

**CONRAIL**

10375

RECORDATION NO. .... Filed 1425

May 16, 1979

MAY 16 1979 3 52 PM

9-136A081

INTERSTATE COMMERCE COMMISSION

MAY 16 1979

Date  
Fee \$ 50.00

Robert L. Oswald, Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue  
Washington, D. C. 20423

Washington, D. C.

Dear Mr. Oswald:

Pursuant to 49 USC § 11303 and as provided by Volume 49 Code of Federal Regulations Sections 1116.1 through 1116.4, we present the following document for recordation.

Agreement and Lease, dated as of April 16, 1979.

Lessor: Melcorp Leasing, Inc.  
Suite 3629  
Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

Lessee: Consolidated Rail Corporation  
Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

The Equipment covered by this transaction is the Roadway Machinery and Work Equipment set forth in the attached list.

Enclosed is our check for \$50 to cover the recordation fee. This document has not been previously recorded with the Interstate Commerce Commission.

After recording a counterpart original of this document, please return the remaining copies, stamped with your recordation number to the individual presenting them for recordation.

Thank you for your assistance.

Sincerely yours,

  
Joseph T. Rowan  
Assistant General Counsel  
Tax and Finance

JTR:ld  
Enclosure

FEE OPERATION BR.  
I.C.C.

MAY 16 3 52 PM '79

RECEIVED

*Jeffrey R. Zetlemeyer*

*Joseph T. Rowan*

CONSOLIDATED RAIL CORPORATION

ROADWAY MACHINERY & WORK EQUIPMENT  
MELCORP LEASING FINANCING - 1979

MW No.	Useful Life (Years)	Quantity	Description	Estimated Cost	
				Per Unit	Total
<u>Production Gang Equipment</u>					
MW 463	9	8	Auto Spikers	\$ 51,000	\$ 408,000
467	9	20	Track Wrench	5,300	106,000
470	9	10	Dual Spike Guns	10,000	100,000
471	9	12	Hand Guns	500	6,000
472	9	1	Abrasive Saw (26")	15,000	15,000
473	9	12	Abrasive Saw (14")	1,000	12,000
474	9	4	Anchor Machines	15,000	60,000
475	9	2	Rail Heaters	17,000	34,000
476	9	4	Tie Sprayers	3,500	14,000
477	9	24	Rail Drills	1,000	24,000
480	9	4	Loading Ramps	5,000	20,000
		Subtotal 101			\$ 799,000
<u>Track Maintenance Gang Equipment</u>					
MW 440 (1)	9	150	Air Compressors	10,000	\$1,500,000
442	9	12	On-Track Cranes (12½ ton)	188,000	2,256,000
446	9	4	Speed Swings	100,000	400,000
448	9	4	Brush Cutters (off track)	50,000	200,000
457	9	3	Hi-Rail Dump Trucks	56,000	168,000
450	9	3	Jet Snow Blowers	80,000	240,000
453	9	30	Grinders (P 22)	3,200	96,000
455	9	22	Hydraulic Rail Pullers	4,700	103,400
		Subtotal 228			\$4,963,400

(1) Requires licensing

<u>MW No.</u>	<u>Useful Life (Years)</u>	<u>Quantity</u>	<u>Description</u>	<u>Estimated Cost</u>	
				<u>Per Unit</u>	<u>Total</u>
MW 481 (1)	9	3	Backhoes w/trailer )	\$	\$
482 (1)	9	10	Backhoes 1½ cov. yard )	24,620	320,060
484	9	3	Front End Loaders (with snow fighting equipment)	168,300	505,000
		<u>Subtotal 16</u>			<u>\$ 825,000</u>
		<u>TOTAL 345</u>			<u>\$6,587,460</u>

Unit costs subject to adjustment upon placement of purchase orders.

(1) requires licensing

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

5/16/79

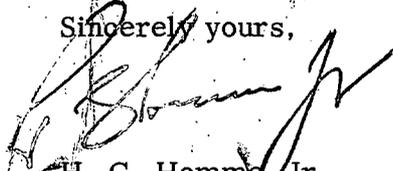
OFFICE OF THE SECRETARY

Joseph T. Rowan  
Assistant General Counsel  
Tax and Finance  
Consolidated Rail Corp.  
Six Penn Center Plaza  
Phila. Pa. 19104

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 **5/16/79** at **3:55pm**, and assigned recordation number(s). **10375**

Sincerely yours,



H. G. Homme Jr.  
Secretary

Enclosure(s)

SE-30  
(3/79)

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10375

RECORDATION NO. .... Filed 1425

MAY 16 1979 - 3 55 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND LEASE

dated as of April 16, 1979

between

MELCORP LEASING, INC.,

Lessor

and

CONSOLIDATED RAIL CORPORATION,  
Lessee

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## TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I. Certain Definitions.....</u>	1
<u>ARTICLE II. Agreement to Lease.....</u>	3
<u>ARTICLE III. Delivery and Acceptance</u>	
3.1. Delivery and Acceptance of Equipment .....	3
3.2. Certificate of Acceptance .....	3
<u>ARTICLE IV. Term and Rent</u>	
4.1. Term .....	3
4.2. Basic Rent and Interim Rent.....	4
4.3. Additional Rent.....	4
4.4. Payment of Rent.....	4
4.5. No Set-Off .....	4
<u>ARTICLE V. Representations and Warranties</u>	
5.1. Lessor's Representations and Warranties .....	5
5.2. Lessee's Representations and Warranties .....	6
<u>ARTICLE VI. Conditions to Lessor's Obligations</u>	
6.1. Conditions .....	6
6.2. Initial Closing .....	6
6.3. Each Acceptance .....	7
<u>ARTICLE VII. Reports</u>	
7.1. Financial Reports .....	8
7.2. Annual Certificate .....	8
7.3. Quarterly Reports.....	9
7.4. Additional Reports .....	9
7.5. Accidents .....	9
7.6. Tax Liens .....	9
<u>ARTICLE VIII. Maintenance, Use and Operation</u>	
8.1. Maintenance and Operation.....	9
8.2. Location and Insignia .....	10
8.3. Supplies .....	10
8.4. Accessories .....	10
8.5. Personal Property.....	10
8.6. Sublease and Assignment .....	10
8.7. Permitted Use.....	10
8.8. Recording.....	10

	<u>Page</u>
<u>ARTICLE IX. Liens</u> .....	11
<u>ARTICLE X. Insurance</u>	
10.1. Physical Damage Insurance .....	12
10.2. Liability Insurance .....	12
10.3. General Insurance Provisions .....	12
10.4. Payment of Premium by Lessor .....	12
<u>ARTICLE XI. Assumption of Risk; Indemnification</u>	
11.1. General.....	12
11.2. Federal Income Tax Matters .....	13
11.3. Survival of Obligations.....	17
<u>ARTICLE XII. Damage to Property</u>	
12.1. Duty to Notify.....	17
12.2. Stipulated Loss Value .....	17
12.3. Insurance and Condemnation Proceeds .....	17
<u>ARTICLE XIII. Return of Property</u> .....	18
<u>ARTICLE XIV. Defaults; Remedies</u>	
14.1. Default; Remedies .....	18
14.2. Remedies Cumulative; Waiver of Requirements ...	20
<u>ARTICLE XV. Assignment by Lessor</u> .....	21
<u>ARTICLE XVI. Quiet Possession</u> .....	21
<u>ARTICLE XVII. Further Assurances</u> .....	21
<u>ARTICLE XVIII. Miscellaneous</u>	
18.1. Miscellaneous .....	22
<u>ARTICLE XIX. Notices.</u> .....	22

Attachments:

- Lease Supplement
- Lease Schedule (with Annex 1, List of Equipment, and Annex 2, Stipulated Loss Values)
- Exhibits -
  - A. Form of Certificate of Acceptance
  - B. Form of Assignment as to purchase orders, etc.
  - C. Form of Consent by vendor to assignment
  - D. Form of vendor's Bill of Sale

## AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of April 16, 1979 between MEL-CORP LEASING, INC., a Pennsylvania corporation ("Lessor"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Lessee");

### W I T N E S S E T H T A T :

WHEREAS, Lessee has requested that Lessor purchase and lease to Lessee the personal property described in the Lease Schedule (attached hereto), and Lessor is willing to do so upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of their mutual covenants hereinafter set forth and intending to be legally bound hereby, agree as follows:

### ARTICLE I. Certain Definitions

In addition to the words and terms defined elsewhere in this Agreement, the following words and terms shall have the following meanings, respectively, unless the context hereof clearly otherwise requires:

"Additional Rent" shall mean any and all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder pursuant to Section 4.3 of this Agreement, other than Basic Rent and Interim Rent.

"Agreement" shall mean this Agreement and Lease, as amended or supplemented from time to time, and shall include the Lease Schedule, the Lease Supplement and each Certificate of Acceptance executed and delivered from time to time pursuant to this Agreement. Each reference herein to "this Agreement", "herein", "hereunder", "hereof" or other like words shall include this Agreement, the Lease Schedule, the Lease Supplement, each such Certificate of Acceptance and any annex, exhibit or schedule attached hereto or thereto.

"Basic Rent" shall mean the amount payable as Basic Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Certificate of Acceptance" shall mean the certificate of Lessee substantially in the form of Exhibit A hereto executed and delivered from time to time under this Agreement.

"Default" and "Event of Default" shall mean any of the events described in Section 14.1 hereof.

"Equipment" shall mean all the Units described in the respective Certificates of Acceptance executed and delivered from time to time under this Agreement.

"Final Delivery Date" shall mean the date identified as such in the Lease Schedule.

"Interest Payment Rate" shall mean the lesser of 12% per annum or the maximum rate permitted by law.

"Interim Rent" shall mean the amount, if any, payable as Interim Rent by Lessee pursuant to Section 4.2 of this Agreement.

"Lease Schedule" shall mean the Lease Schedule executed and delivered by Lessor and Lessee as of the date hereof, attached hereto and hereby incorporated herein.

"Lease Supplement" shall mean the Lease Supplement attached hereto and hereby incorporated herein.

"Lessee's Service Area" shall mean the states of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and West Virginia, the District of Columbia and the provinces of Quebec and Ontario, Canada.

"Lessee's Right to Contest" shall mean, when used herein to modify Lessee's obligation to make payments to a governmental authority or other third party (other than payments required to be made pursuant to Section 11.2 hereof) or to take any action with respect to the Equipment imposed by law or by governmental authority, that Lessee shall have the right to contest such obligation by appropriate proceedings diligently conducted in good faith by Lessee so long as (i) Lessee shall first notify Lessor of its intention to exercise such right and shall supply Lessor with all such information with respect thereto as Lessor shall reasonably request, (ii) such contest does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create any danger of Lessor incurring criminal liability or other liability for which indemnification, satisfactory to Lessor and its counsel, of Lessor, its successors, assigns, representatives, directors, officers, employees, agents and servants by Lessee is not provided, and (iii) no Event of Default (or other event which with notice or lapse of time or both would be an Event of Default) has occurred and is continuing.

"Lessor's Cost" shall mean the purchase price of each Unit to Lessor (which shall not exceed the amount set forth in the Lease Schedule), plus any excise, sales and use taxes paid or payable by Lessor with respect to the purchase thereof, and plus any costs and expenses approved and paid by Lessor in connection with the delivery and installation thereof.

"Rent" shall mean Additional Rent, Basic Rent and Interim Rent, collectively.

"Rental Payment Date" shall mean each date on which Basic Rent (and Interim Rent, if any) is payable hereunder.

"Stipulated Loss Value" shall mean with respect to each Unit the amount equal to the applicable percentage of Lessor's Cost determined in accordance with the table set forth on Annex 2 to the Lease Schedule.

"Term" shall mean the period of time for which any one or more of the Units is leased hereunder.

"Unit" shall mean each individual item of personal property described in any Certificate of Acceptance executed and delivered under this Agreement.

## ARTICLE II. Agreement to Lease

Lessor and Lessee agree that, from time to time on or before the Final Delivery Date, Lessor shall accept title to the respective Units (provided the purchase price therefor shall not exceed collectively, and shall not materially exceed individually, the amount of Lessor's Cost assigned to such Units in the Lease Schedule), and simultaneously therewith Lessor shall lease the Units to Lessee and Lessee shall hire same from Lessor, all upon the terms and subject to the conditions of this Agreement.

## ARTICLE III. Delivery and Acceptance

3.1. Delivery and Acceptance of Equipment. Lessee (or at its request, Lessor) has contracted or will contract with the vendor of each Unit for delivery at the location set forth in the Lease Schedule. Lessor shall not be liable for any failure or delay in obtaining, or in delivery of, any of the Units.

Forthwith upon delivery of each Unit, Lessee shall inspect and determine whether to accept same from the vendor. Lessor hereby appoints Lessee, its officers and employees, as the authorized representative of Lessor, to accept delivery of each Unit from the vendor thereof. Acceptance of delivery by Lessee shall, without further act, irrevocably constitute acceptance by Lessee and Lessor of such Unit for all purposes of this Agreement.

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

## ARTICLE IV. Term and Rent

4.1. Term. The Term shall commence on the date of acceptance by Lessee of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery

by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

4.2. Basic Rent and Interim Rent. Lessee shall pay to Lessor Basic Rent for each Unit, in the aggregate amount and in the installments and on the Rental Payment Dates as specified in the Lease Schedule and in the Certificate of Acceptance covering such Unit, and if so provided in the Lease Schedule, Lessee shall pay to Lessor Interim Rent in the amount determined as therein provided and on the Rental Payment Dates therein specified.

4.3. Additional Rent. The lease created pursuant to this Agreement is a "net" lease. Lessee shall pay as Additional Rent all amounts (in addition to Basic Rent and Interim Rent, if any) required to be paid under this Agreement and (except as expressly provided herein and subject to Lessee's Right to Contest) all costs, taxes (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), assessments and other expenses of every character (whether seen or unforeseen and whether or not expressly provided for herein) relating to or arising in connection with the use, occupancy, ownership, maintenance, repair, replacement or reconstruction of any Unit during the Term and, to the extent expressly provided herein, thereafter. Lessee shall also pay to Lessor as Additional Rent interest at the Interest Payment Rate on each overdue installment of Basic Rent (and Interim Rent, if any) and on each overdue payment of Additional Rent.

4.4. Payment of Rent. Each installment of Basic Rent (and Interim Rent, if any) shall be paid to Lessor at its office at 3629 Mellon Bank Building, Pittsburgh, Pennsylvania 15219, or as directed by Lessor, and all Additional Rent shall be paid directly to the person entitled thereto and if such person is Lessor at its office or as it directs as aforesaid. All payments of Rent shall become due at 12:00 noon Pittsburgh time on the Rental Payment Date when due.

4.5. No Set-Off. Lessee shall not be entitled to any abatement of Rent, reduction thereof or set-off, counterclaim, recoupment or defense against Rent, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever; nor, except as otherwise expressly provided herein, shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the title, condition, design, operation or fitness for use of any Unit or damage to or loss of possession or loss of use or destruction of all or any of such Units from whatsoever cause and of whatever duration or any presently existing or hereafter created liens, encumbrances or rights of others with respect to any Unit or the prohibition of or other restriction against Lessee's use of all or any of such Units or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any combination of such cause or any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this

Agreement. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each payment of Rent made by Lessee hereunder shall be final, and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

#### ARTICLE V. Representations and Warranties

5.1. Lessor's Representations and Warranties. (a) Lessor represents and warrants to Lessee that Lessor has received whatever title was conveyed to it by the vendor from which title to each Unit was received and that the Equipment is free of liens and encumbrances which may result from any claims against Lessor not related to Lessor's ownership of the Equipment. Lessor further represents and warrants that it has full power and authority to lease the Equipment to Lessee in accordance with the terms hereof. THE WARRANTIES OF LESSOR SET FORTH IN THIS SECTION 5.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF LESSOR WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE EQUIPMENT PURSUANT TO THIS AGREEMENT TO HAVE MADE, ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE EQUIPMENT, but Lessor authorizes Lessee, at Lessee's expense, to assert during the Term, so long as no Event of Default and no event which with notice or lapse of time or both would be an Event of Default shall have occurred and be continuing, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty with respect to the Equipment, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall not attempt to enforce such rights unless (i) Lessee shall first notify Lessor of Lessee's intention to enforce such rights and shall furnish to Lessor such information with respect thereto as Lessor may reasonably request and (ii) the enforcement of such rights does not, in Lessor's reasonable judgment, involve any danger of sale, forfeiture or loss of any Unit or create the danger of Lessor's incurring criminal liability or other liability for which indemnification by Lessee, satisfactory to Lessor and its counsel, of Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants is not provided. Any amount received by Lessee as payment under any warranty pursuant to the above authorization shall be applied to restore the Equipment to as good a condition as it was or should have been (but for defects giving rise to such payment under warranty) when delivered to Lessee hereunder, ordinary wear and tear excepted, with the balance of such amount, if any, to be paid over to Lessor. The provisions of this Section 5.1 have been negotiated and agreed to by the parties hereto and, except to the extent otherwise expressly provided in this Section 5.1, are intended to be a complete negation and exclusion of any representations or warranties by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

(b) Lessor represents and warrants to Lessee that Lessor is purchasing the Equipment with its general assets, and not directly or indirectly with the assets of, or in connection with any arrangements or understanding in any way involving, any employee benefit plan with respect to which it or Lessee is a party in interest or a disqualified person, within the meaning of the Employee Retirement Income Security Act of 1974, as amended, or the Internal Revenue Code, respectively.

that: 5.2. Lessee's Representations and Warranties. Lessee represents and warrants

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation, and is duly qualified to do business in those jurisdictions (including each of those where the Equipment will be located) where such qualification is necessary; provided, however, that Lessee is not qualified to do business in the Commonwealth of Virginia and that Lessee's failure to be so qualified will not adversely affect Lessee's ability to perform its obligations hereunder or Lessor's ability to enforce its rights and remedies hereunder;

(b) Lessee has full power, authority and legal right to execute, deliver and perform in accordance with this Agreement. This Agreement has been duly authorized by all necessary corporate action on the part of Lessee; does not require the consent or approval of, or the giving of notice to, any federal, state, local or foreign governmental authority (except such as has already been given or obtained); does not contravene any law, governmental regulation or judicial or administrative order or decree binding on Lessee; and does not contravene Lessee's charter or by-laws or any indenture or agreement to which Lessee is a party or by which it or its property is bound;

(c) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(d) Except as disclosed in the Memorandum For Private Investors dated February 15, 1979 (the "Memorandum"), a complete and correct copy of which was furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder; and

(e) The balance sheet of Lessee as of the close of its most recent fiscal year and the earnings statement of Lessee for the fiscal year then ended have been furnished to Lessor and fairly present Lessee's financial condition as of such date and the results of its operations for such year, in accordance with generally accepted accounting principles consistently applied, and, except as set forth in the Memorandum, since such date there has been no material adverse change in such condition or operations.

#### ARTICLE VI. Conditions to Lessor's Obligations

6.1. Conditions. Lessor's duties and obligations under this Agreement are subject to fulfillment of the conditions precedent set forth in Section 6.2 and Section 6.3, in each case in form, substance and manner satisfactory to Lessor and its counsel.

6.2. Initial Closing. Prior to or on the date of the execution and delivery of this Agreement (the "Initial Closing Date"), Lessee shall have furnished to Lessor:

(a) A copy of the resolutions of the Board of Directors (and if applicable the shareholders) of Lessee, certified as of the Initial Closing Date by the Secretary or an Assistant Secretary of Lessee, duly authorizing the lease of the Equipment hereunder and the execution, delivery and performance of this Agreement.

(b) A certificate of the Secretary or an Assistant Secretary of Lessee dated the Initial Closing Date as to the incumbency and signatures of the person or persons authorized to execute this Agreement and the other documents contemplated hereby on behalf of Lessee.

(c) An opinion of counsel for Lessee dated the Initial Closing Date as to the matters set forth in Section 5.2 other than subparagraph (e) thereof and as to such other matters as Lessor may reasonably request.

(d) A certificate dated the Initial Closing Date signed by its chief engineer stating that the Term (including the Interim Term and the Base Term) will not exceed 80% of the useful economic life of the Equipment and that the Equipment will have an expected residual value at the end of the Term of at least 20% of Lessor's Cost, disregarding inflation or deflation.

6.3. Each Acceptance. Prior to or simultaneously with delivery of a Certificate of Acceptance with respect to each Unit, Lessee shall have furnished to Lessor the following:

- (a) (i) A true and correct copy of all purchase orders, invoices and other contract documents relating to such Unit between the vendor thereof and Lessee,
- (ii) An executed copy of an assignment of such purchase orders, invoices and other contract documents in substantially the form of Exhibit B hereto,
- (iii) An executed copy of a consent to each such assignment substantially in the form of Exhibit C hereto,
- (iv) Tender of an executed bill of sale for such Unit substantially in the form of Exhibit D hereto and
- (v) Evidence satisfactory to Lessor that the person or persons signing each such consent to assignment and each such bill of sale was duly authorized to do so.

(b) A Certificate of Acceptance with respect to such Unit executed by Lessee.

(c) Evidence satisfactory to Lessor that Lessee has or has obtained insurance with respect to such Unit as required by Article X.

(d) A certificate signed by its chief executive or financial officer, treasurer or assistant treasurer dated the date of such Certificate of Acceptance to the effect that the representations and warranties in Section 5.2 hereof are true and

correct as though the same were made on such date and that no Default (and no condition, act or event which with notice or lapse of time would become a Default) has occurred and is continuing.

(e) A list setting forth for such Unit (i) the machine record number assigned to such Unit by Lessee for purposes of Lessee's computerized inventory control system referred to in Section 8.2(b) and (ii) the location, including the region and division within Lessee's Service Area, to which such Unit will be initially assigned.

(f) A copy of the maintenance specifications and procedures for such Unit issued by the manufacturer thereof and a copy of the maintenance specifications and procedures, if any, issued or used by Lessee for equipment of a type similar to such Unit.

(g) Evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of Section 8.8 and Article IX hereof.

(h) All other legal proceedings and details relative to this Agreement shall be reasonably satisfactory to Lessor and its counsel, and Lessor shall have been furnished with original or certified copies of such other documents as it or its counsel may reasonably request.

#### ARTICLE VII. Reports

7.1. Financial Reports. Lessee shall, as soon after the end of each fiscal year of Lessee as practicable (and in any event within 120 days thereafter), furnish to Lessor duplicate copies of (i) Lessee's most recent financial reports, including Lessee's most recent annual report and balance sheet and profit and loss statement, certified by a recognized firm of certified public accountants, and (ii) Lessee's most recent ICC Rail Form R1, prepared on a consolidated basis and in conformity with the Uniform System of Accounts for Railroad Companies prescribed by the Interstate Commerce Commission applied on a basis consistent with that of the preceding fiscal year. Interim statements, certified by the chief financial or accounting officer of Lessee, shall be furnished within fifteen days after their preparation by Lessee.

7.2. Annual Certificate. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate signed on behalf of Lessee by the chief financial or accounting officer, treasurer or assistant treasurer of Lessee stating as of a recent date (but not more than four months prior thereto):

(a) The make, model and manufacturer's serial number of each Unit;

(b) The manufacturer's serial number of any Unit that has become lost, destroyed, irreparably damaged or otherwise permanently rendered unfit or unavailable for use since the date of the previous report delivered pursuant to this Section 7.2 (or since the commencement of the Term in the case of the first such report);

(c) That the Equipment has been kept in good order and repair, ordinary wear and tear excepted, or is then being repaired in accordance with Section 8.1 hereof;

(d) That the location and identification requirements of Section 8.2 and Section 8.7 hereof have been complied with in the case of each Unit; and

(e) That the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Default has occurred and is continuing or, if such Default has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.3. Quarterly Reports. Lessee shall, as soon after the end of each fiscal quarter as practicable (and in any event within 10 business days thereafter) furnish to Lessor a list showing the location, as of the end of such quarter, of each Unit. Such list shall identify each Unit by the machine record number assigned to such Unit for purposes of Lessee's computerized inventory control system referred to in Section 8.2(b) and may identify equipment owned or leased by Lessee other than the Units; provided, however, that if and at such time as Lessee acquires the capability of producing such a list relating only to the Units the list furnished pursuant this Section 7.3 shall relate only to the Units.

7.4. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within fifteen (15) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.2(e) and/or a statement as to the location, as of a date not earlier than the date of such request, of each Unit. Lessee shall also furnish to the Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.5. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.6. Tax Liens. Lessee shall notify Lessor in writing, within ten days after any day on which any tax lien shall attach to any Unit, of such lien and of the location of such Unit on such day.

## ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall service, repair, maintain and overhaul each Unit so as to keep it (i) in as good operating condition as it was when delivered to Lessee hereunder, ordinary wear and tear excepted, and (ii) subject to Lessee's Right to Contest, in such condition as shall meet all

applicable federal, state or local laws or regulations (including without limitation all applicable regulations of the Department of Transportation and the Interstate Commerce Commission) and the applicable rules of the American Association of Railroads. Lessee shall not use, operate or store any Unit in violation of this Agreement, of any instructions therefor furnished by the manufacturer or vendor thereof or, subject to Lessee's Right to Contest, of any applicable federal, state or local law or regulation (including without limitation all applicable regulations of the Department of Transportation and the Interstate Commerce Commission) or the applicable rules of the American Association of Railroads; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof. In case any equipment or appliance on any Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Unit in order to comply with such laws, regulations or rules, Lessee shall make such changes, additions and replacements at its own expense.

In particular, and without limiting the generality of the foregoing, Lessee shall service, repair, maintain and overhaul each Unit in accordance with the maintenance specifications and procedures for such Unit issued by the manufacturer thereof, as the same shall have been furnished to Lessor pursuant to Section 6.3(f) and as they may be supplemented or modified from time to time by such manufacturer, including without limitation such maintenance specifications and procedures relating to (a) operations to be performed, (b) equipment, tools and supplies to be used (except that equipment, tools or supplies generally used by Lessee and equivalent or superior to those prescribed or recommended by the manufacturer may be used instead) and (c) time, usage or other intervals in which such maintenance is to be performed; provided, however, that if Lessee has maintenance specifications and procedures for equipment of a type similar to such Unit which are more exacting than, and not inconsistent with, those issued by the manufacturer thereof, Lessee shall service, repair, maintain and overhaul such Unit in accordance with such maintenance specifications and procedures of Lessee; and provided, further, that all servicing, repair, maintenance and overhauling of each Unit shall take into account unusual, unforeseen or severe operating conditions and shall be sufficient to preserve and maintain such Unit in the condition required hereunder notwithstanding its being subjected to such conditions.

## 8.2. Location and Insignia.

(a) Lessee shall cause the Equipment to be located at all times only at such place or places as will comply with the condition set forth in Section 8.7 and to remain at all times within its possession and control (except to the extent necessary or appropriate for purposes of compliance with the express provisions of this Agreement). Lessee shall keep and maintain, plainly, distinctly, permanently and conspicuously marked on each Unit, the words "Property of and leased from Melcorp Leasing, Inc. subject to an agreement filed with the Interstate Commerce Commission" or such other insignia or identification as Lessor shall request and shall not remove, or permit the removal of, such insignia or identification without the prior written consent of Lessor. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Units to be lettered with the names or initials or other insignia used by the Lessee or any sublessee on railroad equipment of the same or similar type for convenience of identification of the right of the Lessee or any sublessee to use the Unit under this Agreement.

(b) Lessee shall preserve and maintain a computerized inventory control system in which shall be entered and preserved a machine record number separately identifying each Unit and the current geographical location of each Unit so identified and which shall be capable of producing the quarterly reports referred to in Section 7.3 and the additional reports referred to in Section 7.4.

8.3. Supplies. Lessee shall pay for and provide all power, fuel and supplies consumed by and required for each Unit and all repairs, parts and supplies necessary therefor.

8.4. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of Lessor (except such as may be removed without in any way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the removed part shall thereon vest in Lessee, free and clear of all rights of Lessor.

8.5. Personal Property. Lessee shall not, without the prior written consent of Lessor and subject to such conditions as Lessor may impose for its protection, affix or install any Unit to or in any real property, it being the mutual intention of the parties that the Equipment at all times shall be and remain personal property of Lessor. Lessee shall take such steps as may be necessary to prevent any person from acquiring any rights in any Unit by reason of such Unit being claimed or deemed to be real property.

8.6. Sublease and Assignment. Lessee shall not, without the prior written consent of Lessor (it being understood that written consent in one instance shall apply only in the given instance and shall not constitute a waiver of any of the terms of this Agreement), assign this Agreement or sublease or let any Unit or permit any Unit to be operated by anyone other than Lessee or Lessee's subsidiaries and affiliates or their respective employees or persons under their supervision.

8.7. Permitted Use. Lessee shall not use, operate, maintain or store any Unit improperly, carelessly or in violation of this Agreement, or of any applicable regulatory laws and bodies whatsoever, or of any instructions therefor furnished by Lessor or the manufacturer thereof, or at any location outside the Lessee's Service Area; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof.

8.8. Recording. Prior to or simultaneously with delivery of each Certificate of Acceptance with respect to a Unit, Lessee will at its expense cause this Lease to be filed, registered, recorded and deposited in all places and with all federal, state, local and foreign governmental authorities, and Lessee from time to time will do and perform any other act and will execute, file, register, record and deposit any further instruments, as may be required by law or reasonably requested by Lessor for the purpose of proper protection to the satisfaction of Lessor of Lessor's title to such Unit. Lessee will pay or cause to be paid all taxes and fees incident to any such filing, registering, recording or depositing.

#### ARTICLE IX. Liens

Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii)

liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate materials, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest. In particular, and without limiting the generality of the foregoing, Lessee shall not permit any Unit (a) to be subject to any lien in favor of the owners or mortgagees of railroad cars on which such Unit will be placed, (b) to become a fixture to any real estate or (c) to become an accession to any personalty (including without limitation any railroad cars upon which such Unit will be placed); provided, however, that should any Unit become subject to any such lien, Lessee shall obtain such waivers, releases or other documents, in form and substance satisfactory to Lessor, as may be necessary effectively to waive and release such lien and to protect the title of Lessor to such Unit.

#### ARTICLE X. Insurance

10.1. Physical Damage Insurance. At its own expense, Lessee shall maintain physical damage insurance on the Equipment against fire, collision and such other perils and in such amounts as Lessee maintains on similar equipment (whether owned or leased by Lessee) and as are usually carried by Class I Railroads (as defined by the rules and regulations of the Interstate Commerce Commission and by the American Association of Railroads).

10.2. Liability Insurance. At its own expense, Lessee shall maintain insurance protecting the interests of both Lessor and Lessee against liability for property damage to third persons and personal injury or death arising out of the maintenance, use, operation and ownership of the Equipment, in such amounts as Lessee maintains on similar equipment (whether owned or leased by Lessee) and as are usually carried by Class I Railroads (as defined by the rules and regulations of the Interstate Commerce Commission and by the American Association of Railroads).

10.3. General Insurance Provisions. All insurance required by Sections 10.1 and 10.2 of this Agreement shall name the Lessor and Lessee as insured parties, shall be maintained with responsible insurance companies and shall provide that the coverage thereunder may be altered or cancelled only after not less than 30 days' prior written notice to Lessor.

10.4. Payment of Premium by Lessor. In the event that Lessee shall fail to obtain or maintain insurance in accordance with the provisions of this Agreement, Lessor shall have the right to obtain, and pay the premiums on, such insurance as Lessor deems necessary and Lessee shall, upon demand, reimburse Lessor in an amount equal to the amount of such premiums paid plus interest at the Interest Payment Rate from the date of such payment to the date of such reimbursement.

#### ARTICLE XI. Assumption of Risk; Indemnification

11.1. General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional

Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, the Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to require Lessee to indemnify Lessor for (a) its own gross negligence or willful misconduct, (b) any liability arising out of an act or event (other than any failure of Lessee to perform any of its obligations hereunder) with respect to any Unit which occurs after possession of such Unit has been returned to Lessor pursuant to Article XIII hereof, (c) the violation by Lessor of any banking, investment, insurance or securities law, rule or regulation applicable to it (unless such violation shall be the result of any act, omission or misrepresentation of Lessee), (d) the breach of any representation of Lessor set forth in Section 5.1 hereof or (e) any lien, charge or encumbrance which Lessee is not required by Article IX hereof to prevent, pay or discharge. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

## 11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, (i) an allowance for an investment tax credit as provided by Section 38 of the Code and (ii) an allowance for depreciation as provided by Section 167 of the Code. Accordingly, Lessee represents and warrants that (i) at the time Lessor becomes the owner of the Equipment, the Equipment constitutes "new Section 38 property" within the meaning of Section 48(b) of the Code and at such time none of the Units have been

used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Lessor by virtue of this Agreement and (ii) at all times during the Term relating to the respective Units, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

(b) Lessee acknowledges that the anticipated availability to Lessor of a specified amount of investment tax credit and an annual allowance for depreciation is fundamental to the economics of this Agreement. Lessee further acknowledges that certain factors affecting such investment tax credit and allowance for depreciation are within the knowledge, control and experience of Lessee. Accordingly, the basis upon which the investment tax credit and allowance for depreciation will be determined are set forth on the Lease Schedule.

(c) As used in this Agreement: (i) the term "ITC" shall mean the amount of the investment tax credit shown in the Lease Schedule; (ii) the term "Depreciation Deductions" shall mean an allowance for depreciation calculated under the criteria set forth in the Lease Schedule; and (iii) the term "Code" shall mean the Internal Revenue Code of 1954, as amended to the date hereof and as in effect on the date hereof.

(d) If there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of the ITC for any Unit which results from:

- (i) the failure of any Unit to qualify as new "Section 38 property" at the time Lessor becomes the owner of such Unit; or
- (ii) the failure of any Unit to continue to qualify as "Section 38 property" throughout the Term; or
- (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring on or before December 31, 1979; or
- (iv) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents (including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written request from Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, is equal to such Loss of the ITC.

(e) If there shall be a Loss, in whole or in part, of Depreciation Deductions for any Unit which results from:

- (i) the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of section 167(c)(2) of the Code from commencing with Lessor by virtue of this Agreement; or
- (ii) a change in the 7-year "Useful Life" of any Unit for purposes of the Depreciation Deductions; or
- (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring on or before December 31, 1979; or
- (iv) any act, or failure to act, at any time by Lessee or any of its officers, employees or agents (including without limitation, any act, or failure to act, in respect of the income tax returns of Lessee and any misrepresentation in this Agreement),

Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield in respect of such Unit to equal the net yield that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Depreciation Deductions. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent.

(f) Notwithstanding the provisions of paragraph (d) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the ITC due solely to (i) the failure of Lessor to have any federal income tax liability against which to apply the ITC or the inability of Lessor to utilize the ITC as a result of the limitation imposed by Section 46(a)(3) of the Code, (ii) the failure to properly claim the ITC in the tax returns filed by Lessor, (iii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee or (iv) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring after December 31, 1979.

(g) Notwithstanding the provisions of paragraph (e) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Depreciation Deductions due solely to (i) the failure to properly claim the Depreciation Deductions in the tax returns filed by Lessor, (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee, or (iii) any amendment to, or change in, the Code, the income tax regulations promulgated thereunder or published administrative interpretations of the Code or such regulations occurring after December 31, 1979.

(h) In the event the Internal Revenue Service or any state or local taxing authority proposes adjustments to the ITC or Depreciation Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its

best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments including without limitation reasonable attorneys', accountants', engineers' and like professional fees and disbursements. In the event the Additional Rent due from Lessee pursuant to this Section 11.2 over the then remaining term of the Lease ("aggregate indemnity") is less than \$400,000, Lessor's duty to contest the adjustments shall not require proceedings above the level of an Internal Revenue Service examining agent. In those cases where the aggregate indemnity is \$400,000 or more, at the request of Lessee, Lessor shall contest the adjustments in a court of original jurisdiction, selected by Lessor in its sole discretion, it being understood that Lessor may first contest the adjustments through Internal Revenue Service administrative proceedings or forego such administrative proceedings, as Lessor shall deem appropriate, provided, however, that Lessor shall have first received an opinion of its independent tax counsel to the effect that a meritorious defense exists to such adjustments.

(i) In the event that Lessor shall elect to contest the adjustment by paying the tax claimed and then seeking a refund thereof, Lessee shall pay to Lessor an amount equal to the Interest Payment Rate on the amount of such tax computed from the date of payment of such tax to the date of final determination of such adjustment, such interest to be payable in equal installments within each calendar year on each Rental Payment Date. Upon receipt by Lessor of a refund of any federal income tax paid by it in respect of which Lessee has paid interest as set forth above while such tax payment was contested by Lessor, any interest on such refund paid to Lessor by the United States Government shall be paid to Lessee forthwith upon receipt by Lessor.

(j) Lessee acknowledges that Lessor has entered into this Agreement with the expectation that all Rent received hereunder and all deductions relating to such Rent will, for Federal income tax purposes, be treated as being from a "United States source." Lessee agrees to notify Lessor, no later than February 15 of each year, of the amount of Rent, if any, paid under this Agreement which is deemed to be derived from or allocable to sources outside the United States as a result of Lessee's use of any Unit or Units outside the United States.

In the event any amount includable in the gross income of Lessor with respect to any one or more of the Units or any deduction allowable to Lessor with respect to such Unit or Units shall be treated as derived from or allocable to sources outside the United States, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of Federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield in respect of such Unit or Units to equal the net yield that Lessor had expected to realize had such income or deductions not been treated as having been derived from or allocable to sources outside the United States. Such Additional Rent shall be payable within ten days after receipt of written request from Lessor. In determining the Additional Rent due under this paragraph,

Lessor shall take into account any additional Federal income tax benefits actually realized by Lessor for the taxable year as a result of such income or deductions being treated as "foreign source" items, provided however, Lessor shall not be required to maximize such additional Federal income tax benefits available to Lessor with respect to such "foreign source" items if it is not in the best tax interests of Lessor as determined by Lessor, in its sole discretion.

(k) Reference in this Section 11.2 to Lessor shall include any affiliated group of which Lessor is a member for purposes of filing consolidated tax returns, provided that only Lessor shall be obligated with respect to the covenants and duties imposed herein on Lessor.

11.3. Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement (even though no Equipment may have been accepted by Lessee and even though the Term may not have commenced) and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

## ARTICLE XII. Damage to Property

12.1. Duty to Notify. In the event any Unit shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever, or title thereto shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise (herein referred to as an "Event of Loss"), Lessee shall promptly notify Lessor as to the circumstances and time of such event.

12.2. Stipulated Loss Value. Effective upon the happening of an Event of Loss with respect to any Unit Lessee shall become obligated, without demand or notice, to pay to Lessor on the Rental Payment Date next following such Event of Loss an amount equal to the Stipulated Loss Value for such Unit as of such Rental Payment Date together with all Basic Rent due on such Rental Payment Date. The obligation of Lessee to pay Basic Rent for such Unit shall cease when such Stipulated Loss Value and Basic Rent payment has been made and such Unit shall cease to be part of the Equipment leased hereunder effective as of such payment. Upon request of Lessee, Lessor will execute and deliver an appropriate document cancelling or amending the Certificate of Acceptance pursuant to which such Unit was leased under this Agreement, but Lessor's failure so to do shall not affect Lessee's obligations under this Agreement, and Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, in and to such Unit.

12.3. Insurance and Condemnation Proceeds. Any insurance or other payments received by Lessor or Lessee (except under any insurance policy maintained pursuant to Section 10.2 hereof) as a result of any Event of Loss of a Unit shall be paid to or retained by Lessor and applied against Lessee's obligation to pay the Stipulated Loss Value of such Unit. The portion, if any, of any such insurance payment in excess of the amount necessary to pay such Stipulated Loss Value shall be retained by Lessee.

### ARTICLE XIII. Return of Property

At the expiration or sooner termination of the Term, Lessee shall return the respective Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, in a condition which complies with all governmental laws, regulations, requirements and rules as required by Section 8.1 hereof, and in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. Lessee shall return each Unit to Lessor at the location designated by Lessor within Lessee's Service Area, or if the Unit is of a nature that so permits and if Lessor shall so request, Lessee shall load the same at Lessee's expense on such carrier as Lessor shall designate and ship the same, freight collect, as directed by Lessor. If the Lessor so requests, the Lessee will defer such return of any of the Units and will, without expense to the Lessor, store same at premises of the Lessee used by Lessee for the storage of similar property and approved by the Lessor, for a period not to exceed 100 days from the date of the expiration or sooner termination of the Term, the obligations of the Lessee during that interval in respect to the Units being that of reasonable care under all the circumstances; provided, however, that the foregoing shall not impose upon Lessee any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X hereof and Lessor shall reimburse Lessee for the cost of such insurance allocable to such Equipment.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Article, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Unit.

### ARTICLE XIV. Defaults; Remedies

14.1. Defaults; Remedies. If during the Term of this Agreement one or more of the followings events ("Events of Default") shall occur:

(a) Default shall be made in the payment when due of any Rent herein provided and such Default shall continue for five days after such due date; or

(b) Lessee shall attempt to remove, sell, transfer, encumber or sublet (except as expressly permitted under this Agreement) any Unit; or

(c) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for ten days after written notice from the Lessor to the Lessee specifying the Default and demanding the same to be remedied; or

(d) A decree or order by a court having jurisdiction in the premises shall have been entered (i) adjudging the Lessee a bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Lessee under the Bankruptcy Act or any other state or federal law relating to bankruptcy or insolvency,

(iii) for the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of the Lessee or of its property, or (iv) for the winding up or liquidation of the affairs of the Lessee; or

(e) The Lessee shall (i) institute proceedings to be adjudged a voluntary bankrupt, or (ii) consent to the filing of a bankruptcy proceeding against it, or (iii) file a petition or answer or consent seeking reorganization or readjustment under the Bankruptcy Act or any other state or federal law, or otherwise invoke any law for the aid of debtors, or consent to the filing of any such petition, or (iv) consent to the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of it or of its property or any substantial portion of its property, or (v) make an assignment for the benefit of the creditors, or shall admit in writing its inability to pay its debts generally as they become due, or (vi) take any corporate action looking to its dissolution or liquidation or in furtherance of any of the aforesaid purposes, and in each such case, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee, or for the property of the Lessee, in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been instituted, whichever occurs first; or

(f) Lessee shall have knowledge of the existence of circumstances which it reasonably believes to constitute a Default under this Agreement, and shall fail promptly to notify Lessor of such facts; or

(g) Any representation or warranty made by Lessee in this Agreement, any Certificate of Acceptance or any instrument, certificate or other document delivered pursuant thereto or hereto shall prove to be false and misleading in any material respect;

then, in any such case, the Lessor at its option may:

A. Proceed by appropriate court action or actions either at law or in equity to enforce performance by Lessee of the applicable duties and obligations of Lessee under this Agreement or to recover from Lessee any and all damages or expenses, including reasonable attorneys' fees, which Lessor shall have sustained by reason of Lessee's Default or on account of Lessor's enforcement of its remedies hereunder; or

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents

and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

Upon such termination, Lessor shall have the right to recover forthwith from Lessee as damages for loss of the bargain and not as a penalty and as reasonable rent for the use of the Equipment and for the depreciation thereof, the sum of the following:

(1) an amount with respect to each Unit which represents the excess of the Stipulated Loss Value of such Unit over one of the following, as Lessor may in its sole discretion elect: (x) in the event Lessor shall sell such Unit, the net proceeds of such sale, (y) in the event Lessor shall re-lease such Unit, the net rents payable under the terms of such re-leasing for a period equal to the remaining term of this Agreement, discounted to the time of computation at the Interest Payment Rate, or (z) the fair market value of such Unit at the time of such termination;

(2) all due and unpaid Rent for the Equipment to the date of termination;

(3) an amount equal to accrued taxes and other amounts payable hereunder by Lessee with respect to the Equipment;

(4) all costs, expenses, losses and damages incurred or sustained by Lessor by reason of such Default; and

(5) interest at the Interest Payment Rate on each of the foregoing from the date upon which such amounts were first payable which date, in the case of the amounts payable pursuant to clause (1) above, shall be the date upon which the Event of Default which results in the termination of this Agreement first occurs.

If on the date of such termination or repossession, any Unit be damaged, lost, stolen or destroyed, or be subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the Stipulated Loss Value pertaining to such Unit less the amount of any insurance recovery received by Lessor in connection therewith.

**14.2. Remedies Cumulative; Waiver of Requirements.** The remedies in this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW, LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, INCLUDING WITHOUT LIMITATION ANY RIGHT WHICH LESSEE MAY HAVE TO NOTICE AND HEARING PRIOR TO THE REPOSSESSION AND SALE OR LEASING OF ANY UNIT.

#### ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessor agrees to give Lessee notice in writing of any such assignment within 15 business days following the date of such assignment; provided, however, that failure to give such notice shall not affect any of Lessee's obligations hereunder. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder.

#### ARTICLE XVI. Quiet Possession

So long as no Event of Default hereunder shall have occurred and be continuing, Lessor shall not do (nor suffer to be done by any person claiming by, through or under Lessor with respect to matters not related to the ownership of the Equipment or the transactions contemplated by this Agreement) any act which will interfere with the right of Lessee peaceably and quietly to hold, possess and use the Equipment during the Term and in accordance with the provisions of this Agreement.

#### ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

## ARTICLE XVIII. Miscellaneous

18.1. Miscellaneous. Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 and Article XV hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

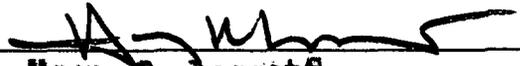
## ARTICLE XIX. Notices

Any notices required or permitted under this Agreement, or by law in respect of this Agreement, shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same

at the address set forth below such party's signature hereto, or to such other address as such party shall specify by like notice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

MELCORP LEASING, INC.  
Lessor

By   
Title Harry R. Leggett  
President

Address: 3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

Attest:



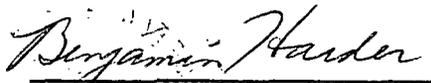
[CORPORATE SEAL]

CONSOLIDATED RAIL CORPORATION  
Lessee

By   
Title Asst. Treas. Fin. & Colls.

Attest:

Address: 1310 Six Penn Center Plaza  
Philadelphia, Pennsylvania 19104

  
ASSISTANT SECRETARY  
[CORPORATE SEAL]





LEASE SUPPLEMENT  
to  
AGREEMENT AND LEASE  
dated as of April 16, 1979  
between  
Melcorp Leasing, Inc., Lessor  
and  
Consolidated Rail Corporation, Lessee

Purchase Option. If Lessee is not in default hereunder, Lessee shall have the right to purchase all, but not less than all, Units at the expiration of the Base Term at a price equal to their then "fair market value" (as hereinafter defined). Lessee shall give Lessor written notice 120 days prior to the end of the Base Term of its election to exercise such option. Payment of the option price shall be made on the last day of the Base Term at the place of payment specified in Section 4.4 by wire transfer against delivery of a bill of sale transferring each Unit to Lessee as is, where is, and with all faults. The "fair market value" of each such Unit shall be determined by an appraiser selected by mutual agreement of Lessor and Lessee. If Lessor and Lessee are not able to agree upon an appraiser, the fair market value shall be determined by American Appraisal Company. Lessee shall pay the fees and expenses of the appraiser in making such determination. The fair market value as finally determined shall bear interest for the period, if any, from the expiration of the Base Term to the date of payment at the Interest Payment Rate.

LEASE SCHEDULE  
to  
AGREEMENT AND LEASE  
dated as of April 16, 1979  
MELCORP LEASING, INC., Lessor  
and CONSOLIDATED RAIL CORPORATION, Lessee

1. Description of Equipment: See Annex 1 hereto.
  
2. Location of Equipment: Tracks or other premises owned by Lessee or public highways within the Lessee's Service Area.
  
3. Final Delivery Date: December 31, 1979
  
4. Term:
  - a. Interim Term. From the date on which delivery of a Unit is accepted by Lessee as set forth in Attachment 1 to the Certificate of Acceptance with respect to such Unit executed and delivered by the parties until the commencement of the Base Term with respect to the Unit.
  
  - b. Base Term. A period 84 months beginning (i) July 1, 1979 for Units with respect to which the parties execute and deliver a Certificate of Acceptance on or before July 1, 1979 and (ii) January 1, 1980 for Units with respect to which the parties execute and deliver a Certificate of Acceptance after July 1, 1979 and on or before the final Delivery Date.
  
5. Lessor's Cost: Not to exceed \$6,600,000 in the aggregate; provided, however, that such amount may be increased to not more than \$7,500,000 in the aggregate with the prior written consent of Lessor.
  
6. Rent:
  - a. Interim Rent. On the Interim Rental Payment Date, Lessee shall pay to Lessor by wire transfer Interim Rent with respect to each Unit determined as follows:

$$C \times \frac{1.2 \times P}{360} \times D$$

As used in this formula, "C" means the Lessor's Cost of the Unit; "D" means the number of days in the Interim Term of the Unit, and "P" means the average during the Interim Term of the prime rate of interest per annum (expressed as a decimal) announced from time to time by Mellon Bank, N.A. at its principal office in Pittsburgh, Pennsylvania for new 90-day loans to commercial borrowers of substantial size and high credit standing.

b. **Basic Rent.** On the first Basic Rental Payment Date and on each of the 27 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor by wire transfer Basic Rent equal to 4.1122% of the Lessor's Cost of the Unit. Each installment of Basic Rent shall be for the quarter immediately preceding the Basic Rental Payment Date on which such installment is due and payable.

7. Rental Payment Dates:

a. Interim Rental Payment Date: The first day of the Base Term.

b. Basic Rental Payment Dates: The ninetieth day of the Base Term and the last day of each succeeding quarter during the Base Term.

8. Bases for Computation of ITC and Depreciation Deductions:

a. ITC. 10% of Lessor's Cost of each Unit available to Lessor in the calendar year in which Lessee and Lessor accept the Unit pursuant to Section 3.1 of the Agreement.

b. Depreciation Deduction. Double declining balance switching to straight-line over a "Useful Life" of 7 years. Salvage value 20% of Lessor's Cost, 10% ignored per Section 167(f) of the Code.

9. Stipulated Loss Value. See Annex 2 to this Lease Schedule.

APPROVED AND AGREED TO as of the \_\_\_\_ day of \_\_\_\_ as the Lease Schedule to and forming a part of the above-described Agreement and Lease.

MELCORP LEASING, INC.  
Lessor

By \_\_\_\_\_

Title \_\_\_\_\_

CONSOLIDATED RAIL CORPORATION  
Lessee

By \_\_\_\_\_

Title \_\_\_\_\_

CONSOLIDATED RAIL CORPORATION

ROADWAY MACHINERY & WORK EQUIPMENT  
MELCORP LEASING FINANCING - 1979

MW No.	Useful Life (Years)	Quantity	Description	Estimated Cost	
				Per Unit	Total
<u>Production Gang Equipment</u>					
MW 463	9	8	Auto Spikers	\$ 51,000	\$ 408,000
467	9	20	Track Wrench	5,300	106,000
470	9	10	Dual Spike Guns	10,000	100,000
471	9	12	Hand Guns	500	6,000
472	9	1	Abrasive Saw (26")	15,000	15,000
473	9	12	Abrasive Saw (14")	1,000	12,000
474	9	4	Anchor Machines	15,000	60,000
475	9	2	Rail Heaters	17,000	34,000
476	9	4	Tie Sprayers	3,500	14,000
477	9	24	Rail Drills	1,000	24,000
480	9	4	Loading Ramps	5,000	20,000
	Subtotal	101			\$ 799,000
<u>Track Maintenance Gang Equipment</u>					
MW 440 (1)	9	150	Air Compressors	10,000	\$1,500,000
442	9	12	On-Track Cranes (12½ ton)	188,000	2,256,000
446	9	4	Speed Swings	100,000	400,000
448	9	4	Brush Cutters (off track)	50,000	200,000
457	9	3	Hi-Rail Dump Trucks	56,000	168,000
450	9	3	Jet Snow Blowers	80,000	240,000
453	9	30	Grinders (P 22)	3,200	96,000
455	9	22	Hydraulic Rail Pullers	4,700	103,400
	Subtotal	228			\$4,963,400

(1) Requires licensing

<u>MW No.</u>	<u>Useful Life (Years)</u>	<u>Quantity</u>	<u>Description</u>	<u>Estimated Cost</u>	
				<u>Per Unit</u>	<u>Total</u>
MW 481 (1)	9	3	Backhoes w/trailer )	\$	\$
482 (1)	9	10	Backhoes 1½ cov. yard )	24,620	320,060
484	9	3	Front End Loaders (with snow fighting equipment)	168,300	505,000
	Subtotal	<u>16</u>			<u>\$ 825,000</u>
	TOTAL	<u><u>345</u></u>			<u><u>\$6,587,460</u></u>

Unit costs subject to adjustment upon placement of purchase orders.

(1) requires licensing

MELCORP LEASING, INC.

"STIPULATED LOSS VALUES" OF ANY UNIT OF THE EQUIPMENT AS OF ANY PARTICULAR DATE SHALL MEAN THE PRODUCT DERIVED FROM MULTIPLYING (1) THE PERCENTAGE FIGURE OPPOSITE THE NOTATION FOR THE APPROPRIATE TIME PERIOD AS SET FORTH IN THE TABLE BELOW BY (2) THE PURCHASE PRICE OF SUCH UNIT.

CONRAIL

<u>Rental Payment Number</u>	<u>% of Price</u>
1	99.63058
2	99.1257
3	98.4856
4	97.7103
5	96.7996
6	95.7537
7	94.5725
8	93.2561
9	91.8043
10	90.2173
11	88.4950
12	86.6374
13	78.4718
14	76.3436
15	74.0802
16	71.6815
17	69.1476
18	66.4783
19	63.6738
20	60.7340
21	51.4861
22	48.2758
23	44.9301
24	41.4492
25	37.8331
26	34.0816
27	30.1949
28	20.0000

EXHIBIT A

CERTIFICATE OF ACCEPTANCE

No. \_\_\_\_\_ dated the \_\_\_ day of \_\_\_ to Agreement  
and Lease (the "Agreement") dated as of April 16,  
1979 between Melcorp Leasing, Inc. ("Lessor")  
and Consolidated Rail Corporation ("Lessee")

THIS CERTIFICATE OF ACCEPTANCE is executed pursuant to the Agree-  
ment and the terms herein shall have the meanings ascribed to them in the Agreement.

Lessor and Lessee do hereby confirm and agree that (i) the Units described  
in Attachment 1 hereto, having an aggregate Lessor's Cost as set forth below, have been  
delivered as of the date set forth in Attachment 1 hereto at the location or locations  
indicated on said Attachment 1, (ii) such Units have been duly accepted by Lessee as  
part of the Equipment for leasing under the Agreement, (iii) such Units are hereby made  
subject to, and the rights and duties of the parties with respect thereto shall be governed  
by, the Agreement, and (iv) Lessee has become obligated to pay Interim Rent, if any,  
in the amount calculated in the manner set forth in the Lease Schedule and Basic Rent  
in the amount set forth below:

Lessor's Cost: \$ \_\_\_\_\_

Basic Rent:

Lessee confirms that it has caused to be affixed to each Unit described  
in Attachment 1 hereto the identification tag indicating Lessor's ownership of such Unit  
as required by the Agreement.

WITNESS the due execution hereof as of the day and year first above written.

LESSEE:

LESSOR:

CONSOLIDATED RAIL CORPORATION MELCORP LEASING, INC.

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT B

ASSIGNMENT

Pursuant to Agreement and Lease dated as of April 16, 1979 (the "Agreement") between Melcorp Leasing, Inc. ("Lessor") and Consolidated Rail Corporation ("Lessee")

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Lessee has bargained, sold, transferred and assigned and by these presents does hereby bargain, sell, transfer and assign to Lessor, its successors and assigns, forever, all right, title and interest of Lessee in and to the [here describe purchase orders, invoices or agreements] attached hereto. Lessee agrees that, except as specifically set forth in the Agreement and subject to the terms and conditions set forth therein, none of the duties or obligations of Lessee under said [purchase orders, invoices or agreements] is or has been delegated to or in any manner assumed by Lessor.

IN WITNESS WHEREOF, Lessee has caused this Assignment to be executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_.

CONSOLIDATED RAIL CORPORATION

Lessee

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT C

Melcorp Leasing, Inc.  
3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

Gentlemen:

The undersigned, \_\_\_\_\_ ("Vendor") hereby consents to the assignment by Consolidated Rail Corporation ("Lessee") to Melcorp Leasing, Inc. ("Lessor") of Lessee's rights under [here describe purchase orders, invoices or agreements]. Vendor understands that such assignment is made in contemplation of the leasing by Lessor to Lessee of the personal property covered by such [purchase orders, invoices or agreements] (the "Units"). Vendor agrees that Lessor intends to purchase the Units from Vendor upon receipt from Lessee of (among other things) an executed Certificate of Acceptance in the form provided in the Agreement and Lease between Lessor and Lessee and that Lessor will pay Vendor for the Units within five business days of the date of receipt by Lessor of a Certificate of Acceptance satisfying the conditions set forth in such Agreement and Lease. Vendor agrees that none of the duties or obligations of Lessee under any agreements of any nature between Vendor and Lessee have been delegated to or in any manner assumed by Lessor, except as stated in the immediately preceding sentence.

Vendor agrees that, upon delivery and acceptance of the Units by Lessee as evidenced by the execution of a Certificate of Acceptance as described above, title to the Units shall vest in Lessor and concurrently therewith Vendor shall execute and deliver to Lessor a Bill of Sale with respect to the Units in the form attached hereto.

Vendor agrees to indemnify and save Lessor and Lessee harmless from any liability, loss, damage, claim and expense which arise out of any claims for patent infringement relating to the Units, except in cases of designs specified by Lessee and not developed or purported to be developed by Vendor or any company controlled by Vendor and articles and materials specified by Lessee and not manufactured by Vendor or by any company controlled by Vendor.

If the foregoing is acceptable to you, please so indicate by signing in the space below and returning one of the copies of this letter to us.

Very truly yours,

[NAME OF VENDOR]

By \_\_\_\_\_  
[Name]

Title \_\_\_\_\_

EXHIBIT D

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, \_\_\_\_\_ (the "Vendor") has bargained, sold, conveyed, transferred and assigned and by these presents does hereby bargain, sell, convey, transfer and assign to Melcorp Leasing, Inc. ("Lessor"), its successors and assigns, forever, good and marketable title to the personal property described in the invoice or invoices attached hereto (the "Units").

The Vendor hereby covenants and warrants to the Lessor, its successors and assigns, that the Vendor is the lawful owner of the Units and has full power and authority to sell the same as aforesaid, and the Units are on the date hereof free and clear of all claims, liens, encumbrances and claims of any nature.

IN WITNESS WHEREOF the Vendor has caused this Bill of Sale to be executed and delivered this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
[Name of Vendor]

By \_\_\_\_\_  
[Name]

Title \_\_\_\_\_

SECRETARY'S CERTIFICATE

The undersigned hereby certifies that he is the duly elected, qualified and incumbent Secretary or Assistant Secretary of \_\_\_\_\_, a \_\_\_\_\_ corporation and the Vendor named in the within Bill of Sale and hereby further certifies that [Name of officer signing Bill of Sale] is the duly elected, qualified and incumbent [Title of officer signing Bill of Sale] of said Vendor and has full power and authority to execute and deliver the within Bill of Sale in the name and on behalf of said Vendor.

\_\_\_\_\_  
[Name]  
[Assistant] Secretary