customer agrees that such trailer and/or equipment will be in good operating condition. Notwithstanding any other provision of this Agreement, Customer will indemnify and hold Ryder harmless from any claim or loss or damage caused by such trailer and/or equipment.

**2. OPERATION OF VEHICLES:**

A. The Vehicles will be used and operated by Customer only in the normal and ordinary course of Customer's business, not in violation of any laws or regulations (including legal weight and size limits) and Customer will indemnify and hold Ryder harmless from any claim or loss or damage arising out of any such violation.

B. Each Vehicle will be promptly returned by Customer to Ryder's facility specified on Schedule A at the end of its lease term unless Customer purchases the Vehicle as provided for hereinafter.

**3. MAINTENANCE AND REPAIRS TO VEHICLES:**

Ryder agrees to provide at its sole cost: (1) Lubricants, tires, tubes and all other operating supplies necessary for the Vehicles; (2) Maintenance and repairs including all labor and parts required to keep the Vehicles in good operating condition; (3) Painting and lettering at the time the Vehicles are placed into service; (4) Exterior washings; and (5) Road service for mechanical or tire failure.

B. Customer agrees that only Ryder or parties authorized by Ryder will make any repairs or adjustments to Vehicles. When repairs are necessary, Customer will notify Ryder immediately. Ryder will not be responsible for the cost of repairs or services not expressly authorized by Ryder. Customer must submit acceptable vouchers for such repairs or services.

C. Customer agrees to return each Vehicle to Ryder for ordinary maintenance and service at the facility stated on Schedule A for a minimum of 8 hours each week at such scheduled times as agreed to by the parties.

**4. FUEL:**

A. When Ryder is designated on the Schedule A:

(1) Ryder will provide fuel for Vehicles from its own or other designated facilities. The charge for fuel will vary over time and be billed to Customer in addition to the other charges provided for on applicable Schedule A.

(2) If Customer purchases fuel from sources other than Ryder's facilities or other designated facilities, Customer will be responsible for the charges for all such fuel.

(3) Ryder will, where permitted by law, apply for fuel tax permits, prepare and file fuel tax returns, and pay the taxes imposed upon the purchase and consumption of fuel by Customer provided: (a) Customer provides Ryder weekly with all documentation necessary to prepare the fuel tax returns and will reimburse Ryder for all charges incurred or credits disallowed as a result of untimely or improper furnishing of such documents, and (b) Customer will reimburse Ryder all such fuel taxes paid on Customer's behalf in excess of those which would have been payable had the fuel consumed been purchased in the state of consumption.

B. When Customer is designated on the Schedule A:

Customer will hold Ryder harmless from any claims or loss resulting from Customer's failure to pay fuel taxes.

**5. LICENSES:**

A. Ryder agrees to pay for the state motor vehicle license for the licensed weight shown on Schedule A, personal property taxes and Vehicle inspection fees for each Vehicle in the state of domicile, and Federal Heavy Vehicle Use Tax, all at the rates and method of assessment in effect on the date of execution of each Schedule A. Customer will be responsible for any increases in assessment of these items thereafter.

B. Where legal, Ryder will apply for vehicle licenses and prorate or state reciprocity plates at Customer's request and

C. Customer agrees to pay for any special license or pay any taxes resulting from the operation and use of the Vehicles including mileage taxes, ton mileage taxes, highway or bridge tolls. Ryder shall have the right to settle any claim or lien involving any Vehicle as a result of Customer's failure to pay any such taxes and Customer will immediately reimburse Ryder.



**6. SUBSTITUTION:**

Ryder agrees to furnish a substitute vehicle at no extra charge for any Vehicle, other than those excepted below, which may be temporarily inoperable because of mechanical failure, the substitute to be as nearly as practicable the same size as the Vehicle. The substitute will be furnished to Customer where the Vehicle was disabled and will be returned by Customer to the Ryder facility that provided it. Ryder will not furnish a substitute for any Vehicle that is out of service for ordinary maintenance and service time; or is out of service for repair of any form of physical damage resulting from causes including fire, collision, or upset; or is lost or stolen; or is out of service for repair of damage resulting from Customer's violation of any provisions of this Agreement; or is out of service for repair or maintenance of special equipment for which Ryder is not responsible. Ryder's failure to furnish a substitute vehicle within a reasonable time when required will cause the charges for the inoperable Vehicle to abate until the Vehicle is returned to Customer's service or a substitute is available. Ryder's liability in the event of such a failure will be limited to abatement of charges for the inoperable Vehicle. A substitute vehicle, while in Customer's service, will be subject to all the terms and conditions of this Agreement. While a Vehicle is out of service because of damage resulting from any form of physical damage, Ryder will rent Customer a replacement vehicle, if available, at a rate equal to the charge for the inoperable Vehicle. Irrespective of whether or not Customer rents a vehicle from Ryder while a Vehicle is out of service for repair of physical damage, the charges applicable to it will not abate.

**7. DRIVERS:**

A. Customer agrees that each Vehicle will only be operated by a properly licensed driver, at least 18, who is the employee or agent of Customer, subject to Customer's exclusive direction and control, and that Vehicles will not be operated by a driver in possession of or under the influence of alcohol or any drug which may impair the driver's ability. Customer agrees to reimburse Ryder in full for loss or damage to Vehicles, including related expenses, if Vehicles are operated by drivers under 18. Upon receipt of a written complaint from Ryder specifying any reckless, careless or abusive handling of a Vehicle or any other incompetence by or of any driver, and requesting the driver's removal as an operator of Vehicles, Customer will immediately remove such individual as a driver of Vehicles. In the event that Customer fails to do so, or is prevented from so doing by any agreement with anyone on the driver's behalf: (1) Customer will, notwithstanding any other provisions of this Agreement, reimburse Ryder in full for any loss and expense sustained by Ryder for damage to any Vehicle when being operated by such individual and Customer will indemnify and hold Ryder completely harmless from any claims or causes of action for death or injury to persons or loss or damage to property arising out of the use or operation of any Vehicle by such individual notwithstanding that Ryder may be designated on applicable Schedules A as responsible for furnishing and maintaining Liability Insurance; and (2) Ryder may at its election and at any time thereafter upon 30 days notice to Customer, terminate any Liability Insurance coverage extended by Ryder, and may, at its election, with respect to each Vehicle, increase the amount of Customer's physical damage responsibility to an amount equal to the agreed value calculated in accordance with Paragraph 11D as of the time of damage or loss.

B. Ryder agrees, at Customer's request, to assist Customer in developing a driver education and safety program.

C. Customer agrees that the Vehicles will not be operated in a reckless or abusive manner, or off an improved road, a flat tire, or improperly loaded, or loaded beyond the manufacturer's recommended maximum gross weight, or to transport any property or material deemed extra hazardous by reason of being poisonous, inflammable, explosive, or fissile. Notwithstanding any other provision of this Agreement, and irrespective of which party is responsible for physical damage to Vehicles pursuant to Paragraph 10B, Customer agrees to reimburse Ryder in full for damage to any Vehicle, including expenses, resulting from a violation of this provision. Customer will be responsible for all expenses of towing any mired Vehicle when not in Ryder's possession or on Ryder's premises.

**8. CHARGES:**

A. Customer agrees to pay Ryder for all charges within 10 days of the date of Ryder's invoice without deduction or setoff. Unless Ryder is notified that any charge is incorrect within 180 days of the date of any invoice, that invoice will be conclusively presumed to be correct.

B. Mileage will be determined from odometer readings. If the odometer fails to function, Customer will immediately report it to Ryder. The mileage for the period in which the failure existed may then be determined at Ryder's option from (1) Customer's trip records; or (2) the amount of fuel consumed and the miles per gallon record of Ryder averaged for the previous 30 days.

C. Customer agrees to promptly provide Ryder with current financial statements and other financial information as requested.

**9. ADJUSTMENT:**

A. The charges in this Agreement are based on Ryder's current cost of labor, parts, and supplies. These costs may fluctuate after the date of execution of this Agreement. Customer agrees that for each rise or fall of 1% in the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers (1967 base period, published by U. S. Bureau of Labor Statistics), above or below the base index figure on Schedule A, charges for each Vehicle will be adjusted upward or downward as follows:

- 1% of 50% of the Fixed Charge and 1% of 100% of the Mileage Rate
- 1% of 60% of the Mileage Rate (including Mileage Guaranty) for Mileage only Rated Vehicles
- 1% of 100% of the hourly charge (refrigeration equipment only)

B. Adjustments will be based on the original charges stated on Schedule A and be effective on the first day of January and July based on the latest index published prior to such effective date. If the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers is discontinued, another mutually acceptable cost adjustment index will be chosen.

C. Customer agrees to pay for (1) any sales, use, gross receipts or similar tax now or hereafter imposed upon the use of a Vehicle or on the rental or other charges accruing hereunder; (2) any increase in license or registration fees, Federal Heavy Vehicle Use Taxes, vehicle inspection fees, fuel tax permits, and personal property tax; or (3) any new or additional tax or governmental fees, adopted after the date of the execution of the applicable Schedule A.

## 10. INSURANCE:



### A. Liability Insurance Responsibility

(1) A standard policy of automobile liability insurance (hereafter Liability Insurance) with limits specified on each Schedule A will be furnished and maintained by the party designated on Schedule A at its sole cost, written by a company satisfactory to Ryder, covering both Ryder and Customer as insureds for the ownership, maintenance, use or operation of the Vehicles and any substitute vehicle. Such policy will provide that the coverage is primary and not additional excess coverage over insurance otherwise available to either party and that it cannot be cancelled or materially altered without 30 days prior written notice to both parties. The party designated will furnish to the other certificates to evidence compliance with the provision.

(2) Upon not less than 30 days prior written notice to Customer, Ryder may terminate Liability Insurance coverage maintained by Ryder and Customer will be obligated to procure and maintain Liability Insurance in the limits set forth on Schedule A as of the effective date of termination and the charges will be adjusted accordingly.

(3) If Customer is obligated to procure and maintain Liability Insurance and fails to do so, or fails to promptly furnish Ryder the required evidence of insurance, Customer agrees to indemnify and hold Ryder harmless from and against any claims or causes of action for death or injury to persons or loss or damage to property arising out of or caused by the ownership, maintenance, use, or operation of any Vehicle, and Ryder is authorized but not obligated to procure such Liability Insurance without prejudice to any other remedy Ryder may have, and Customer will pay Ryder, as additional rental, the amount of the premium paid by Ryder.

(4) Customer agrees to release, indemnify, and hold Ryder harmless from and against any claims or causes of action for death or injury to persons or loss or damage to property in excess of the limits of Liability Insurance, whether provided by Ryder or Customer, arising out of or caused by the ownership, maintenance, use or operation of any Vehicle or substitute vehicle, and any such claims or causes of action which Ryder may be required to pay as a result of any statutory requirements of insurance or as a result of the insolvency of Customer's insurance company and for which Ryder would not otherwise pursuant to the terms hereof be required to pay.

(5) Ryder will, where required and legal, at Customer's request, file evidence of automobile liability insurance required by federal or state governmental authorities when Ryder is designated as responsible for Liability Insurance. Customer agrees to indemnify, defend and hold Ryder harmless from all claims, causes of action, suits and damages arising out of filing such documents for vehicles other than the Vehicles.

(6) Customer further agrees to release and hold Ryder harmless for death or injury to Customer, Customer's employees, drivers or agents, arising out of the ownership, maintenance, use or operation of any Vehicle or substitute vehicle.

### B. Physical Damage Responsibility

The party designated on Schedule A will pay for loss or damage to any Vehicle subject to the following:

#### (1) When Ryder is designated:

a. Ryder will assume and pay for all loss (including theft) or damage to each Vehicle in excess of the deductible amount specified on Schedule A EXCEPT (1) any willful damage to the Vehicle, specifically including but not limited to damage arising out of or in connection with any labor dispute to which Customer is a party; (2) conversion of any Vehicle by an agent or employee of Customer; and (3) the loss of tools, tarpaulins, accessories, spare tires and other such items. Customer agrees to pay up to the amount specified on Schedule A for loss (including theft) or damage to each Vehicle, including related expenses, from each occurrence and will pay for all loss (including theft) or damage to any Vehicle resulting from any perils specifically excepted in this Paragraph.

b. Upon not less than 30 days prior written notice to Customer, Ryder may designate Customer as responsible for all physical damage to Vehicles. In such event, Customer will be obligated to procure and maintain complete physical damage insurance coverage reasonably acceptable to Ryder. Ryder's charges to Customer will be decreased to reflect the change in designation of the responsibility for physical damage. Whenever Customer is obligated to procure and maintain physical damage insurance coverage and fails to do so, or fails to promptly furnish Ryder with complete certificates evidencing such coverage, Customer agrees to pay Ryder for all loss (including theft) or damage to any Vehicle or substitute vehicle pursuant to Paragraph 10B(2)a.

#### (2) When Customer is designated:

a. Customer will be responsible and pay for all loss (including theft) or damage to any Vehicle or substitute vehicle, including related expenses arising from any cause and regardless of how, including Ryder's negligence, or where, including Ryder's premises, the loss or damage occurred. Customer's liability for any Vehicle will not exceed the purchase price for the Vehicle computed according to Paragraph 11D at the time of such loss or damage.

b. Customer agrees to furnish Ryder with evidence of physical damage insurance coverage reasonably acceptable to Ryder with Ryder listed as a named insured or endorsed as a loss payee.

### C. Notice of Accident

Customer agrees to immediately notify Ryder of any accident, collision, loss (including theft), or damage involving a Vehicle or substitute vehicle; to cause the driver to make a detailed report in person at Ryder's office as soon as practicable; and to render all other assistance reasonably requested by Ryder and the insurer in the investigation, defense, or prosecution of any claims or suits.

### D. Cargo Insurance Responsibility

Ryder will have no liability for loss of or damage to any goods or other property in or carried on any Vehicle or substitute vehicle whether such loss or damage occurs in a Ryder facility or elsewhere, occurs due to any negligence on Ryder's part, or occurs as a result of any other failure on Ryder's part. Customer hereby assumes all such risk of loss or damage, waives any claim it may have against Ryder, and agrees to release, indemnify, defend, and hold Ryder harmless from all liability for such loss or damage to cargo. Customer agrees to reimburse Ryder for loss of any tools, tarpaulins, spare tires, or other similar equipment furnished by Ryder.

### E. Vehicle Theft or Destruction

If a Vehicle is lost or stolen and remains so for 30 days after Ryder has been notified, the lease as to such Vehicle shall terminate provided all charges for the Vehicle have been paid to that date and provided any amounts due Ryder pursuant to Paragraph 10B have been paid. Ryder will not be obligated to provide a substitute vehicle during this 30 day period. If a Vehicle is, in Ryder's opinion, damaged beyond repair, Ryder will notify Customer within 30 days after Ryder has been advised of the loss. Upon receipt of Ryder's notice that the Vehicle has been damaged beyond repair, provided all charges for the Vehicle have been paid to that date and provided any amounts due Ryder pursuant to Paragraph 10B hereof have been paid, the lease as to such Vehicle will then terminate.

**11. TERMINATION:**

A. Either party may terminate the lease of any Vehicle prior to expiration of its term on any anniversary date of its Date of Delivery indicated on the Schedule A by giving to the other party at least 60 days prior written notice. If termination is effected by Ryder, Customer will have the right, but not the obligation, to purchase in accordance with Paragraph 11D all Vehicles with respect to which termination notice has been given on the termination date(s). If termination is effected by Customer, Customer will at Ryder's option purchase in accordance with Paragraph 11D all Vehicles with respect to which termination notice has been given on the termination date(s).

B. If Customer becomes insolvent, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, is adjudicated a bankrupt, permits a receiver to be appointed for its business, or permits or suffers a material disposition of its assets, the lease of Vehicles will terminate at Ryder's option. Upon termination, Ryder may at its option demand that Customer purchase the Vehicles within 10 days in accordance with Paragraph 11D.

**C. Breach or Default**

(1) If Customer breaches or is in default of any provision of this Agreement and that breach or default is not cured within 7 days after written notice has been mailed to Customer, Ryder may immediately, without further notice or demand, take possession of the Vehicles. Ryder will be entitled to enter upon any premises where the Vehicles may be and remove them and refuse to redeliver them to the Customer until such breach or default is cured without any of such actions being deemed an act of termination and without prejudice to the other remedies Ryder may have under this Agreement and at law. Customer will continue to be liable for all charges accruing during the period the Vehicles are retained by Ryder.

(2) In the event Ryder takes possession of any Vehicle and there is any property in or upon the Vehicle which belongs to or is in the custody or control of Customer, Ryder may take possession of such items and either hold them for Customer until Customer claims them or place them in public storage for Customer at Customer's expense.

(3) If Customer's breach or default continues for 7 days after written notice has been mailed to Customer, Ryder may terminate the Agreement. Upon termination, Ryder may demand that Customer purchase within 10 days of termination any or all Vehicles in accordance with Paragraph 11D without prejudice to other remedies Ryder may have under this Agreement and at law.

(4) Customer agrees to pay Ryder all Ryder's costs and expenses, including reasonable attorney's fees, incurred in collecting amounts due from Customer or in enforcing any rights of Ryder hereunder.

D. In the event Customer (pursuant to Paragraph 11A) shall be required to purchase any Vehicle, or should Ryder (pursuant to Paragraph 11B or 11C) demand of Customer that it purchase any Vehicle, Customer agrees to purchase each such Vehicle for cash within the time provided for in this Agreement for its Original Value as shown on Schedule A, less the total depreciation which has accrued for such Vehicle in accordance with Schedule A. Additionally, Customer agrees to pay Ryder for the amount of any unexpired licenses, applicable taxes, including personal property taxes and Federal Heavy Vehicle Use Taxes, and other prepaid expenses previously paid by Ryder for the Vehicles prorated to the date of sale and will be responsible for any sales or use tax arising from the purchase. Customer will have no obligation or right to purchase any Vehicle as to which the term on Schedule A has expired.

**12. ASSIGNMENT OF LEASE:**

This Agreement will be binding on the parties hereto, their successors, legal representatives and assigns. Customer agrees to promptly notify Ryder in writing prior to all substantial changes in ownership or any material disposition of the assets of Customer's business. Customer does not have the right to sublease any of the Vehicles, nor to assign this Agreement or any interest therein without Ryder's prior written consent, which consent will not be unreasonably withheld, and any attempt to do so will be void.

**13. FORCE MAJEURE:**

Ryder will incur no liability to Customer for failure to supply any Vehicle, provide a substitute vehicle, repair any disabled Vehicle, or provide fuel for Vehicles, if prevented by a national emergency, wars, riots, fires, labor disputes, federal, state, or local laws, rules, regulations, shortages (local or national), or fuel allocation programs, or any other cause beyond Ryder's control whether existing now or hereafter. Notwithstanding Ryder's inability to perform under these conditions, Customer's obligations hereunder will continue.

**14. GENERAL:**

Notices provided for herein will be in writing and mailed to the parties at their respective addresses set forth above. This Agreement will not be binding on Ryder until executed by a person duly authorized and will then constitute the entire agreement and understanding between the parties concerning the Vehicles, notwithstanding any previous writings or oral undertakings, and its terms will not be altered by any oral agreement or informal writing, nor by failure to insist upon performance, or failure to exercise any rights or privileges, but alterations, additions, or changes in this Agreement will only be accomplished by written endorsements, amendments, or additional Schedules A to this Agreement executed by both parties.

RYDER TRUCK RENTAL, INC.  
(RYDER)

By: *E. H. Kelly*  
Name/Title: \_\_\_\_\_  
Date: 6/2/97  
Witness: *Silvia Moreno*

ITCO HOLDING COMPANY, INC.  
CUSTOMER

By: *Leon Ellin*  
Name/Title: Leon Ellin, C. F. O.  
Date: 3-18-97  
Witness: *John A. Sakuma*

**AMENDMENT TO TRUCK LEASE AND SERVICE AGREEMENT**



**THIS AMENDMENT**, is entered into this \_\_\_\_ day of 03/13/97, by and between **RYDER TRUCK RENTAL, INC.** ("Ryder") and **ITCO HOLDING COMPANY, INC.** ("Customer") to amend, change and modify the Truck Lease and Service Agreement between Ryder and Customer dated March 14, 1997 (the "Agreement").

WITNESSETH:

Notwithstanding anything in the Agreement to the contrary, Ryder and Customer agree as follows:

1. At Paragraph 3A, line 1, delete the phrase, "tires, tubes." Also, add the following sentences to the end of Paragraph 3A:

"Customer shall, at its sole cost and expense, provide, install, maintain, adjust, and repair all tires and tubes on the Vehicles. Customer shall defend, indemnify and hold Ryder harmless of and from all damages, claims, causes of action, costs (including, but not limited to, attorneys fees at trial and on appeal) and expenses arising out of or relating to the tires, tubes, liftgates, or the installation, maintenance, adjustment, or repair of any tire or tube on the Vehicles. Ryder will provide and install the liftgates on the Vehicles, but Customer shall, at its sole cost and expense, maintain, adjust, and repair all liftgates on the Vehicles. Customer shall defend, indemnify and hold Ryder harmless of and from all damages, claims, causes of action, costs (including, but not limited to, attorneys fees at trial and on appeal) and expenses arising out of or relating to the maintenance, adjustment, or repair of the liftgates on the Vehicles."

*Ryder  
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maintenance  
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2. Add the following to the end of Paragraph 3C:

"Ryder and Customer will identify a mutually agreeable third party maintenance vendor (the "Third Party Vendor") who may perform maintenance and repairs approved by Ryder on Vehicles domiciled more than ten (10) miles away from a Ryder maintenance facility ("Distant Vehicle(s)"). Ryder will coordinate the performance of all repairs on the Distant Vehicles with the Third Party Vendor. Notwithstanding the foregoing, Ryder reserves the right to perform any and all maintenance and repairs to the Distant Vehicles itself, without the aid of the Third Party Vendor. In the event that Ryder elects to do so, Ryder will provide or deliver to Customer with a substitute vehicle at no extra cost pursuant to Paragraph 6 for use by Customer during the period of time that Ryder is performing such maintenance or repairs to the Distant Vehicle. Ryder will provide each such substitute vehicle to Customer at the Ryder maintenance facility performing such maintenance and repairs on the Distant Vehicle, and Customer will return each such substitute vehicle to Ryder at that facility upon Ryder's completion of the maintenance and repairs on the corresponding Distant Vehicle. Customer agrees to cooperate with Ryder in good faith to minimize the provision and use of substitute vehicles for the



Distant Vehicles, including, without limitation, cooperating in good faith regarding scheduling preventative maintenance on the Distant Vehicles." ⊕

3. Add a new Paragraph 4C:

"Customer shall not be required to buy fuel from Ryder and shall retain the option to purchase fuel at such places and from such sources as it may deem appropriate at Customer's sole cost and expense, and Ryder shall not be responsible for any charges for any such fuel purchases."

4. Add the following to Paragraph 6:

"Subject to availability in Ryder's rental fleet, Ryder agrees to rent additional Vehicles ("Lease Extra Vehicles") to Customer, which Lease Extra Vehicles will be subject to the terms of Ryder's standard rental form agreement then in effect; provided, however, that (i) only Ryder branches that lease Vehicles to Customer under the Agreement (a "Lease Branch") shall be obligated to rent Lease Extra Vehicles to Customer; (ii) a maximum of five (5) Lease Extra Vehicles will be rented to Customer at any one time from any Lease Branch; and (iii) the rental charges on each Lease Extra Vehicle will be equal to the lease charges then-prevailing under the Agreement on the last like Vehicle placed into service at the Lease Branch renting the Lease Extra Vehicle, plus fifteen percent (15%) thereof."

5. Add the following to the end of Paragraph 8C:

"which shall be held strictly confidential and not released to anyone other than employees of Ryder who have a business need therefor; provided, however, that Ryder may disclose such financial statements or other financial information if sought by subpoena, legal process, or other discovery device or if disclosure is otherwise required by law."

6. Add a new Paragraph 8D as follows:

**"8D. Security Deposit.**

(1) Customer shall at all times maintain with Ryder a cash security deposit in the amount required by the "Security Deposit Agreement" (as defined below in Paragraph 8D(2)(c)) to secure Customer's payment and performance under the Agreement. Customer shall initially fund the security deposit by: (a) remitting to Ryder the sum of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00) contemporaneously with Customer's execution of these Amendments; (b) using the proceeds arising from the sale of the seventy-one (71) vehicles listed on Exhibit "A" attached hereto and incorporated herein (the "Owned Vehicles"); and (c) remitting to Ryder any remaining balance of the security deposit no later than the thirty-first (31st) day following Ryder's tender of the seventy-first (71st) replacement vehicle, which may be a rental vehicle or a leased Vehicle (each, a "Replacement Vehicle"), for the Owned Vehicles.



(2) Contemporaneously with the execution of these Amendments by Customer, Customer shall:

(a) Execute and deliver to Ryder a separate security agreement in a form satisfactory to Ryder (the "Security Agreement") granting Ryder a security interest and first lien on and in the Owned Vehicles and all of the proceeds arising from the sale or other disposal thereof;

(b) Cause Ryder to be listed as first lienholder on the Owned Vehicles on their original certificates of title and deliver such original certificates of title to Ryder to be held by Ryder in accordance with the Security Agreement;

(c) Execute and deliver to Ryder a separate security deposit agreement in a form satisfactory to Ryder and Customer (the "Security Deposit Agreement"), pursuant to which Customer shall eventually deposit with Ryder the amount of Four Hundred Fifty Thousand and no/100 Dollars (\$450,000.00) to secure Customer's payment and performance under the Agreement, and

(d) Remit to Ryder the sum of One Hundred Fifty Thousand and no/100 Dollars (\$150,000.00), representing the first installment of the security deposit required under the Security Deposit Agreement provided for in Paragraph 8D(1).

(2) The security interest in the Owned Vehicles and all proceeds arising therefrom conferred in the Security Agreement shall secure Customer's payment and performance under the Agreement until Ryder possesses the full balance of the Four Hundred Fifty Thousand and no/100 Dollars (\$450,000.00) security deposit required by the Security Deposit Agreement. Customer hereby represents and warrants to Ryder that it owns the Owned Vehicles free and clear of all other interests, liens, or claims. Customer hereby assigns to Ryder all of Customer's right, title, and interest in and to the proceeds arising from the sale of the Owned Vehicles, which sales proceeds will be held by Ryder as the security deposit required under the Security Deposit Agreement.

(3) Customer shall remit to Ryder the first Three Hundred Thousand and no/100 Dollars (\$300,000.00) of the proceeds resulting from the sale of the Owned Vehicles. As Ryder tenders each Replacement Vehicle to Customer for the Owned Vehicles, Customer shall select one (1) corresponding Owned Vehicle to be taken out of service and sold. Customer shall then act in good faith to sell each selected Owned Vehicle as expeditiously as reasonably possible. The proceeds resulting from the sale of each selected Owned Vehicle shall be remitted to Ryder contemporaneously with Ryder's release of its lien on that Owned Vehicle. Once Ryder possesses the full Four Hundred Fifty Thousand and no/100 Dollars (\$450,000.00) security deposit required under the



Security Deposit Agreement, it shall release its lien on the then-remaining Owned Vehicles and on the proceeds arising from their sale and shall deliver certificates of title to all of the then-remaining Owned Vehicles to Customer. In any event, no later than the thirty-first (31st) day following Ryder's tender of the seventy-first (71st) Replacement Vehicle for the Owned Vehicles, Customer shall remit to Ryder the then-remaining balance (if any) of the Four Hundred Fifty Thousand and no/100 Dollars (\$450,000.00) security deposit required under the Security Deposit Agreement. Upon Ryder's receipt of these funds, Ryder will release its lien on the then-remaining Owned Vehicles and on the proceeds arising from their sale and shall deliver certificates of title to all of the then-remaining Owned Vehicles to Customer

(4) Notwithstanding anything in the Agreement to the contrary, and notwithstanding the fact that Ryder may have executed any Schedule A or other agreement, Ryder's obligation to purchase any Vehicle and lease any Vehicle to Customer shall be conditioned on Customer's fulfillment of its obligations contained in this Paragraph 8D and the agreements referred to herein "

7. At Paragraph 10A(4), line 4, after the phrase "substitute vehicle," insert the phrase:

"except to the extent caused by Ryder's negligence "

8. Add the following to the end of Paragraph 10A(6):

"except to the extent caused by Ryder's negligence."

9. Add a new Paragraph 10A(7) as follows:

"Subject to the provisions of Paragraph 10D of the Agreement, Ryder agrees to release, indemnify and hold Customer harmless from and against any claims or causes of action for death or injury to persons or loss or damage to property in excess of the limits of Liability Insurance, whether provided by Ryder or Customer, to the extent caused by Ryder's negligence."

10. At Paragraph 10B(2)a, line 3, after the word, "premises," insert the following:

"except to the extent caused by Ryder's gross negligence or willful misconduct."

11. Delete Paragraph 10B(2)(b), and in lieu thereof, substitute the following paragraph:

"Customer shall have the right to self-insure against the risk of physical loss, theft, or damage to or of the Vehicles. Customer shall notify Ryder in writing of its intent to self-insure such risk of physical loss, theft, or damage to or of the Vehicles."

12. At Paragraph 11A, line 2, delete the number, "60," and in lieu thereof substitute the number, "120."



13. Delete Paragraph 11C(4) in its entirety, and in lieu thereof substitute the sentence:

"Each party agrees to pay the prevailing party's costs and expenses, including reasonable attorneys' fees, incurred in connection with the losing party's enforcement of any rights under the Agreement."

14. Add a new Paragraph 11E as follows:

**"11E. Takeover Vehicles.**

(1) For the purposes of the Agreement, a "Takeover Vehicle" shall be defined to mean any Vehicle purchased by Ryder from Customer or one of Customer's prior lessors (including, but not limited to, General Electric Capital Corp.) for lease under the Agreement.

(2) Customer agrees and acknowledges that (i) Ryder's obligation to lease any Takeover Vehicle to Customer under the Agreement is conditioned on Ryder's performance of the repairs necessary to bring the Takeover Vehicle up to Ryder's reasonable standards for maintenance under the Agreement ("Takeover Repairs"), and (ii) the reasonable and fully detailed and explained charges for the Takeover Repairs will be billed by Ryder to Customer in addition to all other charges under the Agreement. Customer hereby authorizes Ryder to perform such necessary and reasonable Takeover Repairs up to Five Hundred and no/100 Dollars (\$500.00) on each Takeover Vehicle. In the event that any Takeover Vehicle requires Takeover Repairs in excess of Five Hundred and no/100 Dollars (\$500.00), and Customer fails to approve such Takeover Repairs within five (5) days of Ryder's request, then Customer shall pay Ryder for all Takeover Repairs performed on that Takeover Vehicle up to that point, and the Agreement shall terminate as to each such Takeover Vehicle. Within five (5) days of termination, Customer shall purchase each such terminated Takeover Vehicle from Ryder in cash for an amount equal to the greater of: (i) the amount paid by Ryder for such Takeover Vehicle; or (ii) the Takeover Vehicle's Original Value as shown on its Schedule A, less the total depreciation which has accrued for such Takeover Vehicle in accordance with its Schedule A. Additionally, in either event, Customer agrees to pay Ryder for the amount of any unexpired licenses, applicable taxes, including personal property taxes and Federal Heavy Vehicle Use Taxes, and other prepaid expenses previously paid by Ryder for the Takeover Vehicle prorated to the date of sale. Customer will also be responsible for any sales or use tax arising from the purchase.

(3) Ryder's obligation to lease the Takeover Vehicles to Customer at the rates and in accordance with the terms provided on the applicable Schedule A's is conditioned upon Ryder's purchasing each Takeover Vehicle for an amount not exceeding its Original Value as listed on its Schedule A. In the event that Ryder is unable to purchase a Takeover Vehicle for an amount less than or equal to its Original Value, Ryder may decline to purchase and lease that Takeover Vehicle to Customer, in which event the Agreement shall terminate with respect to that Takeover Vehicle. In the event that Ryder purchases a Takeover Vehicle for an amount

(X)

exceeding its Original Value, then during the thirty (30) day period immediately following such purchase, Customer and Ryder shall negotiate in good faith regarding an adjustment to the Original Value, lease term, monthly depreciation amount, and Fixed Charge per Month on each such Takeover Vehicle. If Ryder and Customer are unable to reach agreement as to these adjustments by the end of this thirty (30) days, then the Agreement shall terminate with respect to each such Takeover Vehicle, and within five (5) days of such termination, Customer shall purchase each such Takeover Vehicle for an amount equal to the amount paid by Ryder for such Takeover Vehicle, plus the amount of any unexpired licenses, applicable taxes, including personal property taxes and Federal Heavy Vehicle Use Taxes, and other prepaid expenses previously paid by Ryder for the Takeover Vehicle prorated to the date of sale. Customer will be responsible for any sales or use tax arising from the purchase."

All other terms and conditions of the Agreement, except those expressly modified herein, shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment as of the day and year first above written.

**RYDER TRUCK RENTAL, INC.**  
("Ryder")

**ITCO HOLDING COMPANY, INC.**  
("Customer")

By: *C. H. Leully*  
Title: Sr. VP Operations

By: *[Signature]*  
Title: \_\_\_\_\_

## AMENDMENT TO TRUCK LEASE AND SERVICE AGREEMENT

**THIS AMENDMENT** is entered into this 21<sup>st</sup> day of April 2008, by **RYDER TRUCK RENTAL, INC.** ("Ryder") and **AMERICAN TIRE DISTRIBUTORS, INC.** ("Customer") to amend, change, and modify the Truck Lease and Service Agreement between Ryder and Customer dated March 14, 1997 (the "Agreement").

### WITNESSETH:

Notwithstanding anything in the Agreement or any Schedule A to the contrary, Ryder and Customer agree as follows:

1. This amendment shall apply to all Vehicles on all Schedule(s) A whether currently in effect, executed concurrently with this Amendment, or subsequently executed.

2. Delete the provision entitled "Estimated Annual Mileage" from each Schedule A and insert the following:

"At the end of each calendar year (measured from January 1 to December 31), the parties shall compare the sum of the Estimated Annual Mileage for all Vehicles for that year (the "Aggregate Annual Estimated Mileage") to the sum of the actual miles operated by all Vehicles during that year (the "Aggregate Annual Mileage"). (If any Vehicle is in-serviced or out-serviced during the year, its actual mileage shall be included in the Aggregate Annual Mileage and its Estimated Annual Mileage included on a pro-rata basis in the Aggregate Annual Estimated Mileage for the portion of the year that it was in service.) If in any year, the Aggregate Annual Mileage exceeds the Aggregate Annual Estimated Mileage by more than 20%, then for each mile operated in excess of the Aggregate Annual Estimated Mileage, you shall pay Ryder a mileage surcharge of \$0.05 per mile. Customer agrees to pay any surcharge in addition to all other amounts due to Ryder within the time provided in the Agreement. Notwithstanding the foregoing, Customer may not operate any Vehicle more than 30% in excess of its Estimated Annual Miles in any year of the lease term. Customer will not be entitled to a credit or carry forward, if actual annual mileage is less than Estimated Annual Mileage."

3. Delete the Paragraph 4A(1), and substitute the following:

"The per gallon charge for fuel shall be the Oil Price Information Service ("OPIS") Wholesale Average Cost of Fuel (as of the date of purchase) for the locality where the fuel is purchased (or the closest location or terminal for which OPIS publishes an index) plus six cents per gallon (\$0.06 gallon) plus: (i) all applicable taxes; (ii) all freight charges; (iii) all delivery charges; and (iv) the cost of necessary fuel additives. This per gallon fuel charge shall only apply to fuel purchased from facilities owned or operated by Ryder, including on-site or "captive" locations where Ryder provides fuel, and shall not apply to fuel purchased in Canada or Hawaii."

4. If any Vehicle is lost, stolen, or damaged beyond economic repair (the "Lost Vehicle") and Customer agrees to replace the Lost Vehicle with a similar or greater Ryder vehicle, then you shall only be obligated to pay Ryder the Lost Vehicle's book value, plus one thousand dollars (\$1,000.00), any sales or use tax resulting from the sale, any outstanding charges, unexpired licenses, other applicable taxes (including personal property taxes and Federal Heavy Vehicle Use Taxes), and other expenses previously incurred by Ryder related to the Lost Vehicle.

4. All other terms of the Agreement, except those expressly modified herein, shall remain in full force and effect. This Amendment supersedes all oral negotiations and prior and contemporaneous writings with respect to the subject matter hereof and is intended by the parties as the final expression of their agreement with respect to the terms and conditions set forth herein. If there is any conflict between the terms, conditions and provisions of this Amendment and those of any other agreement or instrument, the terms, conditions and provisions of this Amendment shall prevail. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

**RYDER TRUCK RENTAL, INC.**  
("Ryder")

By: *Rick Cibos*

Name: Rick Cibos  
Dir National Accounts

Title: \_\_\_\_\_

Date: 5/1/2008

**AMERICAN TIRE DISTRIBUTORS, INC.**  
("Customer")

By: *John Salamone*

Name: John Salamone

Title: Director, Logistics

Date: 4-21-08

AMENDMENT TO TRUCK LEASE AND SERVICE AGREEMENT

THIS AMENDMENT is entered into this 21<sup>st</sup> day of April, 2008, by RYDER TRUCK RENTAL, INC. ("Ryder") and AMERICAN TIRE DISTRIBUTORS, INC. ("Customer") to amend, change, and modify the Truck Lease and Service Agreement between Ryder and Customer dated March 14, 1997 (the "Agreement").

WITNESSETH:

Notwithstanding anything in the Agreement or any Schedule A to the contrary, Ryder and Customer agree as follows:

1. This amendment shall apply to all Vehicles on all Schedules A whether currently in effect, executed concurrently with this Amendment, or subsequently executed.

2. Delete the provision entitled "Estimated Annual Mileage" from each Schedule A and insert the following:

"At the end of each calendar year (measured from January 1 to December 31), the parties shall compare the sum of the Estimated Annual Mileage for all Vehicles for that year (the "Aggregate Annual Mileage") to the sum of the actual miles operated by all Vehicles during that year (the "Aggregate Annual Mileage"). If any Vehicle is in-serviced or out-serviced during the year, its actual mileage shall be included in the Aggregate Annual Mileage and its Estimated Annual Mileage included on a pro-rata basis in the Aggregate Annual Mileage for the portion of the year that it was in service). If in any year, the Aggregate Annual Mileage exceeds the Aggregate Estimated Mileage by more than 20%, then for each mile operated in excess of the Aggregate Annual Estimated Mileage, you shall pay Ryder a mileage surcharge of \$0.05 per mile. Customer agrees to pay any surcharge in addition to all other amounts due to Ryder within the time provided in the Agreement. Notwithstanding the foregoing, Customer may not operate any Vehicle more than 30% in excess of its Estimated Annual Miles in any year of the lease term. Customer will not be entitled to a credit or carry forward if actual annual mileage is less than Estimated Annual Mileage."

Delete the Paragraph (XVI) and substitute the following:

"The per gallon charge for fuel that is the net price in common service, net of all applicable taxes, (cost of fuel, net of any discounts for fuel, where the fuel is purchased for the location or terminal for which (DTR) purchases an index) plus service per gallon (50¢ per gallon plus (i) all applicable taxes, (ii) all freight charges for all delivery charges, and (iii) the cost of necessary fuel additives. This per gallon fuel charge shall only apply to fuel purchased from facilities owned or operated by Ryder, including on-site or "captive" locations where Ryder provides fuel, and shall not apply to fuel purchased in Hawaii or Hawaii."

1. If any Vehicle is lost, stolen, or damaged beyond economic repair, the "Lost Vehicle" and Customer agrees to replace the Lost Vehicle with a similar or greater Ryder vehicle, then you shall only be obligated to pay Ryder the Lost Vehicle's book value, plus one thousand dollars (\$1,000.00), any sales or use tax resulting from the sale, any outstanding charges, unexpired licenses, other applicable taxes, including personal property taxes and Federal Heavy Vehicle Use Taxes, and other expense previously incurred by Ryder related to the Lost Vehicle.



4 All other terms of the Agreement, except those expressly modified herein, shall remain in full force and effect. This Amendment supersedes all oral negotiations and prior and contemporaneous writings with respect to the subject matter hereof and is intended by the parties as the final expression of their agreement with respect to the terms and conditions set forth herein. If there is any conflict between the terms, conditions and provisions of this Amendment and those of any other agreement or instrument, the terms, conditions and provisions of this Amendment shall prevail. All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the day and year first above written.

**RYDER TRUCK RENTAL, INC.**  
("Ryder")

By: *Michael Brannigan*

Name: MICHAEL BRANNIGAN

Title: SVP & COO FMS

Date: 6/25/08

**AMERICAN TIRE DISTRIBUTORS, INC.**  
("Customer")

By: *John Salamone*

Name: John Salamone

Title: Director, Logistics

Date: 4.21.08



Truck Leasing

### Vehicle Lease Service Agreement Schedule "A"

Schedule "A" No. All

Date of Preparation 2/19/13

Page 1

The following is added to the end of the VLSA as a new section:

**20. PRIOR AGREEMENT SUPERSEDED, effective 03/01/2013.** The parties agree that this VLSA and any amendments hereto replaces and supersedes the Vehicle Lease Service Agreement dated 06-15-2010 (the VLSA) between PENSKE TRUCK LEASING CO., L.P. (PENSKE TRUCK LEASING) and American Tire Distributors, Inc. (CUSTOMER) and any amendments thereto (the Prior Agreement). All vehicles being leased or rented to CUSTOMER under the Prior Agreement as of the date of this VLSA will hereafter be subject to and governed by all of the terms and conditions of this VLSA and any amendments hereto.

Schedule "A" annexed to and made a part of Vehicle Lease Service Agreement dated 12-15-2011 between American Tire Distributors, Inc. and PENSKE TRUCK LEASING CO., L.P., effective on the 7<sup>TH</sup> day of ~~February~~ <sup>MARCH</sup>, 2013.

Addition(s) \_\_\_\_\_ and shall be in addition to any Schedule "A" attached hereto and made a part of said Agreement hereto.  
(initial)

Deletion(s) \_\_\_\_\_ and shall supercede Schedule "A"(s) Number \_\_\_\_\_ dated \_\_\_\_\_ attached hereto.  
(Initial)

American Tire Distributors, Inc.	Signature 	Title 	Date <u>2/28/13</u>
PENSKE TRUCK LEASING CO., L.P.	Signature 	Title <b>JODY L. GLICK SENIOR CONTRACT ANALYST</b>	Date <u>03-07-13</u>



## VEHICLE LEASE SERVICE AGREEMENT

This Vehicle Lease Service Agreement is executed December 15, 2011 by and between PENSKE TRUCK LEASING CO., L.P. a Delaware limited partnership with an address at P.O. Box 563, Reading, PA 19603-0563 ("Penske"), and American Tire Distributors, Inc. (indicate which) (X) a corporation, ( ) a partnership, ( ) a limited liability company under the laws of the State of NC with an address at 12220 Herbert Wayne Court, Suite 150, Huntersville, NC 28070 ("Customer"), and relates to the vehicle(s) described on the Schedule(s) "A" (the "Vehicle" or "Vehicles") annexed to this Vehicle Lease Service Agreement now or hereafter. As the Vehicles described in a Schedule "A" have been placed into Customer's service, Penske will provide Customer with the specific vehicle number, serial number and in-service date for each such Vehicle. The term "VLSA" means this Vehicle Lease Service Agreement and all Schedules attached hereto.

### 1. GENERAL; TERM AND EXPIRATION.

- a. Lease and Term. Penske shall lease the Vehicles to Customer, and Customer shall lease the Vehicles from Penske, subject to the terms of this VLSA. The term of this VLSA for each Vehicle shall begin on the in-service date listed on the in-service documentation provided by Penske ("In-Service Date"), which shall be the date Penske notifies Customer that the Vehicle is available for delivery, and such term shall end on the last day of the calendar month that is the number of months identified in the "Lease Term Mn." column on Schedule "A" from the In-Service Date.
- b. Selection. Customer has selected each Vehicle, including the accessories, features, and design requirements set forth on the Vehicle's Schedule "S", and has requested that Penske purchase each Vehicle for lease to Customer under this VLSA. Each Vehicle shall be made available to Customer at the Penske service location set forth on Schedule "A". Customer understands that the delivery date of a Vehicle is solely dependent on the manufacturer and Customer accepts that risk. If a Vehicle has been in Customer's service prior to its In-Service Date, no Schedule "S" shall be attached. Except as may be agreed to by the parties, Penske shall have no liability or obligation with regard to any third party hardware or software installed in a Vehicle pursuant to its Schedule "S".
- c. Expiration and Return. Upon expiration or termination of the Vehicle's lease, Customer shall return the Vehicle to the Penske location shown on Schedule "A" in the same condition and appearance as when received, ordinary wear and tear excepted, and shall pay to Penske all outstanding "Lease Charges" (as defined in Article 7.a. below) through the date of return plus (i) all license and registration fees, applicable personal property taxes, and prepaid expenses paid by Penske with respect to the Vehicle, pro-rated to the date of expiration or termination, (ii) the cost of de-identification, re-painting, and returning the Vehicle to daily rental condition in accordance with Penske's established standards, and (iii) a pro-rated portion of any licenses or permits that cannot be used or transferred by Penske. If Customer retains a Vehicle after the expiration of its lease, all the terms of this VLSA shall apply to such hold-over period except that either party may terminate the hold-over lease at any time upon written notice to the other, at which time Customer shall return the Vehicle.

2. **PENSKE'S OBLIGATIONS.** Penske shall, at its expense, provide with respect to the Vehicles: (a) all preventive maintenance, replacement parts in accordance with Penske's Fleet Price, and repairs to keep the Vehicles in good repair and operating condition, (b) oil and lubricants necessary for the efficient operation of the Vehicles, (c) all necessary tires, (d) road service because of mechanical and tire failures, (e) periodic exterior washing, and (f) initial painting and lettering of each Vehicle at a cost not exceeding the per-vehicle allowance specified on its Schedule "A". In the event a Vehicle shall be disabled for any reason, Customer and/or its driver shall immediately notify Penske. If a Vehicle is disabled because of mechanical or tire failure, Penske shall, within a reasonable period of time after receipt of notification, properly repair, or cause the repair of, the Vehicle. Penske shall have no responsibility for any repair or service to a Vehicle away from its facilities unless authorized by Penske and documented by an itemized bill for such repairs or services.

3. **CUSTOMER OBLIGATIONS.** Customer shall not cause or permit any person other than Penske or persons authorized by Penske to make any repairs to a Vehicle, and shall abide by Penske's directions concerning emergency repairs. Customer will cause its drivers to (a) promptly report any trouble concerning a Vehicle on forms provided by Penske and (b) check oil and coolant levels in each Vehicle on a daily basis. Customer will return each Vehicle to Penske at the service location set forth on its Schedule "A", or as otherwise directed by Penske, for inspection, preventive maintenance, and repair every month at scheduled times as are mutually agreed upon. Should Customer move the base of operation of a Vehicle from the domicile shown on its Schedule "A" or change the nature of a Vehicle's operation as described on its Schedule "A", Penske shall have the right to either make adjustments to the rates to compensate for such changes or terminate this VLSA with respect to the affected Vehicle. Title to the Vehicles shall remain in the name of Penske or its designee. Customer shall, at all times and at its sole cost, keep the Vehicles free and clear from all liens, encumbrances, levies, attachments, or other judicial process from every cause whatsoever (other than a claimant through an act of Penske).

### 4. SUBSTITUTE, EXTRA AND INTERIM VEHICLES.

- a. Substitute Vehicles. If a Vehicle is temporarily disabled because of mechanical failure and if such Vehicle's Schedule "A" requires Penske to provide a substitute for such Vehicle ("Substitute"), Penske shall furnish a Substitute in as nearly as practicable the same size and type as the inoperable Vehicle. The Substitute will be provided at no extra charge, except that Customer shall be responsible for paying mileage charges for the Substitute at the same rate as for the disabled Vehicle and the fixed charges for the disabled Vehicle shall not abate. Penske shall not be required to letter, paint, or alter any Substitute. The Substitute shall be furnished to Customer whenever possible at the place at which the original Vehicle was disabled and shall be returned by Customer to the facility from which it was provided or the facility at which the repaired Vehicle is made available, as Penske may designate. Penske shall have no obligation to provide a Substitute if the inoperable Vehicle is out of service: (i) because of damage resulting from collision or upset, or (ii) for preventive maintenance or service, or for service or repairs to equipment for which Penske has no responsibility, or (iii) as a result of Customer's violation of any of the terms of this VLSA.
- b. Extra Vehicles. At Customer's request, Penske will rent additional vehicles ("Extras") to Customer for temporary use to the extent Penske has available sufficient vehicles of the size and type requested at the Penske facility that services Customer. Penske shall not be required to letter, paint, or alter any Extra. The rental rate to be paid by Customer for the use of an Extra shall be Penske's then prevailing daily rental rate for such vehicles in effect at the location from which the Extra is obtained less fifteen percent (15%), plus all license and registration fees, applicable personal property taxes, and prepaid expenses paid by Penske with respect to the Extra, if not included in such rate. Penske shall have no obligation to provide Extras that are specialized vehicles.
- c. Interim Vehicles. During the period prior to a Vehicle being made available to Customer, Penske will, at Customer's request, rent an interim vehicle ("Interim") to Customer, if available in as nearly as practicable the same size and type as the leased Vehicle. Penske shall not be required to letter, paint, or alter any Interim. Miles operated by an Interim will not be included in determining whether the leased Vehicle for which the Interim was provided satisfied any mileage guaranty applicable to it. The rental rate to be paid by Customer for the use of an Interim shall be equal to the Lease Charges for the leased Vehicle, plus all license and registration fees, applicable personal property taxes, and prepaid expenses paid by Penske with respect to the Interim. Customer shall immediately return the Interim when Penske makes the leased Vehicle available and, if the Interim is not returned, Penske may, in addition to other remedies under this VLSA, treat such vehicle as an Extra under this VLSA.
- d. Rental Agreements. Penske may require Customer to execute a rental agreement whenever Customer requests an Extra, Substitute, or Interim. Notwithstanding the execution of a rental agreement, all Extras, Substitutes, and Interims will be considered Vehicles subject to the terms and conditions of this VLSA and not the rental agreement.

5. FUEL.

a. The Party to Provide Fuel. If Penske is designated on a Vehicle's Schedule "A" to provide fuel, Penske shall provide Customer fuel for the Vehicle, including refrigeration units, at charges that vary over time from Penske facilities or from facilities participating in the Penske Fuel Stop Program and invoice Customer for the charges and all applicable taxes and fees for the fuel. Customer may also procure fuel from other sources at its own expense. If Customer is past due on payment of any invoices rendered by Penske or if an "Event of Default" (as defined in Article 13.a. below) has occurred, Penske may (in addition to any other remedy under this VLSA) immediately discontinue providing fuel to Customer.

b. Fuel Cards. If Penske provides Customer with any fuel cards for the purchase of fuel, Customer shall be fully responsible for all purchases made under such fuel cards, even if made improperly or illegally. Customer shall immediately report lost or stolen fuel cards to Penske. If Customer fails to pay fuel card charges when due, Penske may (in addition to any other remedy under this VLSA) immediately cancel Customer's fuel cards.

6. LICENSES, TAXES, PERMITS AND TOLLS. Penske shall, at its own expense, register and title each Vehicle and pay for any Vehicle inspection fees in the state of registration of such Vehicle for the licensed weight shown on its Schedule "A". Customer shall reimburse Penske for all amounts it pays for licenses, taxes, permits or fees (including but not limited to Federal Highway Use Tax and personal property tax) imposed upon the operation or use of each Vehicle, this VLSA, or the Lease Charges that are (a) not set forth on the Vehicle's Schedule "A" or (b) in excess of the amounts included in the fixed lease charge for such licenses, taxes, permits or fees shown on the Vehicle's Schedule "A". Customer shall provide Penske with all documentation required for Vehicle licensing, taxes and permits. If Penske is designated on a Vehicle's Schedule "A" to provide fuel tax reporting for such Vehicle, Penske shall apply for fuel tax permits for such Vehicle and bill their cost to Customer. Penske shall prepare and file mileage and fuel tax returns, for which Customer shall submit weekly driver trip records, original fuel receipts or invoices, and any other information necessary for the preparation of the fuel tax returns (collectively, "Mileage and Fuel Tax Documents"). The obligation to provide Mileage and Fuel Tax Documents shall apply to all Vehicles, Substitutes, Extras, and Interims. If Customer fails to submit the Mileage and Fuel Tax Documents, Penske may estimate Customer's mileage and fuel tax liability based upon such information as is available to Penske. Penske shall have the right upon 30 days' prior notice to stop providing any of the services set forth in this Article 6. Customer shall be liable for the payment of any and all tolls associated with the use and operation of the Vehicle, and for the payment of any and all fines, fees, costs or expenses related to toll evasion or any other traffic violations.

7. LEASE CHARGES.

a. Lease Charges. As used in this VLSA, "Lease Charges" means the fixed lease charges, mileage charges, hourly charges, refrigeration charges, fuel charges, mileage and fuel tax obligations, and any and all other amounts and charges listed on Schedule "A" and/or described elsewhere in this VLSA.

b. Invoices; Payment. Customer shall pay Penske all Lease Charges within seven (7) days of the date of Penske's invoice, without deduction or offset. Penske shall (except for fuel charges, which shall be invoiced weekly, and other amounts and charges for which a different invoicing frequency is specified in this VLSA) invoice Customer for Lease Charges on a monthly basis, including the billing of fixed lease charges in advance and refrigeration and mileage charges in arrears. If an Event of Default occurs, Penske may invoice Customer on a weekly basis. Customer shall pay Lease Charges to the location designated by Penske, and all payments shall be made in the form of check, electronic funds transfer or ACH payment; cash or credit cards shall not be accepted for payment. Unless Customer protests the correctness of any invoice within thirty (30) days of its receipt, such invoice shall be presumed to be correct. Unless the parties agree otherwise or unless Customer does not obtain fuel from Penske, Penske will determine the mileage and (if applicable) the refrigeration hours for each Vehicle. If Customer does not obtain fuel from Penske, Customer shall provide mileage readings and (if applicable) refrigeration hour readings for each Vehicle on at least a monthly basis.

c. Overmileage Charges. Each Vehicle shall be operated according to the Estimated Annual Mileage/Vehicle ("EAM") as listed on its Schedule "A". If on the annual anniversary of such Vehicle's In-Service Date the actual miles operated by such Vehicle exceeds its total EAM for the year by five percent (5%), Customer shall pay Penske \$0.10 for each mile over the total EAM for the year, in addition to the mileage charges due under this VLSA.

d. Excess Refrigeration Charges. If a Vehicle has a refrigeration unit, such unit shall be operated according to the Estimated Annual Refrigeration Hours/Vehicle ("EARH") as listed on its Schedule "A". If at the expiration or termination of the term of this VLSA for such Vehicle the actual refrigeration hours operated by such Vehicle's refrigeration unit exceeds its total EARH for the term, Customer shall pay Penske \$0.50 for each engine running hour, and \$0.15 for each standby hour, over the total EARH for the term, in addition to the refrigeration charges per hour due under this VLSA.

e. Deposit. Upon the occurrence of an Event of Default and notwithstanding any amendment to this VLSA to the contrary, Customer shall thereafter pay Penske per the terms set forth in this Article 7 and Customer shall, if requested, provide Penske with a deposit against future invoices in an amount equal to not less than the total amount invoiced by Penske in the three (3) months prior to the occurrence of the Event of Default.

8. VEHICLE USE AND DRIVERS. From the time a Vehicle is made available to Customer until its return to Penske upon termination or expiration of its lease, Customer shall have exclusive possession, control, and use of such Vehicle. Customer shall not make any alterations to a Vehicle. Vehicles shall be operated by safe, qualified, properly licensed drivers, who shall conclusively be presumed to be Customer's agents, servants or employees only, and subject to Customer's exclusive direction and control. Vehicles shall not be operated: (a) by a driver in possession of or under the influence of alcohol or any controlled drug, substance or narcotic, (b) in a reckless or abusive manner, (c) off an improved road, (d) on an underinflated tire, (e) with insufficient coolant or oil, (f) while improperly loaded or loaded beyond maximum weight shown on the Schedule "A", or (g) in violation of any applicable laws, ordinances, or rules. Customer shall reimburse Penske for any damage or expenses, and shall protect, defend, indemnify and hold Penske and its partners harmless from and against all fines, claims, forfeitures, judgments, seizures, confiscations and penalties, arising out of the failure to adhere to the requirements of the preceding sentence. Customer shall be responsible for all expenses for removing or towing any mired or snowbound Vehicle. If Customer operates a Vehicle with a trailer or other equipment not leased by Penske under this VLSA, Customer warrants that such trailer or other equipment shall be in good operating condition compatible in all respects with the Vehicle with which it is used and in compliance with all applicable laws and regulations, and shall be responsible for all repairs and/or additional maintenance resulting from such use or from any defects in such trailer or equipment. Customer shall not use or permit any Vehicle to be used (x) for the transportation of "hazardous materials" (as defined by regulations promulgated by the United States Department of Transportation), gasoline, or propane, or (y) for any illegal purpose. Customer shall store each Vehicle in a safe location.

9. PHYSICAL DAMAGE AND LIABILITY COVERAGE.

a. Responsibility for Damage; Insurance. Customer assumes the risk of loss of, or damage to, all Vehicles from any and every cause whatsoever, notwithstanding Section 2A-219(1) of the UCC, including, but not limited to, casualty, collision, upset, fire, theft, malicious mischief, vandalism, graffiti, glass breakage, and mysterious disappearance, except as otherwise provided in this VLSA. Unless Penske gives written permission to self-insure these obligations, Customer shall at its sole cost procure and maintain an automobile collision and comprehensive insurance policy protecting Penske and its partners against any and all loss or damage to each Vehicle, in form satisfactory to Penske and in an amount equal to the "Depreciated Schedule 'A' Value" (as defined below) of such Vehicle, which policy shall name Penske and/or its assignee as loss payee. "Depreciated Schedule 'A' Value" of a Vehicle means (i) the Original Agreed Value set forth on its Schedule "A" less (ii) the Depreciation Credit per Month set forth on such Schedule "A" multiplied by the number of months elapsed from the Vehicle's In-Service Date to the date as of which the Depreciated Schedule "A" Value is being determined.

b. Repairs. All repairs of damage to a Vehicle shall be performed by Penske or its designee. Customer shall pay to repair and restore the Vehicle to good working order (as determined by Penske), and if in Penske's judgment a Vehicle has been lost, stolen, destroyed, or damaged beyond repair, Customer shall pay Penske (i) all Lease Charges accruing to the date of Penske's receipt of payment in full for such Vehicle and (ii) the Depreciated Schedule "A" Value of such Vehicle immediately preceding the casualty occurrence; upon Penske's receipt of such payments, this VLSA shall terminate as to such Vehicle and the Vehicle shall become the property of Customer, as-is, where-is,

c. Liability Coverage. Customer shall at its sole cost procure and maintain liability coverage for each Vehicle, protecting Customer and Penske and its

partners and their respective agents, servants and employees, in accordance with the standard provisions of a basic automobile liability insurance policy as required in each jurisdiction in which the Vehicle is operated, against liability for bodily injury, including death, and property damage arising out of the ownership, maintenance, use and operation of each Vehicle with limits of at least a combined single limit of One Million Dollars (\$1,000,000.00) per occurrence. Such coverage shall be primary and not excess or contributory and shall be in conformity with the motor vehicle minimum financial responsibility laws as respects "Uninsured Motorist", "No-Fault", or other optional coverages. Such coverage shall be endorsed to include Penske as an additional insured and shall be in a form acceptable to Penske.

d. Certificates of Insurance. Prior to delivery of any Vehicle, Customer shall deliver to Penske certificates of insurance showing the coverages required pursuant to paragraphs a and c of this Article 9. Each insurer shall agree, by endorsement upon the policy issued by it or by an independent document provided to Penske, that it shall give Penske thirty (30) days' prior written notice of the effective date of any cancellation or material alteration of such policy, and that such notice shall be sent by registered or certified mail postage prepaid, return receipt requested, to Penske Truck Leasing Co., L.P., Route 10-Green Hills, P.O. Box 563, Reading, PA 19603-0563, Attention: Insurance Risk Management Department.

e. Notification of Accidents. Customer shall notify Penske as well as Customer's insurance carrier of any loss of, damage to, or accident involving any Vehicle; such notice shall be effected immediately by telephone, and in writing as soon as practical thereafter. Customer shall cooperate fully in the investigation, prosecution, and/or defense of any claim or suit arising out of any such occurrence and shall do nothing to impair or invalidate any applicable liability, physical damage, or cargo coverage.

10. **INDEMNIFICATION.** FOR LIABILITY IN EXCESS OF THE LIMITS OF THE INSURANCE REQUIRED IN ARTICLE 9 ABOVE, OR IN THE EVENT THERE IS NO INSURANCE COVERAGE OR CUSTOMER FAILS TO PROVIDE A DEFENSE, CUSTOMER SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS PENSKE AND ITS PARTNERS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, AGENTS, SERVANTS, REPRESENTATIVES AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, COSTS, LOSSES, DAMAGES, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) AND LIABILITIES (EVEN IF PENSKE IS CLAIMED TO HAVE BEEN OR IS PROVEN TO BE NEGLIGENT) ARISING FROM: (A) CUSTOMER'S FAILURE TO COMPLY WITH ITS OBLIGATIONS TO GOVERNMENTAL BODIES HAVING JURISDICTION OVER CUSTOMER AND THE VEHICLES, (B) CUSTOMER'S FAILURE TO COMPLY WITH THE TERMS OF THIS VLSA, (C) THE OWNERSHIP, USE, SELECTION, POSSESSION, MAINTENANCE, AND/OR OPERATION OF ANY VEHICLE, (D) ANY LIABILITY IMPOSED UPON OR ASSUMED BY CUSTOMER UNDER ANY WORKER'S COMPENSATION ACT, PLAN OR CONTRACT AND ANY AND ALL INJURIES (INCLUDING DEATH) OR PROPERTY DAMAGE SUSTAINED BY CUSTOMER OR ANY DRIVER, AGENT, SERVANT OR EMPLOYEE OF CUSTOMER, OR (E) LOSS OR DAMAGE INCURRED BY PENSKE FROM CUSTOMER'S USE OF A VEHICLE OR TRAILER NOT OWNED OR INSURED BY PENSKE, REGARDLESS OF PENSKE'S OBLIGATIONS IMPOSED BY THE INSURANCE PROVISIONS OF ANY FEDERAL OR STATE AGENCY. CUSTOMER'S OBLIGATIONS UNDER THIS ARTICLE 10 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS VLSA.

11. **REGULATIONS/RECALLS.** If any law, rule, regulation, or manufacturer's recall shall require the modification of any Vehicle or the installation of any additional equipment or accessories, including, but not limited to, anti-pollution and/or safety devices, Customer shall make such Vehicle available and pay Penske for the installation of such equipment or the performance of such modifications, as well as any ongoing maintenance expenses related to such equipment or modifications.

12. **FORCE MAJEURE.** Neither party shall incur liability to the other party for a failure to perform any obligations under this VLSA (excluding payment and insurance obligations) that is caused by events beyond such party's reasonable control, such as (but not limited to) war, terrorist attack, fire, governmental regulations, acts of God, labor disputes, manufacturer, supplier or transportation shortages or delays, fuel allocation programs, or manufacturer's defects.

13. **DEFAULT AND REMEDIES.**

a. Event of Default. An "Event of Default" shall occur if (i) Customer fails to pay any Lease Charges when due or to maintain any insurance coverage required under this VLSA, or (ii) Customer fails to perform any other term of this VLSA and such failure continues for five (5) days after written notice thereof is sent to Customer, or (iii) Customer or any guarantor of Customer's obligations becomes insolvent, makes a bulk transfer or other transfer of all or substantially all of its assets or makes an assignment for the benefit of creditors, or (iv) Customer or any guarantor of Customer's obligations files or suffers the filing against it of a petition under the Bankruptcy Code or under any other insolvency law or law providing for the relief of debtors, or (v) any representation or warranty made by Customer in this VLSA or in any document furnished to Penske by Customer or any guarantor of Customer's obligations is incorrect in any material respect.

b. Remedies. Upon the occurrence of an Event of Default, Penske shall not be required to perform its obligations under this VLSA and may immediately terminate this VLSA and/or proceed by appropriate court action to enforce the terms of this VLSA and/or to recover damages for the breach of any of its terms. In addition, Penske may, with or without terminating this VLSA, with or without demand or notice to Customer, and with or without any court order or process of law, take immediate possession of any or all Vehicles wherever located, without being liable to Customer for damages caused by such taking of possession. If any such Vehicle contains any property belonging to Customer or in Customer's custody or control, Penske is authorized to hold the items for Customer or place them in storage for Customer, at Customer's sole cost and risk of loss or damage. Penske may also, with or without terminating this VLSA, require Customer upon five (5) days' written notice to, at Penske's option, either purchase any or all of the Vehicles or make the "Alternative Payment" as set forth in Article 14.a. below for any or all of the Vehicles, and in addition pay the total of the Lease Charges for all such Vehicles accruing up to the date upon which Customer could have terminated this VLSA under Article 14.a., together with all Lease Charges due and unpaid to the date of Penske's notice to Customer under this paragraph.

c. Interest; Attorneys' Fees. Should Customer fail to pay any Lease Charges when due, Customer shall be liable for interest on such delinquent amounts at the rate of one and one-half percent (1.5%) per month or the maximum permissible rate allowed in the jurisdiction in which Customer's principal place of business is located, whichever is lower, from the date on which payment was due until paid. If Penske initiates legal action against Customer as the result of an Event of Default, Penske shall be entitled to reimbursement from Customer of all expenses of collection and reasonable attorneys' fees.

14. **TERMINATION PRIVILEGES.**

a. Right to Terminate. Either party may, upon sixty (60) days' prior written notice to the other, terminate this VLSA as to a Vehicle on any annual anniversary of such Vehicle's In-Service Date. Upon termination by either party, Customer shall, at Penske's option, either (i) purchase the Vehicle as to which the notice has been given (other than a Substitute, Interim, or Extra) at the Vehicle's Depreciated Schedule "A" Value, as is, where is, or (ii) pay Penske the "Alternative Payment" (as defined in the next sentence) for such Vehicle. The "Alternative Payment" shall be the difference, if any, between the Vehicle's Depreciated Schedule "A" Value at the termination date and the Vehicle's "Fair Market Value" ("Fair Market Value" shall be the highest bona fide offer to purchase such Vehicle received by Penske as of the date of termination).

b. Termination Amounts. In addition to paying the purchase price or making the Alternative Payment for a Vehicle, Customer shall also pay all outstanding Lease Charges through and including the date of purchase or date the Alternative Payment is made, together with (i) applicable sales or use taxes, (ii) all license and registration fees, applicable personal property taxes, and prepaid expenses paid by Penske with respect to the Vehicle, pro-rated to the date of termination, (iii) the cost of de-identification, re-painting, and restoring the Vehicle to daily rental condition in accordance with Penske's established standards (including the loss of use of such Vehicle during such restoration), and (iv) a pro-rated portion of any licenses or permits that cannot be used or transferred by Penske (collectively, "Termination Amounts"). Customer shall have no right to exercise any option to terminate this VLSA under this Article if an Event of Default has occurred. No termination of this VLSA by either party shall release Customer of liability for the payment of any sums due Penske or any damages that Penske shall have sustained by reason of Customer's breach thereof.

15. **ADJUSTED COST.** For each rise or fall of at least one percent (1%) in the Consumer Price Index for All Urban Consumers for the United States published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), or any successor index designated by Penske, above or below the CPI figure applicable for each leased Vehicle as of the "Effective Date" indicated on its Schedule "A", the Lease Charges for such Vehicle shall be adjusted upward or downward based upon such percentage increase or decrease in the CPI. Seventy-five percent (75%) of the fixed lease charge, one hundred percent (100%) of the basic mileage charge, one hundred percent (100%) of any excess or undermileage charge (per mile), and one hundred percent (100%) of the refrigeration charge, if applicable, shall be subject to adjustment. All increases under this Article shall be cumulative and shall be calculated only on the charges initially shown on the Vehicle's Schedule "A". Adjustments shall be implemented semi-annually on January 1 and July 1. Upon adjustment, the fixed lease charge shall be rounded off to the nearest whole cent and all adjustments in the basic mileage, excess mileage, and undermileage charges shall be rounded off to the nearest tenth of a mil.

16. **NON-LIABILITY FOR CONTENTS.** Penske shall not be liable for loss of, or damage to, any cargo or other property left, stored, loaded or transported in, upon, or by any Vehicle at any time or place.

17. **ASSIGNMENT AND SUBLETTING.**

a. **By Customer.** CUSTOMER SHALL HAVE NO RIGHT TO ASSIGN OR SUBLET THIS VLSA OR THE VEHICLES, NOR SHALL CUSTOMER RENT OR LICENSE THE USE OF THE VEHICLES, OR UNDERGO A CHANGE OF CONTROL THAT WOULD OTHERWISE ASSIGN THIS VLSA BY OPERATION OF LAW OR CAUSE OR PERMIT THE VEHICLES TO BE USED BY ANYONE OTHER THAN CUSTOMER OR ITS LEASED DRIVERS, SERVANTS OR EMPLOYEES.

b. **By Penske.** THIS VLSA AND ANY VEHICLES, RENT, OR OTHER SUMS DUE OR TO BECOME DUE HEREUNDER MAY BE ASSIGNED OR OTHERWISE TRANSFERRED, EITHER IN WHOLE OR IN PART BY PENSKE, WITHOUT AFFECTING ANY OBLIGATIONS OF CUSTOMER AND, IN SUCH EVENT, CUSTOMER'S RIGHTS SHALL BE SUBJECT TO ANY LIEN, SECURITY INTEREST OR ASSIGNMENT GIVEN BY PENSKE IN CONNECTION WITH THE OWNERSHIP OF THE VEHICLE(S), AND THE TRANSFEREE OR ASSIGNEE SHALL HAVE ALL OF THE RIGHTS, POWERS, PRIVILEGES AND REMEDIES OF PENSKE.

18. **DISCLAIMER.** PENSKE MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR ABSENCE OF ANY MANUFACTURING DEFECTS OF ANY VEHICLE COVERED BY THIS VLSA. PENSKE AND ITS PARTNERS SHALL NOT BE LIABLE FOR LOSS OF CUSTOMER'S PROFITS OR BUSINESS, LOSS OR DAMAGE TO CARGO, LOSS OR DAMAGE RESULTING TO CUSTOMER BY REASON OF DELAY IN DELIVERY OR FAILURE TO DELIVER PRODUCTS OWNED OR TRANSPORTED BY CUSTOMER, DRIVER'S TIME OR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES.

19. **MISCELLANEOUS.** This VLSA (including all the schedules attached hereto) shall be considered to be a single integrated contract and constitute the entire agreement between the parties regarding the Vehicles. Upon execution by Penske and Customer, this VLSA shall be binding on the respective parties and their legal representatives, successors and assigns and its terms shall not be amended or altered by failure of either party to insist on performance, or failure to exercise any right or privilege, or in any manner unless such amendment or alteration is in writing and signed on behalf of the parties hereto. Time shall be of the essence of this VLSA. No waiver or breach of any covenant or obligation herein shall be construed to be a waiver of the covenant or obligation itself, or any subsequent breach thereof. This VLSA shall supersede any and all proposals or agreements, written or verbal, between the parties, relating to the subject matter hereof and may not be modified, terminated or discharged, except in a writing signed by the party against whom the enforcement of the modification, termination or discharge is sought. Any notice required hereunder shall be sent by certified mail or overnight mail to the address written above (except that notices sent to Penske via overnight courier shall be sent to 2675 Morgantown Road, Reading, PA 19607) or such other address as either party shall furnish and shall be deemed delivered upon deposit in the United States mail or confirmed receipt by the overnight courier. This VLSA is to be interpreted, construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania. In the event any of the terms and provisions of this VLSA are in violation of or prohibited by any law, statute, regulation, or ordinance of the United States and/or state or city where the VLSA is applicable, such terms and provisions shall be deemed amended to conform to such law, statute, regulation, or ordinance without invalidating any of the other terms and provisions of this VLSA.

IN WITNESS WHEREOF, the parties have caused this VLSA to be executed by their duly authorized representative as of the date first above written.

**PENSKE TRUCK LEASING CO., L.P.**

**CUSTOMER: American Tire Distributors, Inc.**

Signature: Frances E. Graeff  
FRANCES E. GRAEFF

Title: MANAGER  
CONTRACT ADMIN.

Witnessed or  
Attested By: Ruth Paugh

Signature: Joe T. James

Title: CTA

Witnessed or  
Attested By: \_\_\_\_\_



Truck Leasing

Vehicle Lease Service Agreement Schedule "A"

Schedule "A" No. Permanent

Date of Preparation 8/15/12

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Penske Location: City, State and Zip Code:

THIS AMENDMENT is made this 17th day of April, 2012 to the Vehicle Lease Service Agreement dated as of 12/15/11 (the "VLSA") between PENSKE TRUCK LEASING CO., L.P. ("Penske") and AMERICAN TIRE DISTRIBUTORS, INC. ("Customer").

Intending to be legally bound, the parties agree that the VLSA is amended as follows:

Background. Customer has requested certain early termination rights from Penske to allow Customer to "right-size" its fleet during the term of this VLSA. Penske has agreed that Customer shall be allowed to early terminate certain Vehicle(s) subject to the terms and conditions as set forth in more detail below. The parties acknowledge and agree that Customer may terminate up to a maximum total amount of 10% of the Vehicles currently In Service at any time during the term of this VLSA pursuant to either subsection c or d of Article 14 of this VLSA (the "Early Termination Cap"). The Early Termination Cap shall be cumulative such that all Vehicle(s) early terminated by Customer, regardless of when Customer exercises such early termination right, shall be included in the calculation of the Early Termination Cap. By way of an example and not as a limitation, if in year 2 Customer has 50 Vehicles in service under this VLSA, Customer may terminate up to 5 Vehicles representing 10% of its fleet. However, if in year 3 Customer has 100 Vehicles in service under this VLSA, Customer may only terminate up to an additional 5 Vehicles for a cumulative total of 10 Vehicles, representing 10% of its existing fleet.

This Background paragraph shall be incorporated into the amendment below and made a part thereof.

- 1. Article 1.b is amended by adding the following to the end thereof: "Notwithstanding the foregoing, Penske's maintenance and service obligations shall extend to any original installed OEM hardware or software."
2. Article 1.c.ii is amended as follows:
- By inserting the following after "the" and before "cost": "actual and reasonable"
- By inserting the following to the end thereof: "ordinary wear and tear excepted"
3. Article 2 is amended as follows:
- Third sentence, by adding the following to the end thereof: ", at Penske's sole cost and expense."
- Fourth sentence, by adding the following to the end thereof: ", where such authorization shall not be unreasonably withheld."
- By adding the following to the end thereof: "Penske agrees to provide pick-up and delivery of the Vehicles, free of any cargo, at Customer's place of business, at Customer's sole risk of loss (except that Customer does not assume the risk of loss of or

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AMERICAN TIRE DISTRIBUTORS, INC. and PENSKE TRUCK LEASING CO., L.P. effective on the 21st day of Aug, 2012.

Addition(s) and shall be in addition to any Schedule "A" attached hereto and made a part of said Agreement hereto.

Deletion(s) and shall supersede Schedule "A"(s) Number dated attached hereto.

Table with 4 columns: Party Name, Signature, Title, Date. Rows for AMERICAN TIRE DISTRIBUTORS, INC. and PENSKE TRUCK LEASING CO., L.P.



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damage to a Vehicle caused without error, intent or omission of Customer while such Vehicle is in Penske's sole care, custody and control) for scheduled preventive maintenance only."

- By adding the following sentence to the end of Article 2: "Penske agrees to comply with all applicable laws, rules and regulations in the performance of its obligations hereunder."
4. Article 3 is amended by adding the following sentence prior to the fifth sentence thereof: "Notwithstanding the foregoing, Customer shall notify Penske in writing prior to any proposed change in the base of operation of any Vehicle(s) and Penske shall thereafter promptly notify Customer of any anticipated adjustments to the rates for such Vehicle(s)."
5. Article 4 is amended as follows:
- By adding the following to the end thereof: "Notwithstanding the foregoing, Penske agrees to provide Substitutes during preventive maintenance to the extent it has available sufficient vehicles of the size and type requested at the location which services Customer."
- Article 4.b. is amended by adding the following new paragraph to the end thereof: "Notwithstanding anything contained above to the contrary, the rate to be paid by Customer for the use of the first two (2) such Extras to be provided shall be the lease rate applicable to the most recent similar Vehicle placed into service to Customer under this VLSA at the Penske location from which such Extra is provided. The foregoing rate shall also include all license and registration fees, applicable personal property taxes, and prepaid expenses paid by Penske with respect to the Extra, if not included in such rate."
6. Article 5.a. is amended by deleting it in its entirety and replacing it with the following:
"Penske shall provide fuel from facilities owned or operated by Penske. The per gallon charge for fuel shall vary over time and shall be billed in addition to all other charges on the Schedule 'A' but shall not exceed the sum of (i) the Oil Price Information System ("OPIS") daily average Rack cost per gallon for ULSD Diesel based on the average cost from the nearest OPIS Rack location to the facility where fueling occurs on the date Penske took delivery of the fuel (the "OPIS Price") plus (ii) all charges for freight and additives and applicable taxes, plus (iii) six cents (\$0.06) per gallon (the "OPIS Adjustment"), (collectively the "Fuel Reconciliation Price") multiplied by the total number of gallons pumped. The maximum per gallon fuel charge shall only apply to fuel purchased from facilities owned or operated by Penske and shall not apply to fuel purchased in Canada or Hawaii. Fuel charges will be billed to Customer in addition to other charges specified on applicable Schedules 'A' or the underlying agreement. If Customer obtains fuel from sources other than Penske's facilities or authorized facilities, Customer will be responsible for all charges for such fuel. Charges for all fuel provided by Penske to Customer pursuant to this Agreement shall be reconciled quarterly against the Fuel Reconciliation Price and the difference between such charges and the Fuel Reconciliation Price shall be referred to as the "Reconciliation Amount". To the extent

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the Reconciliation Amount is positive (i.e. the amount paid by Customer exceeds the Fuel Reconciliation Price), Customer shall receive an appropriate credit from Penske in Penske's next invoice following the month in which such reconciliation occurs.

Notwithstanding anything to the contrary set forth in this Agreement, if a "Force Majeure" (as defined below) event causes a disruption or interruption in the supply of fuel available to Penske, which renders Penske unable to purchase fuel at or below the Fuel Reconciliation Price, then in such event Penske shall promptly notify Customer (such notice may be telephonic provided it is confirmed in writing as soon as practical) of such circumstances and as of the date of such notification to Customer until that certain date on which Penske is able to provide fuel at or below the Fuel Reconciliation Price, Penske shall not be obligated to provide fuel to Customer at the Fuel Reconciliation Price, but rather it shall provide fuel at Penske's price at the location where fuel is provided.

For purposes of the preceding paragraph, the term "Force Majeure" means any cause that is not within Penske's control, and whether foreseen or unforeseen, including, but not limited to, events of nature or the elements (including hurricanes, earthquakes, fire, storms, floods, and lightning), acts of God, strikes, lockouts, sabotage, wars, blockades, riots, terrorist acts or the threat thereof, epidemics, civil disturbances, explosions, fuel allocation programs imposed on Penske, or other casualty occurrences substantially affecting Penske's ability to obtain and provide fuel. Once the "Force Majeure" is no longer in effect, the "OPIS" pricing will return to the standard contract language as defined in paragraph 1 of section 5.a."

7. Article 6, second sentence, is amended by inserting the following after "all" and before "amounts": "actual and reasonably documented"; and by adding the following sentence after the second sentence: "Notwithstanding anything in this Agreement to the contrary, Customer shall not be responsible for, and Penske shall be solely responsible for, any taxes, duties or assessments on Penske's receipt of proceeds, net income and other receipts from Customer under this Agreement".

8. Article 7(c) is deleted in its entirety and replaced with the following new paragraph:

"c. Overmileage Charges. Each Vehicle shall be operated according to the Estimated Annual Mileage/Vehicle ("EAM") as listed on its Schedule 'A' (the "Schedules"). If at the expiration or termination of the term of this VLSA for all the Vehicles the actual miles operated by all the Vehicles listed on the Schedules exceeds the total EAM for all such Vehicles for the term by twelve percent (12%) (the 'Aggregate EAM'), Customer shall pay Penske \$0.10 for each mile over the Aggregate EAM for the term, in addition to the mileage charges due under this VLSA. If this VLSA terminates for any reason for any Vehicle listed on the Schedules prior to the end of its stated term as provided on the Schedules, the EAM relating to such terminated Vehicle shall be excluded from the calculation of the Aggregate EAM and the miles operated by such terminated Vehicle shall not be included in the overmileage calculation set forth in this paragraph; however, if the actual miles operated by such terminated Vehicle exceeds its EAM (prorated for the term of this VLSA for such terminated Vehicle) by twelve percent (12%), Customer shall pay Penske \$0.10 for each mile over such prorated EAM for the term, in addition to the mileage charges due under this VLSA. Notwithstanding the foregoing the Parties agree to meet annually on or about September 1st, or such other time as scheduled by the parties, to discuss in good

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faith, Customer's use and operation of the Vehicle(s) with respect to this Article 7, including but not limited to: (i) relocation of equipment; (ii) change of routes; and (iii) change of term and pricing."

9. Article 9.a., first sentence, by inserting the following after the word "VLSA" and before the period immediately thereafter:

"(except that Customer does not assume the risk of any loss or damage caused solely by Penske's negligence or willful misconduct)".

10. Article 9.b, second sentence, by inserting the following after the word "Penske" and before the parenthetical immediately thereafter: "ordinary wear and tear excepted."

11. Article 10, first sentence, by deleting the words "(EVEN IF PENSKE IS CLAIMED TO HAVE BEEN OR IS PROVEN TO BE NEGLIGENT)" and inserting the following to the end of the clause (C) after the word "VEHICLE" and before the semicolon immediately thereafter:

"(EXCEPT THAT CUSTOMER DOES NOT INDEMNIFY FOR SUCH CLAIMS, SUITS, COSTS, DAMAGES, EXPENSES, OR LIABILITIES TO THE EXTENT THE SAME ARE CAUSED (i) BY PENSKE'S NEGLIGENCE OR (ii) WITHOUT ERROR, INTENT, OR OMISSION OF CUSTOMER WHILE A VEHICLE IS WITHIN PENSKE'S SOLE CARE, CUSTODY AND CONTROL)."

Article 10 is further amended by adding the new paragraphs to the end thereof:

"NOTWITHSTANDING THE FOREGOING, PENSKE SHALL PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER AND ITS AGENTS, SERVANTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, COSTS, DAMAGES, EXPENSES, LIABILITIES CAUSED (i) BY PENSKE'S NEGLIGENCE IN PERFORMING ITS MAINTENANCE OBLIGATIONS UNDER THIS VLSA, OR (iii) WITHOUT ERROR, INTENT, OR OMISSION OF CUSTOMER WHILE A VEHICLE IS WITHIN PENSKE'S SOLE CARE, CUSTODY AND CONTROL. PENSKE'S OBLIGATIONS UNDER THIS ARTICLE 10 SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS VLSA.

IT IS THE INTENTION OF THE PARTIES TO THIS VLSA THAT NEITHER PARTY SHALL BE REQUIRED TO INDEMNIFY THE OTHER FOR ANY CLAIMS, SUITS, COSTS, DAMAGES, OR LIABILITIES TO THE EXTENT THE SAME ARE CAUSED BY THE OTHER PARTY'S NEGLIGENCE. BECAUSE A DISPUTE MAY ARISE BETWEEN CUSTOMER AND PENSKE AS TO THE LEGAL CAUSE OF AN OCCURRENCE, THE PARTIES AGREE THAT THE HANDLING AND DISPOSITION OF THIRD PARTY CLAIMS SHOULD NOT AWAIT THE DETERMINATION OF LEGAL CAUSE AS BETWEEN CUSTOMER AND PENSKE; THE PARTIES THEREFORE AGREE AS FOLLOWS:

(i) IT SHALL BE THE PRIMARY OBLIGATION OF CUSTOMER AND ITS INSURANCE CARRIER TO INVESTIGATE, DEFEND, SETTLE, OR LITIGATE THIRD PARTY CLAIMS AS THE MERITS OF THE THIRD PARTY CLAIMS INDICATE. ALL RIGHTS OF CUSTOMER AND ITS INSURANCE CARRIER AGAINST PENSKE ARE PRESERVED AND ARE NOT TO BE CONSIDERED WAIVED BY SUCH ACTION.

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(ii) PROMPTLY AFTER CUSTOMER LEARNS OF THE HAPPENING OF AN OCCURRENCE IN WHICH CUSTOMER OR ITS INSURANCE CARRIER FINDS THERE IS PROBABLE CAUSE TO BELIEVE THAT PENSKE MAY HAVE BEEN NEGLIGENT, CUSTOMER SHALL NOTIFY PENSKE OF THE HAPPENING OF SUCH OCCURRENCE TO ALLOW PENSKE AND ITS INSURANCE CARRIER TO INVESTIGATE SUCH OCCURRENCE.

(iii) AFTER THE DISPOSITION OF A THIRD PARTY CLAIM, EACH PARTY TO THIS VLSA MAY PURSUE ITS LEGAL REMEDIES AGAINST THE OTHER PURSUANT TO THE INDEMNIFICATION PROVISIONS CONTAINED IN THIS ARTICLE 10."

12. Article 12, by adding the following to the end thereof:

"and which could not have been avoided through use of commercially reasonable efforts by the affected party; provided that the affected party as soon as reasonably practical shall promptly provide notice to the other party. The non-affected party shall be relieved of its payment obligations with respect to any variable charges hereunder to the extent the benefits to be received by the non-affected party are directly impaired by such delay. Notwithstanding the foregoing, under no circumstance shall the occurrence of such a Force Majeure event relieve Customer of its obligations to pay the Lease Charges hereunder."

13. Article 13 is amended as follows:

- Subsection a., first sentence, (a) inserting the following in between the words "due" and "or" (i): "; and fails to cure the same within seven (7) days after written notice is sent to Customer"; (b) replacing in subsection (ii) the phrase "five (5) days" with the phrase "seven (7) days"; and (c) inserting the following at the end of subsection (v): "and Customer fails to cure the same within seven (7) days after written notice is sent to Customer."
Subsection b, second sentence, (a) inserting the following after "In addition," and prior to "Penske": "upon an occurrence of an Event of Default," and (b) by adding the following phrase to the end thereof ", provided such taking of possession is lawfully conducted."
Subsection c., by deleting the last sentence thereof in its entirety.
By adding the following as a new paragraph d:

"d. Default by Penske. In the event Customer believes that Penske is in default of this VLSA, Customer shall provide written notice to Penske, specifically describing the alleged default and including any and all supporting documentation ("Default Notice"). If Penske fails to cure any such default within sixty (60) days of Penske's receipt of the Default Notice, such failure shall be a "Penske Event of Default" unless Penske

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(i) has made a reasonable request for additional information, (ii) has made a good faith attempt to schedule Customer for service, or (iii) has otherwise commenced such cure within the sixty (60) period and thereafter pursues such cure to completion in good faith. In the event of a Penske Event of Default, Customer may immediately terminate this VLSA, subject to Article 14. Notwithstanding these rights, nothing in this paragraph shall modify, abridge or alter any other rights, obligations, or waivers under this VLSA."

16. Article 14.a., by adding the following to the end thereof:

"Notwithstanding anything contained above to the contrary, if Penske terminates this VLSA and Customer is not then in default, Customer shall not be obligated to pay Penske the Alternative Payment, and shall have the right, but not the obligation to purchase the Vehicles so terminated. However, in the event of such termination, Customer shall pay all outstanding Lease Charges through and including the date of termination, together with the amounts described in clauses (ii), (iii), and (iv) of paragraph b of this Article 14."

17. Article 14, by adding the following to the end thereof:

- As a new paragraph c:

"c. Business Downturn. Notwithstanding the foregoing, in the event Customer either suffers a documented downturn in business or completes an acquisition of assets that creates a documented excess of inventory due to a consolidation of Customer's facilities that as a result eliminates Customer's need for one or more of the Vehicles, Customer shall have the option of terminating up to the Early Termination Cap as of the date of Customer's notice of termination, without the obligation to purchase such Vehicle(s) or to make the Alternative Payment with respect thereto, provided: (i) Customer shall provide Penske with written notice not less than 120 days prior to the effective date of termination, documenting the business downturn or the completed acquisition and consolidation of facilities; (ii) upon Penske's receipt of Customer's notice Penske shall promptly provide Customer written notice setting forth the terminated Vehicle(s) and the effective date of such termination, where such Vehicle(s) to be terminated shall have been In Service not less than one (1) year; (iii) Customer may not exercise this termination right if Customer is then in default under this VLSA or is in default at the time of termination; and (iv) Customer shall not renew, replace, extend or add any like equipment with any vendor in any location that is a dedicated location for leasing Penske vehicles or the location at which the terminated Vehicle(s) were dedicated during the original term of any terminated Vehicle(s) without first utilizing these Vehicles for those requirements. However, in the event of such termination, Customer shall pay all outstanding Lease Charges through and including the date of termination, together with the amounts described in clauses (ii), (iii), and (iv) of paragraph b of this Article 14.

- As a new paragraph d:

"d. Option to Upgrade. Notwithstanding the foregoing, Customer shall have the option of terminating this VLSA up to the Early Termination Cap as of the date of Customer's notice of termination, without the

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obligation to purchase such Vehicle(s) or to make the Alternative Payment with respect thereto, provided: (i) Customer gives Penske not less than 120 days prior written notice; (ii) upon Penske's receipt of Customer's notice Penske shall promptly provide Customer written notice setting forth the terminated Vehicle(s) and the effective date of such termination, where such Vehicle(s) to be terminated shall have been In Service not less than one (1) year; (iii) Customer is not in default under this VLSA or is in default at the time of termination; and (iv) Customer replaces the terminated Vehicle(s) with upgraded equipment leased from Penske under terms to be negotiated by the parties in good faith. However, in the event of such termination, Customer shall pay all outstanding Lease Charges through and including the date of termination, together with the amounts described in clauses (ii), (iii), and (iv) of paragraph b of this Article 14."

18. Article 15 is amended as follows:

- Second sentence, by deleting the words "Seventy-five percent (75%)" and replacing them with the words "Fifty percent (50%)."
- By deleting the fourth sentence and replacing it with the following: "Adjustments shall be implemented annually on January 1."
- By adding the following to the end thereof: "Any rate adjustment pursuant to this Article 15 shall not exceed two and one-half percent (2.5%) in any calendar year."

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