IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| | ) | |
| EXIDE TECHNOLOGIES, et al.,[1] | ) | Case No. 02-11125 (JCA) |
| | ) | (Jointly Administered) |
| Debtors. | ) | |

**Objection Deadline: October 11, 2002 at 4:00 P.M.**

**NOTICE TO REJECT THE AGREEMENT BETWEEN EXIDE AND LIFT TRUCK SUPPLY INC.**

The above captioned debtors and debtors in possession (collectively, the "Debtors") submit this Notice to reject pursuant to Bankruptcy Code § 365 the agreement (the "Agreement") between Exide Corporation d/b/a Sure Star Division ("Exide"), and Lift Truck Supply Inc, dated January 27, 2000.

This rejection Notice is made pursuant to the Order Pursuant To Sections 365 and 554 Of the Bankruptcy Code Authorizing and Approving an Expedited Procedure For the Rejection Of Executory Contracts and Unexpired Leases Of Non-Residential Real Property and Abandonment Of Property Of the Debtors (Docket No. 62). A copy of the Agreement is attached hereto as Exhibit A.

Should a party-in-interest object to the proposed rejection described herein, such party must file and serve a written objection so that such objection is filed with this Court and is actually received by the following parties **no later than thirty (30) days after the date of service of this Notice**: (a) counsel to the Debtors, Kirkland & Ellis, 200 East Randolph Drive,

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[1] The debtors in these proceedings are: Exide Technologies f/k/a Exide Corporation; Exide Delaware, L.L.C.; Exide Illinois, Inc. and RBD Liquidation, L.L.C.

Chicago, Illinois 60601, Attn: Matthew N. Kleiman, Esq. and Pachulski, Stang, Ziehl, Young & Jones P.C., 919 N. Market Street, 16th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705, Attn: Laura Davis Jones, Esq.; (b) counsel to the Committee of Unsecured Creditors Akin, Gump, Strauss, Hauer &Feld, L.L.P., 590 Madison Avenue, New York, NY 10022, Attn: Fred Hodara, Esq.; (c) counsel to the Administrative Agent to the Prepetition Lenders, Sherman & Sterling, 599 Lexington Avenue, New York, New York 10022, Attn: Mark Shapiro; (d) counsel to the Post-Petition Lenders, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia L. Goldstein, and (e) Office of the United States Trustee, 844 King Street, Room 2313, Lockbox 35, Wilmington, Delaware 19801, Attn: Mark Kenney, Esq.

Absent an objection being filed within thirty (30) days after the date the Debtors file this Notice, the rejection of the Agreement, shall become effective on the date the Notice was filed with the Court without further notice, hearing or order of this Court.

If an objection is properly filed and served, the Court will schedule a hearing to consider the objection. If such objection is withdrawn, the rejection of the Agreement shall be deemed to have occurred on the date the Notice was filed with the Court. If such objection is ruled upon by the Court, the Court shall determine the effective date of rejection.

Dated: September 11, 2002

KIRKLAND & ELLIS
Matthew N. Kleiman
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

-and-

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.

Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No 4042)
Kathleen Marshall DePhillips (Bar No. 4173)
16th Floor, 919 North Market Street
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

Co-Counsel for the Debtors and Debtors in Possession

# EXHIBIT A

TOYOTA MOTOR CREDIT CORPORATION

# TOYOTA MOTOR CREDIT CORPORATION

LEASE NO. _____ (TMCC USE)

## LEASE AGREEMENT
(EQUIPMENT)

LEASE DATE: 1-27-00

LESSEE - NAME AND ADDRESS OF PRINCIPAL OFFICE:
do Corporation DBA: Sure Start Divis
4001 Sure Start Drive
Cooper, TX. 75432
☐ Individual ☐ Partnership ☒ Corporation ☐ Other
ADDRESS OF LOCATION OF EQUIPMENT:
4001 Sure Start Dr. Cooper, TX.

DEALER / LESSOR - NAME AND BUSINESS ADDRESS:
on Lift Truck Supply Inc.
P.O. Box 8251
Tyler, TX. 75711

Insurance Company or Agent: J & H Marsh & McLennan
Address: Six PPG Place 4300, Pittsburg, PA 15222 Phone No. (412-552-500

This Agreement ☐ is ☒ is not a FULL SERVICE MAINTENANCE AGREEMENT.

The following Exhibits, if any, are attached hereto and incorporated herein by this reference:
Exhibit "A" NA Exhibit "B" NA

1. LEASE OF EQUIPMENT.
Subject to the terms and conditions of this Lease Agreement ("Agreement"), LESSOR hereby rents to LESSEE and LESSEE hereby rents from LESSOR, the following material handling vehicles complete with all additions, attachments and accessories and all other material handling vehicles described on a Notice of Delivery ("Notice of Delivery") executed by LESSOR and LESSEE from time to time in the form of Supplement No.1 attached hereto and incorporated herein by this reference (collectively referred to as the "Equipment"):

| ITEM NO. | QUANTITY | DESCRIPTION / SERIAL NO. | MONTHLY RENTAL PER ITEM | INITIAL TERM | SECURITY DEPOSIT | HOURLY OVERTIME RATE PER ITEM |
|---|---|---|---|---|---|---|
| #1 | One | 7FGCU25-61217 | $444.45 + tax | 48 mos. | -0- | -0- |
| | One | 7FGCU25-61575 | $353.65 + tax | 48 mos. | -0- | -0- |

All Equipment rented hereunder is rented f.o.b., at LESSOR's address set forth above and will be used by LESSEE in LESSEE's operation at the address set forth above and as described in a Survey Report executed by LESSOR and LESSEE (the "Survey Report"). LESSEE shall not remove any of the Equipment to any other place without LESSOR's prior written consent.

Where battery powered Equipment is rented, any additional batteries and chargers other than those provided above and included in the monthly rental per item shall be rented at the additional sole cost and expense of LESSEE.

The rentals shown above have been calculated on the basis of information supplied by LESSEE and data developed by LESSOR as set forth in the Survey Report.

If an hourly overtime rate is shown above, the hourly overtime rate will apply to each hour of use of any Equipment in excess of -0- hours in any calendar quarter as determined by the hour meter or other mechanical device used to record hours of use supplied with the Equipment ("hour meter"). Readings of the hour meter will be taken and billed by LESSOR quarterly. If any hour meter on any Equipment fails to function, thereby rendering an hour meter reading unavailable for such Equipment, the hours of use will be ascertained by computing the average number of hours per month that the Equipment was used during the previous 3 months of recorded usage (or in case such previous period of recorded use shall be less than 3 months, then during such lesser period) and multiplying the monthly average so computed by the number of months, or fractions thereof, during which said hour meter for such Equipment shall have failed to function. LESSEE agrees to pay said overtime rental charges within 10 days from the date of LESSOR'S invoice for such charges.

2. TERM AND RENEWAL.
2.1 The original term of rental of the Equipment will commence with the delivery thereof and, unless sooner terminated as provided herein, will continue for the number of months set forth above under "Initial Term" (the "Initial Term").
2.2 The Initial Term will be extended automatically from month to month after the expiration thereof unless either of the parties gives notice to the other of an intention to terminate such rental at least 60 days prior to the expiration of the Initial Term, or at least 10 days prior to the expiration of any extended term.

3. RENT.
LESSEE will pay the monthly rental stated in Article 1 with respect to each item of Equipment commencing on the day of delivery and continuing on the same day of the month of each successive month thereafter during the Initial Term, as extended pursuant to Section 2.2 above, until the

until the rented Equipment is put into proper operating condition. The substituted Equipment will be as nearly practicable of the same capacity and general specifications as the rented Equipment; provided, that LESSOR will not be required to provide specialized attachments or accessories, or to make special alterations to the substituted Equipment. Such substituted Equipment will, while in the service of LESSEE, be subject to the terms and conditions and the payment of rentals and charges provided in this Agreement.

6.4A Obligations of LESSEE - LESSEE, at its own cost and expense, will be responsible for the normal needs required for the Equipment in its daily operation, including: (i) the making of a routine check of each unit at the beginning of each shift; (ii) supplying all necessary fuel (gasoline, electric current or L. P. Gas), replacement oil and

Equipment is returned to LESSOR. All rent and other sums payable to LESSOR will be paid to Toyota Motor Credit Corporation at the address set forth below its signature or at such other address as Toyota Motor Credit Corporation may in writing direct from time to time.

4. DELIVERY.
When Equipment is delivered to LESSEE, LESSOR will prepare and deliver to LESSEE a Notice of Delivery which will set forth separately for each item the following information: item number, a description of the Equipment, serial number and a delivery date. Although LESSOR will try to deliver the Equipment by the delivery date requested, TIME OF DELIVERY IS NOT OF THE ESSENCE AND LESSOR ASSUMES NO LIABILITY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR FAILURE TO MAKE DELIVERY ON SUCH DATE. LESSEE or LESSEE'S authorized representative will execute such Notice of Delivery and return it to LESSOR.

5. RETURN OF EQUIPMENT.
5.1 LESSEE will return all of the Equipment at the expiration or earlier termination of the lease term, freight prepaid to a point designated by LESSOR. The designated point will be in no event farther than LESSOR'S place of business. The Equipment will be returned in safe operating condition.
5.2 For the purpose of this Article the phrase "safe operating condition" will mean that the Equipment loaded to its rated capacity: (i) has no missing or broken components or accessories; (ii) starts under its own power and idles; (iii) does not leak oil, water, fuel, or any other fluids; (iv) moves through its normal speed ranges in both forward and reverse; (v) steers normally right and left in both forward and reverse; (vi) is able to stop by means of service brakes in a safe distance in both forward and reverse; (vii) lifts, lowers, and tilts normally and without hydraulic oil leaks; and (viii) its attachments, if so equipped, perform all of their required functions. In addition, to be in safe operating condition Equipment will have: (i) serviceable tires, with some remaining tread and without chunking or flat spots; and (ii) operational horn, parking brake and lights.
5.3 If all of the Equipment is not returned in safe operating condition, LESSOR will bill LESSEE for the amount of LESSOR'S then normal charge to its customers for any repairs necessary to place the Equipment in safe operating condition, regardless of whether LESSOR actually performs such repairs, and LESSEE will pay such bill within 30 days after its receipt thereof.

6. MAINTENANCE, CARE AND INSPECTION.
6.1 LESSEE will keep the Equipment in a covered area when not in use. LESSEE will cause the Equipment to be operated only by competent, fully-trained-in-use employees of LESSEE. LESSEE will also assure that the Equipment is operated with driver's overhead guard and load backrest extension installed. LESSEE agrees to operate the Equipment within its rated capacity and not to alter or modify the Equipment.

If this Agreement is a FULL SERVICE MAINTENANCE AGREEMENT, the following provisions will also apply:

6.2A Obligations of LESSOR - Subject to the performance by LESSEE of its obligations with respect to the Equipment, LESSOR will service and maintain the Equipment in proper working condition. LESSEE agrees to make the Equipment available for servicing by representatives of LESSOR at reasonable times during LESSOR'S business hours. LESSEE will provide, without charge to LESSOR, a suitable area within LESSEE'S premises in order that LESSOR'S agents or employees may service each unit of Equipment and perform such repairs as can reasonably be made without removing the Equipment from LESSEE'S premises. The space will be well lighted, heated and ventilated. Where the number and type of Equipment warrants, LESSEE will provide an adequate, protected storage area and facilities, without charge, in order that LESSOR may maintain an inventory of supplies or parts required in the servicing of the Equipment.

6.3A If any item of Equipment is out of service for needed repairs, due to normal use, LESSOR will promptly after notice by LESSEE arrange to repair such Equipment. If LESSOR deems it impracticable to promptly repair any such item of disabled Equipment, LESSOR will temporarily substitute similar Equipment in good operating condition



water; (iii) where applicable, checking the oil level in the crankcase and water in the cooling system daily and checking the air pressure of pneumatic tires weekly; (iv) where battery-powered Equipment is rented, maintaining the proper level of water in the batteries, and installing devices necessary to effectuate such recharging; and (v) where L. P. Gas Equipment is rented, furnishing and storing L. P. Gas fuel and cylinders and changing such cylinders as required.

If this Agreement is NOT A FULL SERVICE MAINTENANCE AGREEMENT, the following provisions will apply:

6.2B LESSOR will inspect the Equipment periodically during the lease term. LESSOR will furnish to LESSEE a report after each such inspection on the condition of each unit of Equipment and any repair work that may be required.

6.3B LESSEE agrees to perform, at its own cost and expense, according to LESSOR'S manuals for maintenance and operation, all Equipment maintenance, service and repair (including both labor and materials) including, but not limited to:
a. Daily maintenance such as (i) the making of a routine check of each item at the beginning of each shift; (ii) supplying all necessary fuel (gasoline, electric current or L. P. Gas), replacement oil and water; (iii) where applicable, checking the oil level in the crankcase and water in the cooling system daily and checking the air pressure of pneumatic tires weekly; (iv) where battery-powered Equipment is rented, maintaining the proper level of water in the batteries, and installing devices necessary to effectuate such recharging; and (v) where L. P. Gas Equipment is rented, furnishing and storing the L. P. Gas fuel and cylinders and changing such cylinders as required.
b. Preventive maintenance service (per lubrication charts in manual).
c. Repairing, overhauling or adjusting of drive line, drive axle, uprights, steering gear, steering axle, hydraulic system brakes, power steering components, chains; and on gas-powered Equipment, the engine, engine accessories, belts, clutch and transmissions; and on battery-powered Equipment, the electric drive and pump motors, and all other routine repair work required to keep the Equipment in good operating condition.
d. Repairing, overhauling or adjusting of battery and charging Equipment, where battery-powered Equipment is rented.
e. Replacing or repairing of tires.
f. Repairs that may be required as determined by LESSOR during its periodic inspection and report to LESSEE.

6.4B LESSEE will, at its own expense during the term hereof and until the return of the Equipment at the expiration of the lease term, maintain the Equipment in good operating order, repair, and appearance and, in effecting maintenance and repairs, will have such work performed only by qualified persons who are satisfactory to LESSOR. If LESSOR, during any inspection, determines that LESSEE has failed to perform its obligations as set forth above with respect to any item of Equipment, LESSOR will give LESSEE written notice thereof. Unless LESSEE performs such obligations within 30 days from the date of such notice, LESSOR will have the right, but not the obligation, to terminate the lease on such Equipment and/or to perform the maintenance, service and repair required to be performed by LESSEE under this Agreement. If LESSOR performs such maintenance, service or repair, LESSEE will pay LESSOR an amount equal to LESSOR'S then normal charge to its customers for similar services, such payment to be made within thirty (30) days after LESSEE receives LESSOR'S invoice with respect thereto.

7. TAXES.
LESSEE will be responsible for and pay when billed by LESSOR any and all taxes, fees, or assessments, however designated, levied, or based, relating to the Equipment or the lease thereof, or the transfer, use, possession or operation of the Equipment, or any combination of the foregoing; including but not limited to personal property taxes, gross receipts taxes, privilege taxes, excise taxes, license taxes, and sales and use taxes, together with any penalties, fines or interest thereon, and excluding only franchise taxes and taxes measured by the net income of the LESSOR. When personal property taxes are not billed on an item basis by the respective governmental authority, LESSOR will determine the appropriate tax liabilities attributable to the leased Equipment on a reasonable basis. LESSEE will give immediate notice to LESSOR of any

# ADDITIONAL TERMS AND CONDITIONS

attachment, tax notice, or inquiries from taxing authorities concerning taxes, fees, or assessments referred to herein.

8. LIABILITY OF LESSEE.

LESSEE assumes all risks and liability arising from LESSEE's possession, use and operation of the Equipment from the moment of delivery to LESSEE to the moment of return to LESSOR, unless directly caused by LESSOR'S sole negligence. LESSEE agrees to indemnify and hold LESSOR harmless from any and all of the following whether the same be actual or alleged: all loss, damage, claims, suits, taxes, liens, penalties, fines, liability and expense (including attorneys' fees) arising in any manner as a result of the breach by LESSEE, any agent, employee or servant of LESSEE, any assignee of LESSEE and any other person using or in possession of the Equipment of any term of this Agreement, or relating directly or indirectly to the possession, use and operation of the Equipment including, but not limited to injuries or death to persons or damages to or destruction of property, claims and liens for storage, labor and materials and all loss of and damage to the Equipment. Should LESSOR assign any of its rights or delegate any of its obligations under this Agreement, LESSEE agrees that LESSOR, LESSOR'S assignee and the officers, directors, stockholders, employees, agents and representatives of LESSOR'S assignee, will be entitled to the indemnity provided hereunder.

9. INSURANCE.

LESSEE will provide and pay for all-risk insurance against physical loss or damage to the Equipment in an amount satisfactory to LESSOR. LESSEE will also provide and pay for public bodily injury and property damage liability insurance against loss caused by or arising from LESSEE'S possession, use or operation of the Equipment. The minimum limits for such liability insurance shall be not less than One Million Dollars combined single limit. LESSEE will furnish LESSOR with certificates of insurance evidencing such coverages and designating both LESSOR and its assigns as additional insureds and loss payees under the policy. Such certificates shall provide for 30 days' prior written notice by registered mail to LESSOR of any cancellation or change reducing coverage. The insurance so provided will be effective during the period from the moment of delivery of each item of Equipment under lease to LESSEE until the moment of return receipt by LESSOR. LESSOR reserves the right, but not the obligation, upon failure of LESSEE to furnish such certificates of insurance or upon receipt of a notice of cancellation or change reducing coverage to make such arrangements for insurance as LESSOR believes necessary. LESSEE will pay for the cost of such insurance upon demand.

10. THEFT OR DESTRUCTION.

If any of the Equipment is stolen or disappears or is damaged to the extent that it is impossible to place it back into the same condition as when received (ordinary wear and tear excepted) ("Casualty Occurrence"), LESSEE agrees to reimburse LESSOR immediately for the loss of the Equipment by paying LESSOR an amount equal to the then unpaid balance of aggregate rental for such Equipment plus the estimated fair market value at expiration of the lease. Upon receipt of such payment, LESSOR will assign title to the Equipment to LESSEE and LESSEE'S obligations to pay rent shall cease upon such assignment and this Agreement will terminate.

11. OWNERSHIP.

It is expressly understood and agreed that this Agreement is a lease only and LESSEE does not acquire title to any of the Equipment. LESSEE will not cause or allow any liens or mortgages of any kind whatsoever to be placed on the Equipment. LESSEE agrees that it will not take any position on any tax returns or other filings with any taxing authority which is inconsistent with the status of this Agreement as a lease or LESSOR'S status as the owner of the Equipment for income tax purposes. LESSEE will not make any improvements other than ordinary maintenance and repairs to the Equipment without the prior written approval of LESSOR.

12. DEFAULT.

Any one or more of the following shall constitute an Event of Default:

12.1 Default by LESSEE in the payment of any installment of rent or any other amount payable to LESSOR hereunder, if such default shall continue for a period of 10 days after the date such payment is due;

12.2 Default by LESSEE in the performance of any other provision of this Agreement, if such default shall continue for a period of 10 days after written notice of such default is given by LESSOR to LESSEE;

12.3 Institution of a proceeding in reorganization, bankruptcy or insolvency by or against LESSEE or its property in any court, which proceeding is not dismissed within a period of 30 days; or,

12.4 LESSEE (i) admits in writing its inability to pay its debts as they

any right or remedy available to LESSOR will not operate as a waiver of any other right or remedy. The failure of LESSOR to exercise or a delay by LESSOR in exercising any right or remedy will not operate as a waiver of such right or any other right.

14. LATE CHARGE.

If a payment due hereunder is received by LESSOR more than 10 days after its scheduled due date, LESSEE shall pay a late charge equal to 5% of the unpaid amount of the late payment, but only once for each such late payment.

15. WARRANTY SERVICE.

LESSOR will deliver to LESSEE the factory limited warranty for the Equipment to enable LESSEE to obtain customary warranty service furnished on the Equipment. Other than delivering said factory warranty, there are no representations, promises, statements or warranties, express or implied, unless endorsed hereon in writing, and THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LESSOR BE RESPONSIBLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM THE EQUIPMENT OR LESSEE'S USE THEREOF.

16. ASSIGNMENT.

16.1 LESSEE will not assign, mortgage or encumber this Agreement or any Equipment leased hereunder, nor sublet or suffer or permit the Equipment to be used by others without the prior written consent of LESSOR. As to any assignment consented to by LESSOR (i) the term of such assignment will not extend beyond the final day of the term of this Agreement and (ii) the rights of the assignee will be expressly subject and subordinate to all of the terms of this Agreement. It is expressly recognized and acknowledged that LESSEE will remain liable as a principal hereunder and will be bound by and subject to all the terms and conditions hereof notwithstanding any express consent by LESSOR to any such assignment.

16.2 LESSOR will have the right to assign any or all its rights and obligations of LESSOR at any time without the consent of LESSEE and LESSEE agrees to recognize any such assignment and waives notice thereof. LESSOR intends to assign this agreement to Toyota Motor Credit Corporation.

17. SECURITY DEPOSIT.

LESSOR may use the Security Deposit to pay all amounts due under this Agreement. If LESSEE performs all of the obligations required to be performed by LESSEE under this Agreement, the Security Deposit will be returned to LESSEE at the end of the term of this Agreement.

18. REPRESENTATIONS AND WARRANTIES.

18.1 LESSEE represents and warrants to LESSOR that the information relayed to LESSOR for inclusion in the Survey Report is a true and accurate statement of the facts and circumstances of the anticipated use of the Equipment.

18.2 LESSEE represents and warrants to LESSOR that the Equipment shall only be used in a LESSEE'S trade or business and that in no event for other than a lawful purpose and in compliance with all laws. LESSEE agrees to maintain in unobliterated condition any identification numbers, labels, tags and other markings used to identify the Equipment as LESSOR'S property. LESSEE will comply with all laws and regulations relating to the possession, use and maintenance of the Equipment.

19. NOTICES.

All notices pursuant to this Agreement shall be in writing and shall be deemed made when mailed by registered or certified mail, return receipt requested, to LESSEE or LESSOR at their respective addresses set forth on the reverse side of this Agreement or at such other address furnished by either party to the other.

20. GOVERNING LAW.

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California and contains the entire agreement of the parties.

21. FURTHER ASSURANCES.

From time to time each party will execute and deliver such further instruments and will take such other action as any other party reasonably may request in order to discharge and perform their respective obligations and agreements hereunder.

advantage of any insolvency act, (iii) [illegible] a petition in bankruptcy or a petition to take benefit of creditors, (iv) consents to [illegible] appointment of a receiver of itself or of the whole or any substantial part of its property, (v) seeks reorganization or arrangement under the Federal Bankruptcy Laws;

12.5 Any material misrepresentation of fact, circumstance or warranty by LESSEE.

**REMEDIES.**

13.1 If an Event of Default occurs, LESSOR MAY, at its option, exercise any one or more of the following remedies:

a. Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by LESSEE of the applicable covenants and terms of this Agreement or to recover damages for the breach of such covenants and terms;

b. By notice in writing to LESSEE, terminate this Agreement as to all or any of the Equipment rented hereunder, whereupon all right and interest of LESSEE to or in the use of said Equipment will cease. In such event, LESSEE will deliver the Equipment to the place specified in Article 5.1 hereof, or such other place as may be designated by LESSOR, without relieving LESSEE of its other obligations under this Agreement. LESSOR may, directly or by its agents, enter upon the premises of LESSEE without demand or notice, or other premises where any of the said Equipment may be or is reasonably believed to be without demand or notice, and take possession thereof;

c. Sell any of the Equipment at public or private sale, as LESSOR may determine, free and clear of any rights of LESSEE and without any duty to account to LESSEE with respect to such sale or for the proceeds thereof; or

d. Hold, keep idle or lease to others any of the Equipment, as LESSOR in its sole discretion may determine, free and clear of any rights of LESSEE and without any duty to account to LESSEE with respect to such action or for any proceeds with respect thereto.

13.2 In an Event of Default LESSOR shall have the right to retain all prior rental payments and any security deposit made hereunder, and to recover from LESSEE any and all amounts including rents which, under the terms of this Agreement may be then due and be unpaid hereunder as compensation for the use of said Equipment, plus a reasonable sum for attorney's fees and such expenses as shall be expended or incurred in the seizure of said Equipment or in the enforcement of any right hereundor.

13.3 The remedies provided by this Agreement in favor of LESSOR will not be deemed exclusive, but will be cumulative and will be in addition to all other remedies in LESSOR'S favor existing at law or in equity. LESSEE hereby waives any and all rights of setoff. The exercise of

22. **DELAYS.**
LESSOR will not [illegible] incur any liability to LESSEE for any obligations, if prevented by wa[illegible]res, strikes or other labor disputes, accidents, acts of God, governmental regulations or interference, shortages of labor or materials, delays in transportation, non-availability of same from the manufacturer, or other causes beyond LESSOR'S control. IN NO EVENT WILL LESSOR BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

23. **SEVERABILITY AND WAIVER.**
Any provision of this Agreement prohibited by applicable law will be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. The failure of either party to require strict performance of any provision will not diminish that party's right thereafter to require strict performance of any provision.

24. **PRIOR APPROVAL.**
This Agreement shall not be effective until reviewed and accepted by Toyota Motor Credit Corporation. LESSEE shall not take delivery of the Equipment until such time.

25. **SUCCESSORS AND ASSIGNS.**
This Agreement shall be binding on, and will inure to the benefit of, the parties hereto and their respective permitted successors and assigns.

26. **DEPRECIATION.**
If, as to any Equipment, under any circumstances and for any reason whatsoever (and regardless of whether such Equipment is public utility property as defined in the Internal Revenue Code), LESSOR shall lose, or shall not have the right to claim, or there shall be disallowed or recaptured (collectively, a "Loss") any portion of the claimed depreciation deductions for such Equipment, based on the capitalized cost thereof, LESSEE agrees to pay LESSOR upon demand, an amount which will be equal to the sum of an amount which, in the reasonable opinion of LESSOR, shall cause LESSOR'S net yield to equal the net yield that LESSOR would have received if LESSOR had not suffered the Loss with respect to claimed depreciation deductions and the amount of any interest, addition to tax, and/or penalty which may be assessed by any taxing authority in connection with the Loss of the depreciation deductions.

27. **SURVIVAL OF COVENANTS, REPRESENTATIONS AND WARRANTIES.**
The covenants, representations, warranties and indemnities of LESSEE set forth in this Agreement shall survive the termination of this Agreement.

28. **AMENDMENTS OR MODIFICATIONS.**
Any amendment or modification to this Agreement must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year first above written.

LESSEE: Exide Corporation DBA: Sure Start ~~Division~~

By: [signature]

Title: _____

**Assignment of Lease Agreement:**

The authorized signature of the LESSOR below has the effect of:

1. Accepting the terms and conditions of this Agreement; and
2. Assigning to Toyota Motor Credit Corporation all of LESSOR'S right, title and interest in and to the leased Equipment and this Agreement, including all amounts to become due under it.

**Acceptance of Assignment of Lease Agreement:**

TOYOTA MOTOR CREDIT CORPORATION

By: [signature]

Title: CTS

Address: 1515 West 190th Street, P.O. Box 2958
Torrance, California 90509-2958

LESSOR: Lift Truck Supply Inc.

By: [signature]

Title: _____

TO: PAT FULMER 2-4-00

# TMCC Commercial Finance Department
## Assignment

1. For value received, the undersigned Toyota Dealer ("Seller") does hereby sell, assign and transfer to Toyota Motor Credit Corporation ("TMCC") Seller's entire right, title and interest in and to the attached contract ("Contract"), herein submitted to TMCC for acceptance, and the property covered thereby ("Property") described as follows:

**Description of Property**

| Year | Make | New or Used | Model | Unit ID Number |
|---|---|---|---|---|
| 1999 | TOYOTA | New | 7FGCU25, 7FGCU26 | 01217, 02878 |

**Description of Contract**

| Customer's Name | Date of Delivery |
|---|---|
| EXIDE CORPORATION<br>DBA: SURE START DIVISION | 01/27/00 |

and authorizes TMCC to do every act and thing necessary to collect and discharge obligations arising out of or incident to the Contract and this Assignment, all in accordance with *the Retail Sales Financing Agreement (Agreement)* currently in existence between the Parties. Further, Seller agrees that in the event Buyer or any other person makes a claim against TMCC alleging facts which, if true, would constitute a breach of any of the covenants, representations or warranties of the Agreement, Seller shall assume the defense of such claim and shall indemnify and save TMCC harmless from all loss, cost and expense arising therefrom. The liability of Seller shall not be affected by any extension, renewal or other change in the time of payment of the Contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for the payment thereof or the release or non-perfection of any security thereunder. TMCC shall not be bound to exhaust its recourse against Buyer or any other person or any security that TMCC may at any time have before being entitled to payment from Seller hereunder. Seller waives notice of the acceptance of this Assignment and notices of non-payment and non-performance of the Contract and any other notices required by law and waives all setoffs and counterclaims. This Assignment shall become effective upon delivery of the Contract to TMCC or upon TMCC's payment of the purchase price therefore, whichever first occurs.

II. As part of this Assignment, undersigned's obligations are further defined in the particular paragraph below executed by undersigned, notwithstanding the terms of the Agreement, and signature of any such paragraph shall constitute signature of the entire Assignment.

1. "PARTIAL GUARANTY" Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract, and agrees to purchase the Contract from TMCC, upon demand, for the full amount then unpaid whether the Contract shall then be, or not be, in default; provided, that at the time of any such demand by TMCC, Seller may, at his election, pay to TMCC the sum of $3,388.80 (advance guaranty), and $1,186.08 (residual guaranty) in consideration of being released from such guaranty obligation, and in such event, this Assignment of the Contract is without recourse against Seller, except as otherwise provided by the terms of the Agreement in effect at the time this Assignment becomes effective.

Reason for Partial Guaranty. Over 120% Advance and Over Maximum Allowed Residual

Seller signs Lift Truck Supply By Craig Murphy Title Pres.

2. "FULL GUARANTY" Seller unconditionally guarantees payment of the full amount remaining unpaid under the Contract and agrees to purchase the Contract from TMCC, upon demand, for the full amount then unpaid whether the Contract shall then be, or not be, in default. Reason:

Seller signs By Title

PA-Subsequent UCC Filing (UCC3)

**RIDER 1**

Project ID: 92249

**Collateral:**

PLEASE AMEND THE DEBTOR NAME FROM:

SURE START DIVISION
4001 SURE START DRIVE
COOPER, TX 75432

TO NOW READ:

EXIDE DELAWARE LLC
~~XXXXXXXXXXXXXXX~~ 802 West Street, Suite 209
~~XXXXXXXXXXXXXXX~~ Wilmington, DE 19801

2 USED TOYOTA FORKLIFT MODEL AND SERIAL NO. 7FGCU25 61217 & 61575
ACCT# 2/3 03218-002-0001 & 0002

TOYOTA MOTOR CREDIT CORPORATION TMCC

# NOTICE OF DELIVERY

SUPPLEMENT NO. _____ TO LEASE DATED 1-27-00

LESSEE - NAME AND ADDRESS OF PRINCIPAL OFFICE:
Exide Corp. DBA: Sure Start Division
4001 Sure Start Dr.
Cooper, Tx. 75432
ADDRESS OF LOCATION OF EQUIPMENT:
Same As Above

LESSOR - NAME AND BUSINESS ADDRESS:
Lift Truck Supply Inc.
P.O. Box 8251
Tyler, Tx. 75711
ASSIGNEE:
TOYOTA MOTOR CREDIT CORPORATION
2050 W. 190TH STREET, SUITE 208
P.O. BOX 3457
TORRANCE, CALIFORNIA 90504-3457

| ITEM # | DESCRIPTION | SERIAL NUMBER | DELIVERY DATE |
|---|---|---|---|
| #1 | New Toyota Forklift Truck, model 7FGCU25, 5000# Base Capacity, LP-Gas Powered, Solid Rubber Cushion Tires, 189" FSV Upright Assembly, Front Mounted Lights, Back-Up Alarm, SAfety Strobe Light, Rear Combination Lights, Cascade 360 degree Rotator, model 55D-RRB-14A, Overhead Guard with Safety Restraint Seat. | 61217 | 1-27-00 |
| #2 | Same As Above with exception of Cascade Rotator. | 61575 | " |

FOR PURPOSES OF ASSESSING THE PROPER USE TAX AND/OR PROPERTY TAX PLEASE COMPLETE THE FOLLOWING INFORMATION ON THE PHYSICAL LOCATION OF THE ABOVE EQUIPMENT.

CITY: Cooper COUNTY: Delta STATE: TX

THE FOREGOING DESCRIBED EQUIPMENT IS SUBJECT TO ALL OF THE TERMS AND CONDITIONS OF THE ABOVE REFERENCED LEASE.

THE EQUIPMENT OPERATES PROPERLY AND IS HEREBY ACCEPTED BY LESSEE ON 1-27-00, 19 ____

BILLING ADDRESS

IF THE ADDRESS SHOWN ABOVE FOR THE PRINCIPAL OFFICE IS NOT TO BE USED FOR BILLING, SHOW THE BILLING ADDRESS BELOW.

LESSEE: Exide Corporation DBA: Sure Start Division

BY : Bob Jones

TITLE : _____

LESSOR: Lift Truck Supply Inc.

BY : Craig D. Murphy

TITLE : President

TMC-154

TMCC 18197 10/93

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| | ) | |
| EXIDE TECHNOLOGIES, et al.,[1] | ) | Case No. 02-11125 (JCA) |
| | ) | (Jointly Administered) |
| Debtors. | ) | |

**CERTIFICATE OF SERVICE**

I, Kathleen Marshall DePhillips, Esquire, certify that on September 11, 2002, I caused a true and correct copy of the document listed below to be served upon the individuals on the attached service list in the manner indicated:

1. **NOTICE TO REJECT THE AGREEMENT BETWEEN EXIDE AND LIFT TRUCK SUPPLY INC.**

Dated: September 11, 2002

Kathleen Marshall DePhillips
(Bar No.4173)

[1] The Debtors in these proceedings are: Exide Technologies f/k/a Exide Corporation; Exide Delaware, L.L.C.; Exide Illinois, Inc. and RBD Liquidation, L.L.C.

**Exide/Core Service List for Reject Notices**
Doc. No. 51776
05 - Federal Express
01 – Hand Delivery

(Counsel to Debtor)
Laura Davis Jones, Esquire
Pachulski, Stang, Ziehl, Young & Jones
919 North Market Street
16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

***HAND DELIVERY***
Mark Kenney, Esquire
Office of the United States Trustee
844 King Street, Room 2313
Lockbox 35
Wilmington, DE 19801

***OVERNIGHT MAIL***
(Co-Counsel to Debtor)
Matthew N. Kleiman, Esquire
Kirkland & Ellis
200 East Randolph Drive
Chicago, Illinois 60601

***OVERNIGHT MAIL***
(Counsel to the Committee of Unsecured Creditors)
Fred Hodara, Esquire
Akin, Gump, Strauss, Hauer & Feld, LLP
590 Madison Avenue
New York, NY 10022

***OVERNIGHT MAIL***
(Counsel to the Administrative Agent to the
Prepetition Lenders)
Mark Shapiro
Sherman & Sterling
599 Lexington Avenue
New York, NY 10022

***OVERNIGHT MAIL***
(Counsel to the Pre-Petition Lenders)
Marcia L. Goldstein
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153

***OVERNIGHT MAIL***
Carter Pennington
210 Carnegie Center
Suite 500
Princeton, NJ 08040

**Service List**

**Overnight Mail**
Lift Truck Supply Inc.
P.O. Box 8251
Tyler, TX 75711