



**FORD EQUIPMENT  
LEASING COMPANY**

No. 8-250A012  
Date SEP 6 1988  
Fee \$ 13.00

August 31, 1988

ICC Washington D.C.

Ms. Mildred Lee  
Conveyance Examiner  
Room 2303  
Interstate Commerce Commission  
12th Street and Constitution Ave. NW  
Washington, D.C. 20423

RECORDED COPY NO. 15809

SEP 9 1988-11 04 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

I have enclosed three copies of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are a Master Lease Agreement No. 88-3-3155 and Schedule 01 dated August 22, 1988.

The names and addresses of the parties to the documents are as follows:

Lessor: FORD EQUIPMENT LEASING COMPANY  
24551 Raymond Way, Suite 245  
El Toro, CA 92630

Lessee: Tex-Trac, Inc.  
2353 9th Avenue  
Port Arthur, TX 77642

A description of the equipment covered by these documents follows:

Qty: 23 - 95-Ton Capacity All-Steel Ore Cars, Serial numbers RM 634, RM 566, RM 1064, RM 608, RM 1105, RM 1030, RM 520, RM 708, RM 1027, RM 639, RM 547, RM 999, RM 817, RM 615, RM 459, RM 468, RM 614 RM 962, RM 1037, RM 695, RM 593, RM 495.

A fee of \$13.00 is enclosed. Please return a recorded copy and any extra copies not needed by the Commission for the recordation to:

FORD EQUIPMENT LEASING COMPANY  
24551 Raymond Way, Suite 245  
El Toro, CA 92630  
Attn: Patti Lundie

SEP 9 10 50 AM '88  
MOTOR OPERATING UNIT  
ICC OFFICE OF THE SECRETARY

Letter to Mildred Lee  
Interstate Commerce Commission  
Page 2

A short summary of the documents to appear in the index follows:

Master Lease Agreement  
Schedule 01 to the Master Lease Agreement

Very truly yours,

Patti Lundie  
FORD EQUIPMENT LEASING COMPANY

/p1  
att.



FORD EQUIPMENT  
LEASING COMPANY

September 7, 1988

Mrs. Lane  
Conveyance Examiner  
Room 2303  
Interstate Commerce Commission  
12th Street and Constitution Ave. NW  
Washington, D.C. 20423

Re: Ford/Tex-Trac Instate Recordation

Dear Mrs. Lane:

Per your request, enclosed is a duplicate original Master Lease Agreement and Schedule 01 for recordation pursuant to Section 11303 of Title 49 of the U.S. Code. I do not need the original returned.

The names and addresses of the parties are the same as my letter dated August 31st.

Please let me know if there is anything more needed to record these 23 ore cars.

Very truly yours,

A handwritten signature in cursive script that reads "Patti Lundie".

Patti Lundie  
FORD EQUIPMENT LEASING COMPANY

/pl  
encl.

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/12/88

OFFICE OF THE SECRETARY

Patti Lundle  
Ford Equipment Leasing Company  
24551 Raymond Way, Suite 245  
EL Toro, CA. 92630

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/9/88 at 11:05am, and assigned recordation number(s). 15809

Sincerely yours,

*Nurita R. McEwen*  
Secretary

Enclosure(s)



# FORD EQUIPMENT LEASING COMPANY

REGISTRATION NO. 15809

## MASTER LEASE AGREEMENT

SEP 9 1988 - 11 05 PM

No. 88-3-3155

INTERSTATE COMMERCE COMMISSION

THIS MASTER LEASE AGREEMENT is entered into as of August 15 19 88 by and between  
 FORD EQUIPMENT LEASING COMPANY, a Delaware corporation, with an office at 24551 Raymond Way, Suite 245  
El Toro, CA 92630  
 (hereinafter called "Lessor"), and TEX-TRAC, INC.  
 a Corporation organized under the laws of the State  
(corporation, partnership or proprietorship)  
 of Texas with its principal place of business at 2353 9th Avenue, Port Arthur, TX 77642  
 (hereinafter called "Lessee").

I. **LEASING:** Subject to the terms and conditions set forth below, Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the equipment and other personal property, described in any schedule or schedules which may be executed from time to time by the parties hereto and identified as a schedule of this Lease (individually a "Schedule" and collectively the "Schedules"), (which property, together with any replacement parts, replacements, additions, repairs and accessories incorporated therein and/or affixed thereto, is hereafter referred to individually as an "Item of Equipment" and collectively as the "Equipment") upon the terms and conditions set forth in this Lease supplemented by the terms and conditions set forth in the applicable Schedule. All Schedules shall be incorporated by reference herein and this Lease and all Schedules which may be executed pursuant hereto shall constitute a single lease of equipment.

II. **LEASE TERM:** The lease term for any Item of Equipment shall commence upon the earlier of (i) the date on which Lessor, at the request of Lessee, acquires an interest in or incurs any obligation with respect to such Item of Equipment or (ii) the date on which such Item of Equipment is delivered to Lessee. Unless sooner terminated pursuant to the terms hereof, the lease term for any Item of Equipment for which an Acceptance Certificate has been executed pursuant to Section V below, shall terminate upon payment of all rent and other sums due or to become due with respect to such Item of Equipment and the complete satisfaction of all other obligations of Lessee with respect to such Item of Equipment. Lessor may terminate this Lease with respect to any Item of Equipment for which an Acceptance Certificate has not been executed (i) on or at any time subsequent to the Commitment Expiration Date, as provided in the Equipment Lease Commitment with respect to such item of Equipment, (ii) upon the occurrence of a material adverse change in Lessee's financial condition or credit rating, (iii) if, prior to the execution of such Acceptance Certificate, any event or condition exists which, with notice or the passage of time or both, would constitute a default hereunder or under any agreement between the parties, or (iv) in the event Lessor is otherwise not obligated to lease such Equipment to Lessee. In the event Lessor elects to terminate its obligations hereunder with respect to such Item of Equipment not covered by an Acceptance Certificate, Lessee shall promptly purchase from Lessor all of Lessor's rights, title and interest in such Item of Equipment for the amount Lessor has paid or become obligated to pay on account thereof plus all other amounts owed by Lessee in respect thereof. Lessee agrees to indemnify and defend Lessor from any claims including any demand for payment of the purchase price of such Item of Equipment by the manufacturer or seller of such Item of Equipment.

III. **RENT; COMMENCEMENT DATE:** Rent for each Item of Equipment shall be as provided in the applicable Schedule. Lessee shall pay all rent and other sums due hereunder to Lessor at the address set forth above, or to such other person or place as Lessor from time to time may designate in writing. The first rent payment shall be due when the relevant Schedule is executed by Lessee and returned to Lessor. Interim rent, if any, specified in such Schedule shall commence on the date Lessor advances any funds to manufacturers, suppliers, vendors or others in connection with the acquisition of any Item of Equipment, shall be payable monthly in arrears on the first day of each month thereafter, and shall accrue on the entire amount so advanced outstanding from time to time through and including the Commencement Date. The Commencement Date with respect to any Schedule, shall be established as follows: Schedules for which Acceptance Certificates are received and processed by Lessor between the first and the fifteenth of the month shall have a Commencement Date of the first of the month in which received, and those received after the fifteenth of any month shall have a Commencement Date of the first day of the month immediately following.

IV. **DISCLAIMER OF WARRANTIES; REPRESENTATIONS AND WARRANTIES:** Lessee acknowledges that Lessor is not the manufacturer of the Equipment, nor manufacturer's agent, and Lessee represents that Lessee has selected the Equipment leased hereunder based upon Lessee's judgment prior to having requested Lessor to purchase the same for leasing to Lessee, and Lessee agrees that the Equipment leased hereunder is of a design, size, fitness and capacity selected by Lessee and that Lessee is satisfied that the same is suitable and fit for its intended purposes. **LESSEE FURTHER AGREES THAT LESSOR LEASES AND LESSEE TAKES THE EQUIPMENT "AS-IS" AND THAT LESSOR HAS NOT MADE, DOES NOT MAKE AND SHALL NOT BE DEEMED TO MAKE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED, OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING, BUT NOT LIMITED TO, THE TITLE, VALUE, CONDITION, WORKMANSHIP, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE EQUIPMENT, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, THE ABSENCE OF ANY VIOLATION OR CONFLICT WITH ANY LAW, GOVERNMENTAL REGULATION, CONTRACT OR SPECIFICATION.** Lessee specifically waives all rights to make claim against Lessor herein for breach of any warranty of any kind whatsoever and Lessor hereby passes to Lessee all warranties, if any, received by Lessor by virtue of its ownership of the Equipment. Lessor shall not be liable to Lessee for any loss, damage or expense of any kind or nature caused directly or indirectly by any Equipment leased hereunder or for the use or maintenance thereof, or for the failure of operations thereof, or for the repairs, service, or adjustment thereto, or by any delay or failure to provide any thereof, or by any interruption of service or loss of use thereof or for any loss of business or any other damage whatsoever and howsoever caused. No defect or unfitness of the Equipment shall relieve Lessee of the obligation to pay rent with respect to such Equipment, or any other obligation under Agreement to Lessor.

Lessee hereby represents and warrants that (a) if it is an entity other than an individual or sole proprietorship, it is duly organized and validly existing in good standing under the laws of the jurisdiction of its organization, (b) the execution, delivery and performance of this Lease and all related documents have been duly authorized by all necessary action on the part of the Lessee and do not and will not contravene any law, governmental rule, regulation or order binding on Lessee or, if Lessee is a corporation, contravene the articles of incorporation, by-laws or other constituting documents of the Lessee or contravene the provisions of, or constitute a default under, or result in the creation of any lien, security interest or other encumbrance upon the property of Lessee under, any indenture, mortgage, contract or other agreement to which Lessee is a party or by which it or any of its property may be bound, (c) neither the execution and delivery by the Lessee of this Lease nor the consummation by the Lessee of any of the transactions contemplated hereby require the consent or approval of, the giving of notice to, the registration with, or the taking of any other action in respect of the registration with, or the taking of any other action in respect of any governmental authority or agency, (d) this Lease and all related documents have been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee enforceable against Lessee in accordance with their terms, (e) there are no pending or threatened actions or proceedings before any court, governmental authority, administrative body or tribunal which, if adjudicated against Lessee, would materially adversely affect the ability of Lessee to perform its obligations hereunder and (f) any financial information furnished to Lessor by Lessee in connection herewith is true and correct and any balance sheet or statement of income of Lessee furnished to Lessor by Lessee in connection herewith fairly presents the financial position of Lessee as at the date of such balance sheet and the results of operations of Lessee for the period covered by such statement of income, all in accordance with generally accepted accounting principles applied on consistent basis.

V. **ACCEPTANCE OF EQUIPMENT; NONCANCELLABLE.** Lessee's acceptance of any Item of Equipment shall be conclusively and irrevocably evidenced by Lessee signing the Acceptance Certificate in the form of the Master Lease Agreement Acceptance Certificate attached to the Schedule covering such Item of Equipment and upon such acceptance, this Agreement shall be noncancellable with respect to such Item of

Equipment. If Lessee cancels or terminates this Agreement prior to delivery of an Item of Equipment or if Lessee fails or refuses to sign the Certificate of Acceptance as to all or any part of such Item of Equipment within a reasonable time, not to exceed ten (10) days, after such Item of Equipment has been delivered, tested and ready for use, in which event Lessee will be deemed to have cancelled this Agreement, Lessee shall automatically assume all of the Lessor's purchase obligations for such Item of Equipment and Lessee agrees to indemnify and defend Lessor from any claims, including any demand for payment of the purchase price for such Item of Equipment, by the manufacturer or seller of such Item of Equipment. In addition thereto, Lessee shall pay Lessor (a) all of Lessor's out-of-pocket expenses relating to such Item of Equipment and (b) a sum equal to one percent (1%) of the total rent payments which would otherwise be payable over the entire lease term as liquidated damages, the exact sum of which would be extremely difficult to determine, to reasonably compensate Lessor for credit review, document preparation, ordering equipment and other administrative expenses. Lessor may apply any advance rent payments to sums due from Lessee under (a) and (b) above. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED AS INCONSISTENT WITH OR DIMINISHING THE EFFECT OF THE DISCLAIMER OF WARRANTY CONTAINED IN PARAGRAPH IV OF THIS LEASE.

**VI. SURRENDER:** Unless Lessee has acquired the Equipment pursuant to paragraph VIII or XVIII below, Lessee, at its expense but at Lessor's option, shall, at the expiration or earlier termination of this Lease with respect to any Item of Equipment, return such Item of Equipment properly packed and crated with freight prepaid, to Lessor at such place and by such reasonable means as may be designated by Lessor in the same repair, condition and working order as at the commencement of the term hereof with respect thereto, except for reasonable wear and tear resulting from permitted use.

If requested by Lessor, Lessee, prior to returning any Equipment to Lessor, shall provide suitable and adequate storage space for a period not to exceed ninety (90) days at the Equipment location shown in the applicable Schedule or such location to which such Equipment may have been moved with the written consent of Lessor, during which time Lessee shall insure that Lessor will be allowed reasonable access thereto.

If Lessee shall fail to return any Item of Equipment as provided herein, lessee shall pay to Lessor during the period of such failure rent for such Item of Equipment in the same amount and at the same frequency as the amount and frequency of rent payable during the lease term with respect to such Item of Equipment.

**VII. POSSESSION; USE; LOCATION; MAINTENANCE; INSPECTIONS:** Lessor covenants to Lessee that as long as Lessee shall not be in default hereunder, Lessee may possess and use the Equipment in accordance with this Lease. Lessee warrants that the Equipment will not be used or operated in violation of any law, ordinance or governmental regulation. Lessee will not make or suffer any changes, alterations, improvements or remove any parts, accessories or attachments to or from the Equipment other than in the course of routine maintenance. Lessee shall, at its sole cost, maintain the Equipment in good operating order, repair and condition excepting normal wear and tear resulting from permitted use. Lessee shall perform maintenance on the Equipment in the manner recommended by the manufacturers of the Equipment. Lessee shall not move the Equipment from the location specified on the applicable Schedule without Lessor's prior written consent. Lessee shall not operate or use the Equipment in such a way, including use outside the United States or by a tax-exempt entity (as defined by IRC Section 168 (h) of the Code) as to exclude the Equipment from qualifying or continuing to qualify for Accelerated Cost Recovery System depreciation deductions under the Internal Revenue Code of 1986, (the "Code"), except to the extent Lessee established to the prior satisfaction of Lessor that such use will not increase the Federal or State income tax payable by Lessor (including, without limitation, any increase by reason of recapture of "Tax Benefits" as such term is defined in Section XIII below). Lessor, or its designated agent, may during normal business hours with prior notice to Lessee inspect the Equipment and the maintenance records pertaining thereto. At its expense, Lessee shall make all modifications to the Equipment which are required by law, governmental rule or regulation. Lessee will not, without the prior written consent of Lessor, affix or install any accessory, equipment, or device on any Equipment if such addition will impair the originally intended function or use of such Equipment or diminish its value or utility. All additions, repairs, parts accessories, equipment and devices furnished or affixed to any Equipment shall become the property of Lessor except such as may be removed, and which are in fact removed, without in any way damaging the Equipment or without in any way affecting or impairing the originally intended function or use of such Equipment. Lessee, without the prior consent of lessor, shall not affix any Equipment to any real property. Lessee agrees not to waive its right to use and possess the Equipment in favor of any party other than Lessor and further agrees not to abandon the Equipment to any party other than Lessor.

**VIII. RISK OF LOSS:** Lessee hereby assumes and shall bear all risk of any loss, theft, damage to, or destruction of the Equipment from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence shall relieve Lessee from its obligations under this Lease; however, the Lessee's obligation to pay rent with respect to any Item of Equipment that has suffered a Casualty Occurrence may be discharged by compliance with the terms of this Section VIII.

In the event of a Casualty Occurrence to any Item of Equipment, Lessee shall give Lessor prompt notice thereof and thereafter shall place such Item of Equipment in good repair, condition and working order; provided that if Lessor reasonably determines such Item of Equipment to be lost, stolen, destroyed or damaged beyond repair, then Lessee, at Lessor's option, shall either (a) replace such Item of Equipment with like equipment in the condition required by Section VII hereof which has a market value at least equal to that of the replaced Item of Equipment immediately prior to the Casualty Occurrence, or (b) pay to the Lessor not later than sixty (60) days after notification by Lessor, the "Casualty Value" of such Item of Equipment as such term is defined herein. The Casualty Value of any Item of Equipment shall be equal to a total of (i) all matured but unpaid rent and other amounts, if any, due at the time of such payment, plus (ii) the sum of the present values of unmatured rent payments with respect to such Item of Equipment, with the present value of each such unmatured rent payment being calculated by discounting the amount thereof at a discount rate of five percent (5%) per annum from the date such rent payment would otherwise be due to the date of payment of the Casualty Value, plus (iii) any sums due or to become due because of the loss of Tax Benefits as provided in Section XIII of this lease, plus (iv) the "Reversionary Value" of said Item of Equipment less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, theft, damage or destruction. For purposes of this Section VIII, Reversionary Value shall be the estimated fair market value of the Item of Equipment (determined on the basis described in Section XVIII) as of the end of the lease term, as though such Casualty Occurrence had not occurred. Upon such replacement or payment, as appropriate, this Lease shall terminate with, and only with, respect to the Item of Equipment or portion thereof so replaced or paid for and Lessee shall become entitled to such replaced or paid for Item of Equipment or portion thereof AS-IS, WHERE-IS.

**IX. INSURANCE:** During the lease term of any Equipment, Lessee shall, at its expense, keep in effect an "All Risk" Property insurance policy covering the Equipment in an amount not less than the full replacement cost of the Equipment. In addition, Lessee shall also carry a Public Liability insurance policy (Comprehensive General Liability or other similar form of third party liability coverage acceptable to Lessor) in an amount not less than \$5 million combined single limit per occurrence, unless Lessor specifies otherwise. All insurance policies shall be in form and amount and with insurers acceptable to Lessor. The All Risk Property insurance policy shall name the Lessor and its assigns as Loss Payee, and the Public Liability insurance policy shall name the Lessor as an Additional Insured. Each policy shall provide (i) for no less than thirty (30) days prior written notice of modification, cancellation or non-renewal to Lessor; (ii) that such policy shall not be invalidated as against Lessor or its assigns for any violation of any term of the policy or Lessee's application therefor, and (iii) that such insurance is primary insurance and any other insurance covering Lessor or its assigns shall be secondary and excess of such policy. Lessee shall pay the premiums therefor and deliver to Lessor at the commencement of the lease term of any Item of Equipment, a Certificate of Insurance, or other evidence satisfactory to Lessor, stating that coverage is in effect, provided, however, Lessor shall be under no duty either to ascertain the existence of or to examine such insurance policy or to advise Lessee in the event such insurance shall not comply with the requirements hereof. Proceeds from any Public Liability insurance policy shall be made payable first on behalf of the Lessor to the extent of its liability, if any. Lessee shall promptly notify any appropriate insurer and Lessor of each and every occurrence which may become the basis of a claim or cause of action against the insureds and provide Lessor with all data pertinent to such occurrence. The proceeds of casualty insurance, at the option of Lessor shall be applied toward (a) the repair or replacement of the appropriate Equipment, (b) payment of the Casualty Value thereof, or (c) the payment of any other accrued obligation of Lessee hereunder. Any excess of such proceeds remaining shall belong to Lessee. Lessee hereby appoints Lessor as Lessee's attorney-in-fact with full power and authority to do all things, including, but not limited to, making claims, receiving payments and endorsing documents, checks or drafts, necessary or advisable to secure payments due under any policy contemplated hereby on account of a Casualty Occurrence to the Equipment.

**X. TAXES:** Lessee shall pay as and when due, and indemnify and hold harmless Lessor from and against all present and future taxes and other governmental charges (including, without limitation, sales, use, leasing, stamp and personal property taxes and license and registration fees), and all amounts in lieu of such taxes and charges and any penalties and interest on any of the foregoing, imposed, levied or based upon, in connection with or as a result of the purchase, ownership, delivery, leasing, possession or use of the Equipment or the exercise by Lessee of any option hereunder, or based upon or measured by rentals or receipts with respect to this Lease, and Lessee shall file all returns required and furnish copies thereof to Lessor upon its request; provided, however, that the foregoing shall not apply to any federal or state income or franchise taxes measured by net income of Lessor.

If any of the Equipment leased hereunder is a motor vehicle(s), Lessee shall register and title, where permissible, the vehicle(s) in the name of Lessor.

**XI. PERFORMANCE OF OBLIGATIONS BY LESSOR:** If Lessee shall fail to make any payment or perform any act or obligation required of Lessee hereunder, Lessor may, but need not, at any time thereafter make such payment or perform such act or obligation at the expense of Lessee. Any expense so incurred by Lessor shall constitute supplemental rent due hereunder and shall be payable by Lessee to Lessor upon demand. Such action by Lessor shall not be deemed a cure or waiver of any default of Lessee.

**XII. INDEMNIFY:** Lessee agrees to indemnify, defend and hold Lessor, and its employees, officers, directors, successors and assigns harmless from and against any and all liabilities, damages, claims, actions, suits, proceedings, penalties, costs and expense, including reasonable attorney's fees and costs, of whatsoever kind and nature (hereinafter "claims") arising out of the use, condition (including, but not limited to, latent or other defects and whether or not discoverable by Lessee or Lessor), operation, acquisition, ownership or leasing of any Item of Equipment, including without limitation the manufacture, selection, purchase, delivery, acceptance, rejection, possession, return or disposition of any Item of Equipment, and including without limitation claims arising by contract or tort including negligence, strict liability or otherwise, regardless of where, how and by whom the Equipment was operated or any failure on the part of Lessee to perform or comply with any of its obligations under this Lease. If any claim is made against Lessee or Lessor, the party receiving notice of such claim shall promptly notify the other, but the failure of such person receiving notice so to notify the other shall not relieve Lessee of any obligation hereunder. This indemnity shall survive the expiration or other termination of this Lease.

**XIII. DEPRECIATION AND INDEMNIFICATION:** Lessor shall be entitled to Capital Cost Recovery Deductions in accordance with Section 168 of the Internal Revenue Code of 1986 ("Code") or depreciation deductions under Section 167 of the Code with respect to the purchase price paid by Lessor for any Item of Equipment (collectively "Tax Benefits"). If Lessor loses the Tax Benefits or any portion thereof or if Lessor's net economic after tax return is reduced for any reason whatsoever other than Lessor's sale or disqualifying disposition of the Equipment, Lessor's gross negligence or Lessor's failure to utilize such Tax Benefits, Lessee shall indemnify Lessor on an after tax basis against any such loss or reduction of net economic return, including penalties and interest.

Lessee and Lessor hereby agree that the term Lessor, as it applies to this paragraph XIII, shall mean Lessor and the group of which Lessor is a member pursuant to Section 1504 of the Code.

**XIV. ASSIGNMENT:** Without Lessor's prior written consent, Lessee shall not transfer, assign, sell, sublet, or otherwise dispose of any of Lessee's interest in any Equipment of this Lease, and any attempt by Lessee to accomplish the same without Lessor's consent shall be void. Lessor may, at any time, without notice to Lessee, mortgage, grant security interest in or otherwise transfer, sell or assign all or any part of its interest in this Lease or any Equipment or any rent or other sums due or to become due hereunder, except that the interest of any such mortgagee, transferee or assignee shall be subject to Lessee's rights of use and possession, renewal rights and purchase options, if any, hereunder so long as no Event of Default has occurred and is continuing hereunder.

**XV. SUPPLEMENTAL RENT; LATE CHARGE:** All sums due or to become due hereunder in addition to the rent provided for on the Schedules shall be payable by Lessee as supplemental rent hereunder. Any sum due under this Lease which is past due more than ten (10) days shall accrue late charges from the due date at the lower of (a) Lessor's then prevailing late charge rate or (b) the highest rate permitted by applicable law. All payments made hereunder shall be applied first to any charges or expenses due hereunder, then to any supplemental rent due hereunder, and the remaining balance to any rent then due.

**XVI. DEFAULT:** The occurrence of any of the following shall, at the option of Lessor and without any notice other than provided herein, constitute an Event of Default under this Lease: (a) Lessee fails to pay any rent or other sums due hereunder and such failure shall continue for ten (10) days; (b) Lessee fails to perform any other covenant herein and such failure continues for twenty (20) days after written notice by Lessor to Lessee; (c) Lessee shall be in default in the payment of any other indebtedness or obligation now or hereafter owed by Lessee to Lessor or an affiliate of Lessor under any other agreement or instrument; (d) Lessee files a petition in bankruptcy, or for reorganization, or for an arrangement pursuant to the U.S. Bankruptcy Code, or any similar federal or state or foreign law, or it is adjudicated bankrupt or insolvent, or makes an assignment for the benefit of creditors, or admits in writing to its inability to pay its debts generally as they become due, or is dissolved, or suspends payment of any of its obligations, or takes any corporate action in furtherance of any of the foregoing; (e) a petition or answer proposing the adjudication of Lessee as a bankrupt, or its reorganization under the U.S. Bankruptcy Code, or any similar federal or state or foreign law is filed in any court, and (i) Lessee shall consent to such filing, or (ii) such petition or answer is not discharged or denied within sixty (60) days after such filing; (f) a receiver, trustee or liquidator (or other similar official) is appointed for or takes possession or charge of Lessee, substantially all of its assets, or any Equipment; (g) Lessee's interest in any Equipment is levied upon or attached in any proceeding, and such process is not vacated or discharged within thirty (30) days thereafter; (h) Lessee attempts to sell, transfer, mortgage, pledge, or otherwise encumber, sublet or part with possession of any Equipment without Lessor's prior written consent; (i) a material adverse change in Lessee's financial condition or credit rating; (j) if Lessee is an individual, the death or judicial incompetence of Lessee; (k) any representation or warranty made by Lessee herein or in any document or certificate furnished by Lessee in connection herewith or pursuant hereto shall prove to have been incorrect in any material respect at the time made; or (l) the occurrence of any event described in (c), (d), (e), (f), (i), (j) or (k) with respect to any guarantor or other party liable for the payment or performance of this Lease or the termination or adverse modification of any instrument, agreement or document by which such guarantor or other party is liable for the obligations of Lessee hereunder.

**XVII. REMEDIES:** Upon the occurrence of any Event of Default, or at any time thereafter, Lessor, at its sole option, may exercise one or more of the following remedies: (i) declare all accrued and unpaid rent immediately due and payable; (ii) terminate this Lease as to any or all Items of Equipment upon written notice to Lessee, without prejudice to any other remedies hereunder; (iii) enter at any time any premises where the Equipment may be located with or without legal process and take possession thereof without such action constituting a termination of the Lease unless Lessor notifies Lessee in writing to such effect; (iv) proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for breach thereof; and (v) exercise any and all rights available to Lessor under applicable law upon a default by Lessee. Lessee, upon default hereunder, shall pay to Lessor (a) as liquidated damages for the loss of the bargain and not as a penalty an amount equal to the Casualty Value of the Equipment, as defined in Section VIII above, as of the date of occurrence of the Event of Default plus interest on such amount at Lessor's then current late payment charge from the date of such occurrence to the date of payment, and (b) all costs and expenses (including reasonable attorney's fees) incurred by Lessor in connection with collecting any amounts due hereunder or enforcing any right or remedy of Lessor hereunder. After repossession of the Equipment by Lessor, Lessor shall attempt to mitigate Lessee's damages as hereinafter provided. Lessor shall attempt to sell or release (the choice being reserved to Lessor's reasonable discretion) the Equipment in a public or private transaction at which Lessor may be the purchaser and Lessor may use Lessee's premises for the foregoing without liability for rents, costs, damages, or otherwise and if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee. The proceeds of such sale or lease, if any, shall be applied first (i) to all of Lessor's costs, charges and expenses incurred in taking, removing, holding, repairing and selling or leasing the Equipment; then (ii) to the extent not previously paid by Lessee, to pay Lessor any amounts or damages (including any Casualty Value) then remaining unpaid hereunder; then (iii) to reimburse Lessee any such sums previously paid by Lessee as damages hereunder; (iv) any surplus shall be retained by Lessor. Lessee shall pay Lessor any deficiency in (i) and (ii) within ten (10) days of written request for same. Lessor's remedies provided for herein shall be in addition to any and all other remedies provided, existing or available in its favor under any other provisions of this Lease, at law, in equity or under statute. Lessor's remedies may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy. No failure or delay on the part of Lessor in exercising any right or remedy provided hereunder shall operate as a waiver thereof. Waiver of default shall not be a waiver of any other or subsequent default. Lessee waives demand of performance and notice of sale or lease. Lessee waives notice of place of sale or lease and manner and place of any advertising.

**XVIII. END OF LEASE OPTION:** Lessee shall have the option to purchase, at the price determined as set forth below, all but not less than all the Equipment covered by any Schedule on the date of the last rent payment due with respect thereto; provided that Lessee is not then in default hereunder. Such option shall be exercised by giving Lessor written notice of same no sooner than one hundred twenty (120) days nor less than sixty (60) days prior to the due date of the last rent payment. Lessee shall take title to the Equipment "AS IS, WHERE IS."

The option price shall be the then "fair market value" of the Equipment mutually agreed upon by Lessee and Lessor; provided that if Lessee and Lessor are unable to agree upon the fair market value of the Equipment or any portion thereof within thirty (30) days after receipt by Lessor of Lessee's notice of election to purchase, such fair market value shall be determined by an appraiser selected by mutual agreement. If Lessee and Lessor are unable to agree upon an appraiser or if the appraiser selected by Lessee and Lessor does not complete the appraisal within a reasonable time, the fair market value shall be determined by the American Appraisal Company. All costs of the appraisal(s) shall be paid by Lessee. For purpose hereof, fair market value shall be determined on the basis of, and shall be equal in amount to, the value which would be obtained in an

arms-length transaction between an informed and willing buyer who intends to use the Equipment and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal of the Equipment from its location of current use shall not be a deduction from such value.

XIX. NOTICES: All notices required hereunder shall be in writing and shall be deemed to have been given when delivered personally or when mailed with proper postage for ordinary mail, addressed to Lessor or Lessee, as the case may be, at their respective addresses as set forth herein or at such other address as either shall from time to time designate in writing.

XX. TITLE TO EQUIPMENT; LIENS: Title to all Equipment leased hereunder shall at all times remain in Lessor, and Lessee shall have no right, title or interest in the Equipment except as expressly set forth herein. Lessee, at its sole expense, will protect and defend Lessor's title to the Equipment and will keep the Equipment free from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons other than those claiming by and through Lessor. Lessor shall have the right to display notice of its ownership of the Equipment by affixing, or by requesting Lessee to affix, in which case Lessee hereby agrees to affix, an appropriate notice to each piece of Equipment in a conspicuous place and Lessee shall not obscure, deface or remove such ownership notice. The Equipment is, and shall at all times during the term hereof remain, personal property notwithstanding that any such Equipment may now or hereinafter be affixed to realty, with or without the consent of Lessor. It is understood and agreed that for all purposes this Agreement is intended to be a Lease and that, subject to Section XVIII, Lessee does not and shall not acquire any right, title or interest in any Equipment leased hereunder except the right to use same under the terms provided herein.

XXI. NET LEASE; OFFSET; SURVIVAL: This Lease is a net lease and Lessee shall not be entitled to any abatement of rent or other payments due hereunder or any reduction thereof under any circumstances or for any reason whatsoever. Lessee hereby waives any and all existing and future claims as offsets against any rent or other payments due hereunder and agrees to pay the rent and other amounts due hereunder as and when due regardless of any offset or claim which may be asserted by Lessee or on its behalf. This Lease shall not terminate, or the respective obligations of Lessor or Lessee be otherwise affected or Lessor have any liability whatsoever to Lessee by reason of any failure or delay in delivery of any or all of the Equipment, any defect in or damage to or loss or destruction of any of the Equipment from whatever cause, the prohibition of Lessee's use of the Equipment, the interference with such use by any government, person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, any lack of right, power or authority of Lessor or Lessee to enter into this Lease or any other cause whether similar or dissimilar to the foregoing. The obligation and liabilities of Lessee hereunder shall survive the expiration or earlier termination of this Lease.

XXII. FINANCIAL STATEMENTS: Lessee will, within 90 days of the close of each fiscal year of Lessee, deliver to Lessor Lessee's balance sheet and statement of income certified to by a recognized firm of certified public accountants or by the chief financial officer of Lessee. Upon request, Lessee will deliver to Lessor, within 90 days of the close of each fiscal quarter of Lessee, copies of Lessee's quarterly financial report certified to by the chief financial officer of Lessee.

XXIII. ADDITIONAL DOCUMENTS; FURTHER ASSURANCES: Lessee further agrees to execute or obtain and deliver to Lessor, at Lessor's request, such additional documents as Lessor may reasonably deem necessary to protect Lessor's interest in the Equipment or in this Agreement, including, without limitation, financing statements, landlord's waivers, and mortgagee's waivers. Lessee shall pay to Lessor upon demand as supplemental rent any filing fees or expenses incurred in connection with such additional documents. The execution of financing statements or the filing of same shall be for information purposes only and shall not be construed as an intention by the parties that the Equipment is being sold to Lessee under this Agreement.

XXIV. MISCELLANEOUS: This Lease and any Schedules executed by Lessor and Lessee shall constitute the entire agreement between the parties with respect to the Equipment and the subject matter of this Lease. No term or provision of this Lease may be changed, waived, amended or terminated except by a written agreement signed by the parties, except that Lessor may insert the serial number of any Item of Equipment and the Commencement Date on the appropriate Schedule after delivery thereof and receipt of an Acceptance Certificate with respect thereto. No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default whether similar in kind or otherwise. The titles of the section of this Lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence in this Lease and all of its provisions. Except as expressly provided herein, no options to purchase any of the Equipment or extend the term of this Lease with respect to any Equipment have been granted or agreed to by Lessor. No information, exhibit or report furnished or to be furnished by the Lessee to the Lessor in connection with the negotiation of this Lease and the transactions contemplated hereby contains or will contain any material misstatement of fact or omits or will omit a material fact necessary to make the statement contained therein not misleading when made. The Lessee is not aware of any material facts or circumstances not disclosed to the Lessor which might, if disclosed, be of material consequence in the credit evaluation of the Lessee by the Lessor. If this Lease is signed by more than one Lessee, then each Lessee shall be jointly and severally liable for all the obligations to be performed by Lessee hereunder.

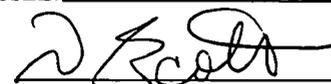
XXV. GOVERNING LAW JURISDICTION: This Lease shall be governed by and construed in accordance with the law of the State of California. Lessee consents to the non-exclusive jurisdiction of the Superior Court of the County of Orange, State of California in any and all actions and proceedings between the parties hereto arising under or growing out of this Lease and irrevocably agrees to service of process by any means authorized under California law.

IN WITNESS WHEREOF, the parties hereto have executed these presents to be effective as of the day and year first above written.

FORD EQUIPMENT LEASING COMPANY

LESSEE: TEX-TRAC, INC.

By: \_\_\_\_\_

By: 

Print Name & Title: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

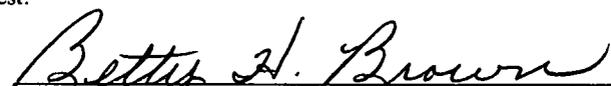
\_\_\_\_\_  
\_\_\_\_\_

Richard R. Scott  
President

(Seal)

Attest:

By: \_\_\_\_\_

By: 

Print Name & Title: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Betty H. Brown  
Ass't Secretary

# FORD EQUIPMENT LEASING COMPANY

## (LESSOR) MASTER LEASE SCHEDULE

ITC Retained by Lessor: N/A  
ITC Passed to Lessee: N/A

SCHEDULE NO. 01

Name and Address of Lessee:  
TEX-TRAC, INC.  
2353 9th Avenue  
Port Arthur, TX 77642

Name and Address of Supplier:  
Azcon Corporation  
180 North La Salle St.  
Chicago, IL 60601

This Schedule covers the following property (Equipment):  
Qty- 23 95-Ton Capacity All-Steel Ore Cars. Serial Numbers:  
RM 634 RM 566 RM 1064 RM 468  
1105 1030 520 609  
1027 639 547  
817 615 459  
614 962 608  
1037 695 708  
593 495 999

Location of property (if other than above):  
Same

Cost Basis:  
Total Equipment Cost \$ 119,600.00  
Taxes (if applicable) \_\_\_\_\_  
Delivery, Installation, etc. \_\_\_\_\_  
Total Cost to Lessor \$ 119,600.00

Expiration of Lease Term: At expiration of 48 months following the "commencement date." As per Paragraph III of the Master Lease.  
Second and subsequent rent payments will be due monthly in arrears in ~~XXXXX~~ 48 installments commencing on the first day of the month after the commencement date. (monthly, quarterly, etc.)

A. Rent per month \$ 2,732.86 plus tax  
(month, quarter, etc.)  
B. 1st Month and Advance Rental None \$ None  
C. Security Deposit (10%) \$11,960.00 \$ 11,960.00 \$ 11,960.00  
(B+C)

Additional Provisions:  
A Security Deposit of 10%, or 11,960.00, non-interest-bearing, is to be held for the term of the transaction. At the end of the basic lease term, if there is no default under the Lease, and the End of Lease Option has been satisfied, this security deposit will be refunded to the Lessee.

Executed and agreed to this 22<sup>nd</sup> day of August, 19 88 as a Schedule to and part of the Master Lease Agreement between Lessor and Lessee dated as of the 15th day of August, 19 88

FORD EQUIPMENT LEASING COMPANY  
By \_\_\_\_\_  
Name & Title

TEX-TRAC, INC.  
Lessee  
By W. Scott - President  
Name & Title  
Ass't. Secretary  
(Seal) Attest: Betty A. Brown  
By \_\_\_\_\_  
Name & Title