

**DONOVAN HAMMOND ZIEGELMAN ROACH & SOTIROFF**

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RECORDATION NO. **14762** Filed 1425

**14762-A**  
RECORDATION NO. Filed 1425

August 5, 1985

AUG 6 1985 - 9 00 AM

INTERSTATE COMMERCE COMMISSION

AUG 6 1985 - 9 00 AM

INTERSTATE COMMERCE COMMISSION

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

ATTENTION: Mildred Lee

RE: Lease Transaction Between Whirlpool Leasing Services, Inc.,  
as Lessor and Qualcorp, Inc., as Lessee

Dear Mr. Bayne:

I have enclosed an original and two copies/counter-parts of the documents described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The primary document enclosed is a lease, dated August 6, 1985. The names and addresses of the parties are as follows:

- Lessor:** Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Drive, Suite 233  
Livonia, Michigan 48152
- Lessee:** Qualcorp, Inc.  
Shelter Rock Road  
Danbury, Connecticut 06810

Also enclosed is an original and two copies of a guaranty which relates to the lease. The names and addresses of the parties:

*Handwritten signature: Fabis*  
*Handwritten signature: [illegible]*

**DONOVAN HAMMOND ZIEGELMAN ROACH & SOTIROFF**  
REGISTRATION CORPORATION

Mr. James H. Bayne  
Page Two  
August 5, 1985

are as follows:

**Lessor:** Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Drive, Suite 233  
Livonia, Michigan 48152

**Lessee:** Qualcorp, Inc.  
Shelter Rock Road  
Danbury Connecticut 06810

**Guarantor:** The Penn Central Corporation  
500 W. Putnam Avenue  
Greenwich, Connecticut 06836

This transaction covers one new Sperry Rail Service Series 100 Rail Detector Car, Number 148.

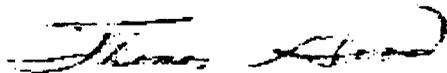
A fee of \$20.00 is included. Please return the original and any extra copies not needed by the Commission for recordation to the following address:

Phil Harrison  
Whirlpool Leasing Services, Inc.  
17177 N. Laurel Park Drive, Suite 233  
Livonia, Michigan 48152

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

This is a lease transaction between Whirlpool Leasing Services, Inc., 17177 N. Laurel Park Drive, Suite 233, Livonia, Michigan 48152, as Lessor, and Qualcorp, Inc., Shelter Rock Road, Danbury, Connecticut 06810, as Lessee. The Guarantor of this lease is The Penn Central Corporation, 500 W. Putnam Avenue, Greenwich, Connecticut 06836. This lease is dated August 6, 1985. It covers one Sperry Rail Service Series 100 Rail Detector Car, Number 148.

Very truly yours,



Thomas Good

Very truly yours,  
Eswin K. Taylor  
Attorney for Qualcorp, Inc.  
TG:jcz

AUG 6 1985 9 00 AM

INTERSTATE COMMERCE COMMISSION  
MASTER EQUIPMENT LEASE AGREEMENT

THIS MASTER EQUIPMENT LEASE AGREEMENT, as hereinafter defined, made and entered into by Whirlpool Leasing Services, Inc. (hereinafter the "Lessor") and the corporation hereinafter identified as the "Lessee".

Section 1. Definitions; Declaration of Intent to Lease;

Delivery and Acceptance of Items in Declarations.

A. As used herein the following definitions shall apply:

- (i) "Lessee" means Qualcorp, Inc., a Delaware corporation, whose address is Shelter Rock Road, Danbury, Connecticut 06810.
- (ii) "Master Equipment Lease Agreement" shall mean this agreement and any other schedules or exhibits referred to herein or incorporated by reference or otherwise attached to this document, whether executed contemporaneously herewith, or prior to, or subsequent to the date of execution and shall be referred to herein also from time to time as the "Lease", "Agreement" and/or "Lease Agreement".
- (iii) "Equipment" shall mean the equipment which shall be subject to the term of this Lease as identified on the schedules and/or exhibits attached hereto or referenced herein or otherwise incorporated by reference, and when used to refer to an individual piece of Equipment such item shall be referred to as "Item" or "Item of Equipment".
- (iv) "Declaration" shall mean and include that document entitled "Declaration to Master Equipment Lease" signed by the Lessee and accepted by the Lessor which incorporates by reference the terms and conditions of this Lease and which shall otherwise set forth in detail the rental related to the Items of Equipment referenced in such Declaration, including, but not limited to, terms and conditions which are not specifically set forth in the Lease such as the term of the Lease as applied to the Item of Equipment, the commencement and termination date of such term, and any purchase or renewal options which may be contemplated. It is anticipated that such Declaration shall be appended to this Lease, but, if not appended, such Declaration shall nonetheless be valid upon acceptance thereof by the Lessor who shall have the power to append any such Declaration to this Lease. There may be more than one Declaration attached to each Lease.

- (v) "Certificate of Acceptance" shall mean the certificate pursuant to which the Lessee accepts the Equipment and may be a separate document or incorporated into the Declaration.
- (vi) "Guarantor" shall mean The Penn Central Corporation, 500 West Putnam Ave., Greenwich, CT 06836.
- (vii) "Code" shall mean the Internal Revenue Code of 1954 as amended.
- (viii) The remaining terms as used herein shall have the meaning prescribed thereto by the Uniform Commercial Code for the State of New York or such other definition as shall be indicated herein.

B. The Lessor agrees to lease to the Lessee each Item of Equipment listed in the Declaration and the Lessee agrees to lease each such Item of Equipment from Lessor for the rental specified in the Declaration attached hereto relating to such Item of Equipment and subject to the terms and conditions set forth herein and in the Declaration; it being understood and agreed that Lessor is under no obligation to lease any Item of Equipment to Lessee hereunder unless and until Lessor in its sole discretion executes and delivers an appropriate Declaration and that Lessee is under no obligation to lease any item of Equipment from Lessor hereunder until Lessee, in its sole discretion, executes and delivers an appropriate Declaration.

C. Lessee will select the type, quantity and supplier of each Item of Equipment described in the appropriate Declaration and in reliance thereon such Equipment will then be ordered by Lessor from the supplier. Lessor will allow Lessee to include in the Total Price identified in the Certificate of Acceptance attached hereto all transportation, packing, taxes, duties, installation and other charges in connection with delivery, installation and use of the Equipment, but only to the extent that the foregoing may be properly included in Lessor's basis in the Equipment or may be currently deductible for Federal income tax purposes under the Code. The Total Price including the aforesaid charges shall constitute "Lessor's Cost" as that term is used herein.

D. The Lessee shall inspect each Item of Equipment upon its arrival and within two (2) business days thereafter give the Lessor written notice either accepting or rejecting such Item. The acceptance by the Lessee shall be in substantially the form of the Certificate of Acceptance attached hereto. Said Certificate of Acceptance acknowledges receipt by the Lessee of the Equipment in good condition and working order and as satisfactory in all respects for the purposes of this Lease, contains an approval of the invoice of the supplier and a request for the Lessor to pay the invoiced amount. Any rejection by the Lessee shall specify any defect in or other objection to any Item of Equipment. In such case, the Lessee shall upon Lessor's demand, pay Lessor any amounts previously paid by the Lessor with respect to the rejected Item of Equipment and upon such payment the Lessee shall be subrogated to the Lessor's claims, if any, against the manufacturer and/or supplier thereof. Any rejection or refusal of acceptance of any Item of Equipment by the Lessee shall relieve the Lessor of any obligation or liability to the manufacturer and/or supplier thereof and such obligation or liability shall become that of the Lessee. No defect or unfitness of any Item of Equipment shall relieve the Lessee of the obligation to pay rent or any other obligation under this Lease and the appropriate Declaration except as expressly provided herein.

## Section 2. Term and Rental.

A. The term of this Lease with respect to any Item of Equipment shall commence on its date of acceptance, as set forth in the Certificate of Acceptance executed and delivered with respect thereto. The term of this Lease with respect to any Item of Equipment shall end, unless earlier terminated in accordance with the provisions of this Lease if applicable, at the expiration of the term specified in the Declaration.

B. Lessee shall pay to Lessor rent for the use of each Item of Equipment (herein "Rental") in the amounts and at the times specified in the Declaration.

C. In the event any Rental or other amount payable hereunder shall not be paid within ten (10) days when due, Lessee shall pay to Lessor, as additional charges, an amount equal to one half of one (.5%) percent per month of such overdue payment (the "Late Charge"). Such Late Charge shall be waived by Lessor in the event Lessor fails to notify Lessee of a Rental payment due within ten (10) days prior to the due date thereof.

D. All payments provided for in this Lease to be made to Lessor, including "Additional Rental" (which is defined as including charges required to be paid hereunder and Late Charges) and Rental, shall be made to Lessor at the address indicated herein or at such other place as Lessor shall specify in writing.

E. It is the intention of the parties hereto that the Rental and Additional Rental payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. This Lease is a net lease and Lessee shall not be entitled to any abatement of Rental or Additional Rental or other charges payable hereunder by Lessee or withholding thereof from the Lessor or any reduction thereof, for such matters including, but not limited to, abatements or reductions due to any present or future claims of Lessee against Lessor or any assignee under this Lease or otherwise, or against the manufacturer, vendor or dealer of the Equipment; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be affected, by reason of any defect in, or damage to, or loss or destruction of all or any of the Equipment from whatever cause, the interference with use by any private person, corporation or governmental authority, the invalidity, unenforceability or lack of due authorization of this Lease or lack of right, power or authority of Lessor to enter into this Lease, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law or regulation to the contrary notwithstanding.

## Section 3. Expiration or Termination, Purchase and Return of Equipment.

A. Upon the expiration or termination of the term of this Lease with respect to any Item or Items of Equipment, Lessee, at its own expense, will return any such Items of Equipment to Lessor at its principal place of business in Michigan, or such other locations as Lessor may designate in writing to Lessee within ten (10) days of expiration or termination, no further removed

from the location of any such Items of Equipment than Lessor's principal place of business in Michigan; and at such time, the Lessee shall return any such Items of Equipment free and clear of all liens, security interests, encumbrances and rights of others, other than those referred to in Section 7 hereof, and in as good condition as when delivered to Lessee hereunder, ordinary wear and tear excepted.

B. Provided no Event of Default, as that term is hereinafter defined in Section 15(A) hereof, shall have occurred and be continuing, Lessee may elect by giving not less than ninety (90) days prior written notice to Lessor, to purchase all, or any Items of Equipment at the end of the initial Lease term relating thereto by paying to Lessor in immediately available funds the then "Fair Market Value" (as hereinafter defined) of such Item or Items (provided, that in determining such Fair Market Value for the purpose of this Section B, such Item or Items shall be deemed to be in the condition in which it or they are required to be returned pursuant to Section 3(A) hereof and to be free and clear of all liens, claims and encumbrances). Provided, however, that in no event shall the Fair Market Value for the purpose of this Section B exceed 35% of Lessor's cost of such Item or Items. Lessee shall be solely responsible for any sales or other taxes or charges applicable to the transfer. The Lessee shall enter into such contracts for sale as required by Lessor and Lessor shall be required only to warrant title to such item or items of Equipment to the extent provided in Section 5(A) hereof.

The Fair Market Value of such Item or Items as hereinafter defined shall be the value upon which a willing seller and a willing buyer would agree, each respectively under no compulsion to buy or sell. The "Fair Market Value" is to be the amount determined by agreement between Lessor and Lessee, and if they cannot agree then by an independent appraiser selected by Lessor but acceptable to Lessee, which acceptance shall not be unreasonably withheld. The cost of any such appraisal shall be borne equally by Lessor and Lessee.

Upon not less than 90 days prior written notice from Lessee to Lessor prior to the expiration of the original term of this Lease or any renewal term thereof, Lessee may (provided that no Event of Default shall have occurred and be continuing) elect to renew this Lease of all, or any Items of Equipment for a minimum term of one year commencing at the end of the original term of this Lease at a rental equal to the Fair Market Rental Value for such Item or Items as such term is hereinafter defined. The rental payable for such renewal period shall be paid in quarterly installments in arrears on the same dates as regular rental installments were payable during the term of this Lease. Lessor and Lessee shall execute and deliver such documents as may be necessary to confirm such renewal. For purposes of this Section "Fair Market Rental Value" shall be agreed upon by Lessor and Lessee or shall be such amount as an appraiser selected by Lessor reasonably acceptable to Lessee shall determine to be the rental value which would obtain in an arm's length transaction between an informed and willing lessor, under no compulsion to lease, and, in such determination, (i) costs of removal from the location of current use shall not be a deduction from such rental value, (ii) there shall be excluded any rental value attributable to additions, modifications and improvements which the Lessee is entitled to remove pursuant to Section 9(C) hereof, and (iii) it shall be assumed that such Item or Items are in the condition in which they are required to be returned pursuant to Section 3(A) hereof and are free and clear of liens, claims and encumbrances.

C. So long as no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing, Lessee shall have the right at its option, on at least 90 days' prior written notice to Lessor to terminate this Lease with respect to any or all Items of Equipment on any Rental payment date thereafter with respect to any such Item (herein referred to as the "Termination Date"), provided, that any such Item shall have become obsolete or surplus with respect to Lessee's requirements. During the period from the giving of such notice (which notice shall identify the Item and specify the Termination Date and the reasons for termination and shall be signed by an appropriate authorized financial officer of Lessee) until the Termination Date, Lessee, as agent for Lessor shall use its best efforts to obtain bids for the purchase of such Items described in such notice. Lessee shall certify to Lessor in writing the terms and amount of each bid received by Lessee and the name and the address of the person (who shall not be Lessee or any person acting for or affiliated with Lessee) submitting such bid. Lessor may also independently obtain bids for such purchase and certify them to Lessee as provided in the next preceding sentence. Within 30 days prior to the Termination Date, Lessee may withdraw its election to terminate the Lease as to any such Item upon notice to Lessor; provided, that such notice shall not be effective if a bona fide bid shall have been submitted with a price in excess of the then applicable "Termination Value" (as set forth in the Schedule attached to the Declaration relating to such Item) for such Item on or before the Termination Date. On or before Termination Date, Lessee shall deliver such Item all in accordance with the terms of Sections 3 and 9 hereof, in the event Lessee shall not have withdrawn its election as to early termination. On the Termination Date (or such earlier date as may be agreed to in writing by Lessor and Lessee) Lessor shall sell such Item for cash (without recourse or warranty except as to the absence of Lessor's liens) to whomsoever shall have submitted the highest bid prior to such date. The total sales price realized at such sale shall be retained by Lessor and, in addition, on or before the date of such sale, Lessee shall pay to Lessor the sum of (A) the amount, if any, by which (i) the Termination Value for such Item, computed as of the date of payment, exceeds (ii) the sales price of the Item sold by Lessor less all reasonable expenses incurred by Lessor in connection with such sale, (B) any amounts of accrued but unpaid Rental relating to such sold Item including the Rental due on such Termination Date, and (C) all other amounts whether Additional Rental or otherwise due and owing by Lessee to Lessor hereunder. If no sale shall have occurred on or prior to the Termination Date, Lessor shall redeliver the Item subject to this paragraph to Lessee and, unless Lessee shall have withdrawn its election to terminate as described above, Lessee shall purchase such Item for cash at a purchase price which is the greater of the Termination Value or Fair Market Value, and, in addition, Lessee shall reimburse Lessor's reasonable expenses, if any, incurred with respect to such early termination set forth in this Section 3C. Lessor shall be under no duty to solicit bids, to inquire into the efforts of Lessee to obtain bids or otherwise take action in connection with any such sale other than to transfer to the purchaser named in the highest bid certified by Lessee to Lessor, or to the Lessee, as the case may be, against payment therefor, without recourse or warranty (except as to the absence of Lessor's liens), all Lessor's right, title and interest in and to such Item.

#### Section 4. Authorization

Lessee shall supply the following at its cost, in form and substance reasonably satisfactory to Lessor:

A. Detailed description, including serial numbers, of all Items of Equipment which Lessee proposes to lease hereunder, certified by an officer of Lessee.

B. Articles of Incorporation and By-laws of Lessee, resolutions of the Board of Directors of Lessee, and Incumbency Certificate, each certified 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 Lease.

C. Evidence satisfactory to Lessor as to due compliance with the insurance provisions of Section 12 hereof.

D. A favorable written opinion of counsel for Lessee satisfactory to Lessor as to each of the matters set forth in Section 6(A)(i) - (iv) hereof and as to such other matters as Lessor may reasonably request.

#### Section 5. Lessor's Representations and Warranties.

A. Lessor warrants that it has received whatever title was conveyed to Lessor by Lessor's predecessor in title to such Equipment. Lessor further warrants that during the term of the Lease, if no Event of Default has occurred, Lessee's use of the Equipment shall not be interrupted by Lessor or anyone claiming solely through or under Lessor.

B. The warranties set forth in the preceding paragraph are in lieu of all other warranties of Lessor, whether written, oral or implied; and Lessor shall not, by virtue of having leased or delivered any bill or bills of sale pursuant to this Lease, or for any other reason, be deemed to have made any other warranties or representations. LESSOR HEREBY DISCLAIMS ANY OTHER REPRESENTATION OR WARRANTY, EITHER EXPRESSED OR IMPLIED. AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT "AS IS" WITHOUT WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, (i) THE DESIGN, PERFORMANCE, SPECIFICATIONS OR CONDITION OF THE ITEM OR ITEMS OF EQUIPMENT, (ii) THE MERCHANTABILITY THEREOF, (iii) THE FITNESS FOR ANY PARTICULAR PURPOSE THEREOF, (iv) THE LESSOR'S TITLE THERETO, (v) INTERFERENCE BY ANY PARTY, OTHER THAN LESSOR OR ANYONE CLAIMING SOLELY THROUGH OR UNDER LESSOR, WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (vi) THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT OR CONFORMITY THEREOF TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO, IT BEING AGREED THAT ALL SUCH RISKS AS BETWEEN THE LESSOR AND THE LESSEE ARE TO BE BORNE BY THE LESSEE.

C. The Lessor hereby authorizes the Lessee, at Lessee's expense, to assert for Lessor's account, during the term of this Lease, all of Lessor's rights under any manufacturer's, vendor's or dealer's warranty on the Equipment to the extent permitted by law and agreement, and Lessor agrees to cooperate with Lessee in asserting such rights; provided, however, that Lessee shall indemnify and hold harmless Lessor from and against any and all claims, and all

costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the above authorization. Any amount received by Lessor and 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 Lessee. If in the reasonable judgment of Lessee, the Equipment cannot be so restored or the value thereof has been materially diminished by reason of an act or omission under warranty, then as to the Items, an Event of Loss under Section 11 hereof shall be deemed to have occurred and the proceeds representing a warranty payment shall be applied to the Casualty Loss Value.

D. Other than those special or consequential damages resulting from Lessor's gross negligence or willfull misconduct, the Lessor will not be responsible for special or consequential damages in connection with its obligations or performance under this Agreement, nor shall any third party have any right to any claim against Lessor arising out of or in connection with any of the Equipment or the use or disposition thereof.

Section 6. Lessee's Representations and Warranties.

A. Lessee represents and warrants that:

(i) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its jurisdictions (including those where the Equipment will be located) where such qualification is necessary to authorize Lessee to carry on its present business and operations;

(ii) Lessee has full power, authority and legal right to execute, deliver and perform the terms of the Lease. This Lease has been duly authorized by all necessary corporate action on the part of the Lessee, does not require any stockholder approval, does not require the approval of, or the giving of notice to, any federal, state, local or foreign governmental authority and does not contravene any law binding on Lessee or contravene Lessee's certificate or articles of incorporation or by-laws or any indenture, credit agreement or other agreement to which Lessee is a party or by which it is bound;

(iii) This Lease constitutes a legal, valid, and binding obligation of Lessee, enforceable in accordance with its terms, subject only to applicable bankruptcy, insolvency or other similar laws which may affect creditors generally and except as the availability of equitable remedies may be subject to general equitable principles;

(iv) There are no pending or threatened actions or proceedings before any court, administrative agency or other tribunal or body or judgments which may materially adversely affect Lessee's financial condition or operations;

(v) The Equipment is personal property and is not now nor will it become either real property or a fixture or inventory;

- (vi) The execution of this Agreement does not constitute a default in any other agreement;
- (vii) There are no liens or security interests with respect to the Equipment except those in favor of the Lessor;
- (viii) The Equipment is of size design, capacity and manufacture selected by Lessee and will be suitable for Lessee's purposes;
- (ix) Lessor is not a manufacturer thereof nor a dealer in property of the kind of the Equipment;
- (x) The Lessee will cause to be done, executed, acknowledged and delivered all and every such further acts, conveyances and assurances as the Lessor shall reasonably require for accomplishing the purposes of this Lease Agreement;
- (xi) The Lessee shall not consolidate with or merge into an unrelated business entity or convey, transfer or lease substantially all of its assets as an entity to any unrelated third party without the prior written consent of the Lessor first obtained (which consent shall not be unreasonably withheld); and
- (xii) The Lessee shall not sublease any of the Items of Equipment to an unrelated third party without obtaining the prior written consent of Lessor to such sublease (which consent shall not be unreasonably withheld) and that any sublessee shall assume the obligations of Lessee hereunder which assumptions shall not in any way relieve Lessee of its obligations hereunder.

B. In addition, the Lessee represents, warrants and covenants as follows:

- (i) Upon delivery and acceptance of each Item of Equipment under the Lease and related documents, (a) such Item constitutes or will constitute "new section 38 property" within the meaning of Section 48(b) of the Code; (b) the Lessor will be deemed the original user thereof; and (c) such Item will be eligible under Sections 38 and 46 of the Code for an investment credit equal to 10% of Lessor's Cost less any portion which is currently deductible with all such investment credits being retained by Lessor;
- (ii) Upon the delivery and acceptance of each Item of Equipment under the Lease and related documents, such Item will constitute "5-year property" as defined in Section 168(c)(2)(B) of the Code.
- (iii) Upon delivery and acceptance of each Item of Equipment under the Lease and related documents, the Lessor's basis for Federal income tax purposes in such Item will be at least equal to the Lessor's Cost thereof less any portion which is currently deductible.

- (iv) The Lessee has not made an election with respect to any Item of Equipment under subsection (b)(3) or (f)(2)(C) of Section 168 of the Code.
- (v) Prior to the termination or expiration of the term of the Lease with respect to an Item, neither the Lessee nor any affiliate or shareholder of the Lessee will claim deductions for cost recovery with respect to any Item of Equipment under Section 168 of the Code after the delivery and acceptance thereof under the Lease and related documents of such Item; and neither the Lessee nor any affiliate or shareholder of the Lessee will claim to be the owner for Federal income tax purposes after the delivery and acceptance of such Item under the Lease or related documents.
- (vi) At the time each Item of Equipment is delivered and accepted under the Lease and related documents, such Item of Equipment will require no improvements, modifications or additions (other than ancillary items of equipment which are readily removable without causing material damage to the Item and which are of a kind customarily selected and furnished by purchasers or lessees of similar Items) in order to be rendered complete for its intended use by the Lessee.
- (vii) Neither the Lessee nor any affiliate or shareholder of the Lessee will, at any time during the Term of the Lease make any investment in any Item unless such investment is permitted by Section 4(4) of Revenue Procedure 75-21, 1975-1 C.B. 715, as modified by Revenue Procedure 79-48, 1979-2 C.B. 529.
- (viii) All information supplied by the Lessee in writing to the Lessor with respect to each Item of Equipment was accurate at the time given, and the Lessee is not aware of any aspect of the condition or design of any Item, or of its intended use, that is inconsistent therewith.
- (ix) The Lessor will not be required to include in its gross income prior to the termination of the Lease term (a) any amount resulting from any addition, modification, improvement, alteration, maintenance, repair or expenditure of, to or with respect to any Item of Equipment made by any person other than the Lessee to the extent permitted under the Lease, or (b) any amount of Rental prior to the date such amount is payable under the Lease pursuant to Section 467 of the Code and related regulations thereunder.
- (x) The Fair Market Value of each Item of Equipment on the date of the delivery and acceptance thereof hereunder will be at least equal to the Lessor's Cost thereof less any portion that is currently deductible.
- (xi) Lessee agrees to maintain in the ordinary course of business such information and records as shall be reasonably required to prove compliance by Lessee with the covenants, warranties and representations set forth in this Section 6B and to make such information and records available to Lessor upon reasonable request.

- (xii) Notwithstanding the foregoing, although the Lessee knows of no facts and circumstances that would require that the transactions contemplated in this Lease and related documents be treated for Federal income tax purposes as other than a "true lease", Lessee makes no representation as to the "true lease" status thereof.
- (xiii) Each Item of Equipment will have been originally placed in service by Lessee not more than 3 months prior to the date of the execution and delivery of the Declarations and Certificate of Acceptances with respect to such items of Equipment and upon the execution and delivery of the Declarations and the Certificate of Acceptances with respect thereto each Item of Equipment shall be eligible for the deductions permitted under the Accelerated Cost Recovery System set forth in Section 168 of the Code based on the class of property of each Item as set forth in the Declarations.

#### Section 7. Mortgages, Liens and Other Encumbrances.

Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, security interest, pledge, lien, charge, encumbrance or claim on or with respect to the Equipment, title thereto or any interest therein (and Lessee will promptly, at its own expense, take such action as may be necessary to discharge any such mortgage, security interest, pledge, lien, charge, encumbrance or claim) except (a) the respective rights of Lessor and Lessee as herein provided, (b) liens or encumbrances which result from claims against Lessor except to the extent that such liens and encumbrances arise from failure of Lessee to perform any of Lessee's obligations hereunder, and (c) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings.

#### Section 8. Taxes.

LESSEE AGREES TO PAY AND TO INDEMNIFY AND HOLD LESSOR HARMLESS FROM ALL SALES, USE, PERSONAL PROPERTY, LEASING, LEASING USE, STAMP OR OTHER TAXES, LEVIES, IMPOSTS, DUTIES, CHARGES, FEES OR WITHHOLDINGS OF ANY NATURE (TOGETHER WITH ANY PENALTIES, FINES OR INTEREST THEREON) IMPOSED AGAINST LESSOR, LESSEE OR THE EQUIPMENT BY ANY FEDERAL, STATE, LOCAL OR FOREIGN GOVERNMENT OR TAXING AUTHORITY UPON OR WITH RESPECT TO THE EQUIPMENT OR UPON THE PURCHASE, OWNERSHIP, DELIVERY, LEASING, POSSESSION, USE, OPERATION, RETURN OR OTHER DISPOSITION THEREOF, OR UPON THE RENTALS, RECEIPTS OR EARNINGS ARISING THEREFROM, OR UPON OR WITH RESPECT TO THIS LEASE, COLLECTIVELY REFERRED TO HEREIN AS "IMPOSITIONS" (EXCLUDING, HOWEVER, FEDERAL, STATE, LOCAL AND FOREIGN TAXES ON, OR MEASURED BY, THE NET INCOME OF LESSOR OR CONSOLIDATED GROUP OF WHICH LESSOR IS A MEMBER) UNLESS, AND TO THE EXTENT ONLY, THAT ANY SUCH IMPOSITION, IS BEING CONTESTED BY LESSEE IN GOOD FAITH AND BY APPROPRIATE PROCEEDINGS AND IF SUCH IMPOSITION SHALL BE A LIEN ON AN ITEM OF EQUIPMENT BEYOND THE DATE OF PAYMENT, THEREOF IS OVERDUE, LESSEE SHALL HAVE PROVIDED SECURITY SATISFACTORY TO LESSOR IN THE AMOUNT OF 100% OF THE CLAIM, SUCH SECURITY TO BE APPLIED TO ANY ADVERSE DECISION FROM SUCH PROCEEDINGS, AS WELL AS, ANY PENALTIES, INTEREST, DAMAGES, COSTS AND EXPENSES INCURRED BY LESSOR AND/OR LESSEE IN CONNECTION THEREWITH. In case any report or return is required

to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either make such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor, or will notify Lessor of such requirement and make such report or return in such manner as shall be satisfactory to Lessor. Lessor agrees to cooperate fully with Lessee in the preparation of any such reports or returns. Lessor is hereby authorized to submit any report or other information relating to the Equipment or the Lease to any governmental authority so requesting but in no event shall Lessor be obligated to do so.

Section 9. Title; Use, Maintenance and Operation; Identification Marking.

A. The Lessor as between the Lessor and the Lessee shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and for the possession and use thereof by the Lessee.

B. Lessee agrees that the Equipment will be used solely in the conduct of its business unless such Equipment has been transferred or subleased to another entity in a manner not prohibited hereunder. The Lessee further agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance on any such Item of Equipment shall be required to be changed or replaced or in case any additional or other equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own cost. Lessee agrees that each Item of Equipment (except Items which prior to the execution of this Lease Lessee shall have advised Lessor in writing are normally used or to be used in more than one location) will be kept at the address shown in the Declarations with respect to such Item, unless the Lessor shall first otherwise consent thereto in writing. Lessee will immediately give written notice to the Lessor of any change in its principal place of business. The Lessee will not use any of the Equipment outside the territorial limits of the United States or Canada unless the Lessor shall first so agree in writing.

C. Lessee, at its own cost and expense, will repair and maintain the Equipment so as to keep it in as good condition as when delivered to Lessee hereunder, ordinary wear and tear excepted. Lessee may from time to time add further parts or accessories to any Item of Equipment provided that such addition does not impair the value, utility, or warranties of such Item of Equipment; and any parts or accessories so added, if not required by Section 11 to be added as a replacement, shall remain the property of Lessee or other owner thereof and may be removed by Lessee at any time prior to the expiration of the term of the Lease with respect to such Item or Items of Equipment, provided such removal does not impair the value or utility of such Items of Equipment, any damage to the Equipment caused by such removal is repaired, and no Event of Default hereunder shall then occur and be continuing. Any parts or accessories not removed within a reasonable time after the expiration of the Lease with

respect to such Item of Equipment shall become the property of Lessor. Lessee will not commit any act, or permit to remain uncorrected any condition which invalidates or adversely affects any duties owed by the vendor of the Equipment.

D. Lessee agrees at its own cost and expense to place such markings, plates, or other identification on Items of Equipment showing Lessor's title thereto as Lessor may from time to time request, provided such identification markings are placed so as not to interfere with the usefulness of the said Equipment. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership and shall remove the same as well as any other markings associated with the Lessee's use thereof, upon the return of the Equipment. The Lessee shall indemnify the Lessor and any third party dealing with Lessor against any liability, loss or expense incurred by it or any third party dealing with Lessor as a result of any act or omission of the Lessee which is inconsistent with the provisions of this Section 9. In no event shall the placing of the name of Lessee or division thereof in the ordinary course of its business and customary within the industry be prohibited hereby.

#### Section 10. Inspection.

Upon the request of Lessor, which shall be in writing, identifying the day and time of the requested inspection at least five (5) days prior thereto, Lessee shall advise Lessor as to the location of each Item of Equipment and shall, at any reasonable time, promptly advise Lessor and make the Equipment available to Lessor or Lessor's agent for inspection at the place where it is ordinarily located, and shall make such of Lessee's records as directly pertain to the Equipment available for the Lessor's inspection. During any such inspection, Lessor or Lessor's agent will be permitted to copy or make extracts from such records. Lessor shall have no duty to make any such inspection or examination and shall not incur any liability or obligation by reason of not making any such inspection or examination.

#### Section 11. Loss or Destruction.

A. In the event any Item of Equipment shall be lost, stolen, destroyed, damaged beyond repair or permanently rendered unfit for use for any reason whatsoever (hereinafter "Event of Loss"), Lessee shall promptly, but in any event within ten (10) days of the Event of Loss, give written notification to Lessor thereof and of the facts pertaining thereto. In addition, within ten (10) days of the Event of Loss, Lessee shall elect to either (1) replace such Item of Equipment at Lessee's own cost and expense as provided in Section 11B. hereof, or (2) pay to Lessor the Casualty Loss Value of the Item as hereinafter defined as provided in Section 11C. hereof. Notification of Lessee's election shall be tendered in writing by Lessee to Lessor within ten (10) days of the Event of Loss. The term "Casualty Loss Value" shall mean the value of the destroyed or lost Item as computed on the Casualty Loss Value Schedule attached hereto or to the Declaration relating to such Item.

B. Should Lessee elect to replace such Item, any replacement item shall be free and clear of all liens, encumbrances and rights of others and shall be in as good condition, and shall have a value and utility reasonably determined by the Lessor to be at least equal to the replaced Item, as if such Item were in the condition and repair required to be maintained by the terms hereof. All such replacement Items shall become the property of Lessor and shall immediately become subject to this Lease, and shall be deemed part of the

Equipment for all purposes hereof, to the same extent as the property originally comprising the Equipment; whereupon such replaced Item of Equipment shall no longer be deemed part of the Equipment leased hereunder, and Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title and interest, if any, therein and any insurance or condemnation proceeds payable with respect thereto and assign to Lessee any claim Lessor has for damages with respect to such Equipment. In the event Lessee elects to replace such Item of Equipment, Lessee's obligation to pay Rental as set forth in this Lease shall remain unchanged. Lessee further agrees to execute such documents as deemed necessary by the Lessor to include such replacement items in this Lease.

C. Should Lessee elect not to replace such Item of Equipment, then Lessee shall pay to Lessor, on the next Rental payment date for such Item following such Event of Loss, the Casualty Loss Value as of such date of such lost or destroyed Item. The obligation of Lessee to pay Rental with respect to such Item (including the installment due on such next Rental payment date) shall continue undiminished until the payment of such Casualty Loss Value. After the payment of such Casualty Loss Value and applicable Rental therefore, Lessee's obligation to pay further Rental for such Item shall cease, but Lessee's obligation to pay Rental for all other Items of Equipment shall remain unchanged. After the payment of such Casualty Loss Value, Lessor will transfer to Lessee, without recourse or warranty, all of Lessor's right, title, and interest, if any, in and to such lost or destroyed Item of Equipment and any insurance or condemnation proceeds payable with respect thereto, and assign to Lessee any claim Lessor has for damages with respect to such Equipment.

## Section 12. Insurance.

At its own expense, Lessee shall maintain insurance on each Item of Equipment for the full insurable value of such Item, and shall maintain adequate comprehensive general public liability and property damage insurance with respect to each Item, said insurance to be in an amount not less than the amount specified in the Declaration. All such insurance shall name Lessor and Lessee as insureds or shall provide certification of blanket contractual coverage, satisfactory to Lessor, and shall provide that it may be altered or cancelled by the insurer only after ten (10) days' prior written notice to, and that losses shall be adjusted only with and paid to, Lessor and its assignee, if any, and Lessee, as their interests may appear, it being agreed that upon an Event of Loss, if Lessee has replaced an Item pursuant to Section 11B hereof, or has paid the Casualty Loss Value required by Section 11C hereof, Lessor shall notify the appropriate insurer that all insurance proceeds with respect to such Item shall be payable directly to the Lessee to the extent of the cost of the replacement equipment under Section 11B or the amount of the Casualty Loss Value under Section 11C. Certificates or other evidence satisfactory to Lessor showing the existence of such insurance, the terms and conditions of the policy, and payment of the premium therefor shall be delivered to Lessor forthwith and periodically prior to each expiration of such insurance. In the event Lessee shall fail to obtain and/or maintain insurance in accordance with the provisions of this paragraph, Lessor shall have the right to obtain such insurance as Lessor deems necessary, and Lessee shall be obligated to reimburse Lessor for the payment by Lessor of all premiums therefor together with interest computed from the date of

Lessor's payment at the rate of eighteen (18%) percent per annum. As between Lessor and Lessee, it is agreed that if any such insurance proceeds are received with respect to an occurrence which does not constitute an Event of Loss under Section 11 proceeds will be applied in payment for repairs and replacement property required pursuant to Sections 9 and 11 hereof, or to reimburse Lessee for having made such payments.

Section 13. Indemnification and Expenses.

A. The Lessee shall defend, indemnify and save harmless the Lessor or any assignee or transferee of Lessor as set forth herein and their respective agents and servants from and against any claim, cause of action, damages, liability, cost, fee or expense (including counsel fees and costs in connection therewith, but, excluding taxes) which may reasonably be incurred in any manner by or for the account of any of them (1) relating to the Equipment or any part thereof including without limitation the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (2) by reason of Lessee's failure or refusal to accept the Equipment as is when delivered to the Lessee, (3) by reason or as the result of any act or omission of the Lessee for itself or its agent or as attorney in fact for the Lessor hereunder, (4) as a result of claims for patent or trademark infringements, or (5) based on any event which results in any claim for negligence or strict liability in tort except for such claims arising as the result of Lessor's gross negligence or willful misconduct. This Section shall become and be effective and in full force and effect from the date the first Item of Equipment is ordered even though the Equipment has not yet been accepted by Lessee and even though the Rental term of this Lease has not yet commenced, and shall remain in effect notwithstanding the expiration or other termination of this Lease with respect to any one or more Items of Equipment insofar as it relates to an event which occurred prior to such expiration or termination. Lessee agrees to give Lessor prompt notice of any claim or liability hereby indemnified against. Subject to the above, the Lessor agrees to cooperate with the Lessee in any defense or other action which the Lessee is by this Section obligated to undertake.

B. If by reason of any act or omission of Lessee, misrepresentation by Lessee of any of the warranties and representations contained herein, including any amendments, riders or exhibits hereto, or by reason of any statutory or regulatory provision enacted or adopted prior to the date of any applicable Declaration or Certificate of Acceptance, Lessor shall lose or shall not have, or shall lose the right to claim, or there shall be disallowed or recaptured, all or any portion of Federal income tax depreciation deductions under Section 168 of the Code (or successor provisions) with respect to the Equipment, based on the depreciation deduction of Lessor's cost of the Equipment over the period or periods initially selected by Lessor as the life or lives of the Equipment, using any depreciation deduction method which Lessor may in its discretion properly elect to use under Federal income tax law and applicable regulations and which Lessor in its complete discretion may select, then Lessee will pay Lessor, as Additional Rental hereunder, (i) a sum which shall be equal to the amount necessary for Lessor to maintain its net after-tax rate of return on investment and its net after-tax cash flow with respect to this Lease trans-

action, (ii) the amount of interest and penalties which may be payable to any such taxing authority by Lessor in connection with such loss, disallowance or recapture or the right to claim the same, plus (iii) the net amount of all taxes required to be paid by Lessor with respect to the receipt of such foregoing sums under the laws of any Federal, state or local government or taxing authority in the United States. Such payment shall be made to Lessor by Lessee within 30 days of Lessor's written notice to Lessee describing in reasonable detail the loss, disallowance or recapture and the computation of the amount payable hereunder.

C. If by reason of any act or omission of Lessee, misrepresentation by Lessee of any of the warranties and representations contained herein, including any amendments, riders or exhibits hereto, or by reason of any statutory or regulatory provision enacted or adopted prior to the date of any applicable Declaration or Certificate of Acceptance, Lessor shall not have or shall lose the right to claim or there shall be disallowed or recaptured, all or any portion of the full ten (10%) percent or other percentages or amount of investment tax credit provided for in Section 38 of the Code and related sections (or any successor provision thereto), with respect to the Equipment, then Lessee will pay Lessor, as Additional Rental hereunder, (i) a sum which shall be equal to the amount necessary for Lessor to maintain its net after-tax rate of return on investment and its net after-tax cash flow with respect to this Lease transaction, (ii) the amount of any interest and penalties payable by Lessor in connection with the loss, disallowance or recapture of such investment tax credit or the right to claim the same, plus (iii) the net amount of all taxes required to be paid by Lessor with respect to the receipt of such foregoing sums under the laws of any Federal, state or local government or taxing authority in the United States. Such payment shall be made to Lessor by Lessee, within 30 days of Lessor's written notice to Lessee describing in reasonable detail the loss, disallowance or recapture and the computation of the amount payable hereunder.

D. Lessee shall not be required to pay Lessor the amount provided for in Paragraphs B and C above if the loss, disallowance, or recapture of depreciation deductions and/or investment credit or the right to claim the same shall result solely because of the occurrence of any of the following events:

- (i) Lessee is required by the terms hereof to pay and shall have paid the Casualty Loss Value or Termination Value; or,
- (ii) Lessor, or the consolidated group of which Lessor is a member, shall fail to claim such depreciation deduction or investment tax credit in its income tax returns for the appropriate year or shall fail to follow the proper procedure in claiming such depreciation deduction or investment tax credit.
- (iii) Lessor shall, at any time where no Event of Default has occurred and is continuing, without the written consent of Lessee, voluntarily, or in connection with any bankruptcy or insolvency proceedings against Lessor, transfer legal title to such Equipment to anyone and such transfer by Lessor shall be the direct cause of such loss.

- (iv) Lessor, or the consolidated group of which Lessor is a member, shall fail to have sufficient taxable income against which to claim the depreciation deductions and/or sufficient tax liability against which to claim the investment tax credit.

E. Lessor agrees to notify Lessee promptly of any claim made by the Internal Revenue Service against Lessor in respect to the disallowance of such depreciation deductions or investment tax credit. Lessor further agrees that, should all or any portion of the said depreciation deductions or investment tax credit be disallowed as aforesaid, Lessor, or the appropriate affiliate of Lessor, will contest the disallowance, if so requested by Lessee in writing at least five (5) working days prior to the last date allowed for filing notice of such contest, provided that Lessee makes adequate provision for Lessor's indemnification and the payment of all of Lessor's expenses, including actual legal fees, in connection therewith, and provided further that before Lessor shall be required to contest such disallowance, Lessor receives an opinion from independent tax counsel acceptable to both parties stating that there is a reasonable probability that any such contest will be successfully resolved in favor of Lessor. Lessor further agrees that it will not compromise, surrender, or waive any such contested claims exceeding \$20,000 without Lessee's written approval unless the right to receive the indemnity payable with respect to such claim is waived by Lessor. In the event of a contest in the U.S. District Court or the U.S. Court of Claims, Lessee shall loan sufficient funds, interest free, to pay the additional taxes required prior to instituting proceedings in such courts.

F. It is expressly understood and agreed that the income of Lessor may be reported to any taxing authority with other entities on a consolidated income tax return if Lessor so elects.

G. Lessee expressly agrees that Lessor may assign or otherwise transfer all or any portion of its title to the Equipment and its rights under this Section 13 to a third party pursuant to this Lease Agreement herein referred to, including, but not limited to, Lessor's rights to claim depreciation deductions and the investment tax credit hereinabove described. Lessee, by execution of this Lease Agreement, expressly consents to any said assignment or other transfer of Lessor's interest and rights made pursuant to this Lease Agreement herein referred to. Lessee further covenants that said third party shall have all the rights against Lessee to the extent granted to Lessor by Lessee in this Section 13, provided that Lessee's obligations hereunder shall in no event exceed its obligations, if such assignment or other transfer had not occurred.

H. Lessor agrees that it will pay to the Lessee an amount equal to the sum of (i) the amount of any savings in Federal income tax (or any interest, penalties or additions to tax, if any) available to Lessor or the consolidated group of which Lessor is a member and attributable to any tax benefit arising from a loss, disallowance or recapture that was the subject of a prior payment by Lessee hereunder plus (ii) the amount of any after-tax benefits available to

Lessor or the consolidated group of which Lessor is a member as a result of any payment to Lessee under clause (i) of this sentence; provided, however, in no event shall the amount computed pursuant to this subsection H exceed the amount paid to Lessor by Lessee as an indemnity with regard to such loss disallowance or recapture of such tax benefit. All payments by Lessor hereunder shall be made within 30 days of the date when such tax benefits become available to Lessor or the consolidated group of which Lessor is a member and shall be accompanied by a description in reasonable detail of the computation of the amount so payable. The obligations of Lessor hereunder shall survive the termination of this Lease.

I. All computations required by this section shall be made in the first instance by the Lessor, based on the original economic assumptions utilized in deriving such net after tax rate of return on investments and net after tax cash flows referenced in Section 13 B and C hereof, and if requested in writing by Lessee, shall within 30 days after receipt by Lessee be verified in writing by an independent public accounting firm mutually acceptable to the Lessor and Lessee with costs borne by Lessee.

#### Section 14. Assignment.

Lessor may at any time, with or without notice to Lessee, transfer, assign or grant a security interest in this Lease or any Equipment or any Rental or other sums due or to become due hereunder, and in such event Lessor's transferee or assignee shall have all of Lessor's rights, powers, privileges and remedies hereunder on the same terms and conditions as granted to Lessor and each and all of Lessor's covenants and agreements provided for herein and all representations and warranties of Lessor shall survive any such transfer or assignment of this Lease; provided, however, such transferee or assignee shall not be a competitor or customer of Lessee. The term "competitor" as used herein means any person that is in the railroad rail testing business. The term "customer" as used herein means any person that owns or operates either a public or private railroad.

#### Section 15. Events of Default; Remedies.

A. The following events shall constitute Events of Default:

- (i) Lessee shall fail to make any Rental payment hereunder when due and such failure shall continue for 10 business days thereafter, or,
- (ii) Lessee shall fail to make any payment other than Rental required hereunder or shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed by it under this Lease and such failure shall continue for 5 business days thereafter; provided, however, that there shall be no grace period with respect to any breach of an agreement or covenant by Lessee, the result of which would be the cancellation of any insurance required hereunder; or,
- (iii) Any representation or warranty made by Lessee under this Lease or any supplement, amendment, or addition thereto, or in any document or certificate furnished Lessor in connection herewith or pursuant hereto shall prove to be incorrect at any time in any material respect; or,

- (iv) Lessee or Guarantor shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver; or a trustee or a receiver shall be appointed for Lessee or for a substantial part of its property without its consent and shall not be dismissed within a period of sixty (60) days; or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee or Guarantor and, if instituted against Lessee or Guarantor, shall not be dismissed for a period of sixty (60) days; or,
- (v) Judgments aggregating more than \$5,000,000 shall be entered against Guarantor and shall not be satisfied or appealed from and execution thereon stayed within the time limited by law for taking appeals as of right or if any Item of Equipment or a substantial part of its property shall become subject to a judicial lien and not released by bond or otherwise; or,

B. Upon the happening of an Event of Default, the Lessor shall, after written notice mailed to Lessee with a copy to Guarantor, be entitled to:

- (i) proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;
- (ii) repossess any or all Items of Equipment without prejudice to any remedy or claim hereinafter referred to, and for this purpose enter upon the premises of the Lessee and peaceably remove, without liability for suit, action or other proceeding by Lessee, any or all Items of Equipment;
- (iii) declare all unpaid Rentals immediately due and payable;
- (iv) terminate the Lease without prejudice to Lessor's rights in respect to obligations then accrued and remaining unsatisfied as well as the remedies and claims referred to herein;
- (v) elect to sell any or all Items of Equipment at one or more public or private sales and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount, if any, by which (a) the sum of (i) the aggregate Casualty Loss Value of such Items of Equipment on the date such sale is consummated, (ii) all rent owing or accrued hereunder to and including the date such sale is consummated, (iii) all costs and expenses (including sales tax) reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and selling such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as Additional Rent, indemnification or otherwise, and (v) all reasonable costs and expenses, in-

cluding (without limitation) legal fees and expenses incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (b) the amount received by the Lessor upon such public or private sales of such Items of Equipment;

- (vi) elect to lease any or all Items of Equipment after giving statutory notice to Lessee if required by law, pursuant to one or more leases on such terms and conditions as Lessor and such subsequent lessee of the Items shall have agreed and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount if any, by which (a) the sum of (i) the aggregate Casualty Loss Value of such Items of Equipment on the date such lease is consummated, (ii) all rent owing or accrued hereunder to and including the date such lease is consummated, (iii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and leasing such Items of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as Additional Rent, indemnification or otherwise, and (v) all reasonable costs and expenses, including (without limitation) legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (b) the aggregate Rentals to be received by Lessor over the term or terms of such release of the Items from such subsequent lessee or lessees discounted by an amount equal to five (5%) percent per annum;
- (vii) upon demand made to the Lessee, receive prompt payment from Lessee of an amount equal to the aggregate Casualty Loss Value on the Rental payment date next preceding the date such demand is made of all Items of Equipment which have not been sold or released by the Lessor pursuant to clauses (v) or (vi) above plus, to the extent not otherwise recovered from the Lessee pursuant to said clause (v) or (vi) above, (i) any Rent owing or accrued hereunder to and including the date such notice is given, (ii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Items of Equipment, (iii) all other amounts owing by the Lessee hereunder, whether as Additional Rent, indemnification or otherwise, and (iv) all reasonable costs and expenses, including without limitation legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder; provided that upon receipt of payment in full of such amount, the Lessor shall tender to the Lessee a bill of sale for the Items of Equipment then subject to this Lease without any warranties or representations regarding or relating to the Items for which the bill of sale is tendered; or
- (viii) avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

In addition, Lessee shall be liable for any and all expenses and charges hereunder, including (without limitation) attorneys' fees, incurred by reason of any late payment, Event of Default, or the exercise of Lessor's remedies with respect thereto.

C. THE REMEDIES IN THIS LEASE 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. LESSEE HEREBY WAIVES ANY MANDATORY REQUIREMENTS OF LAW, NOW OR HEREAFTER IN EFFECT, WHICH MIGHT LIMIT OR MODIFY ANY OF THE REMEDIES HEREIN PROVIDED, TO THE EXTENT THAT SUCH WAIVER IS PERMITTED BY LAW. LESSEE HEREBY WAIVES ANY AND ALL EXISTING OR FUTURE CLAIMS OF ANY RIGHT TO ASSERT ANY OFF-SET AGAINST THE PAYMENTS DUE HEREUNDER, AND AGREES TO MAKE THE PAYMENTS REGARDLESS OF ANY OFF-SET OR CLAIM WHICH MAY BE ASSERTED BY LESSEE ON ITS BEHALF IN CONNECTION WITH THE LEASE OF THE EQUIPMENT.

Section 16. Lessor's Right to Perform for Lessee.

If Lessee fails to make payments required by this Lease, including rental payments, or fails to perform or comply with any of its agreements contained herein, Lessor may itself but shall not be required to, make payment or perform or comply with such agreement, and the Rental payments in default and the amount of the reasonable expenses of Lessor incurred in connection with such payment, performance of or compliance with such agreements shall be payable by Lessee to Lessor upon demand together with interest at the rate of eighteen (18%) percent, per annum from the date of the default in the Rental or the date that the expense was incurred to the date of payment by Lessee to Lessor and any legal fees incurred by Lessor therewith. The foregoing default rate shall constitute Additional Rent immediately due and payable.

Section 17. Further Assurances.

Lessee will promptly and duly execute and deliver to Lessor such further documents, assurances and financing statements and take such further action as Lessor may from time to time reasonably request in order to carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created or intended to be created in favor of Lessor hereunder, including, without hesitation, if requested by Lessor, at the expense of Lessee, the execution and delivery of financing statements with respect hereto, in accordance with the laws of such jurisdictions as Lessor may from time to time deem advisable. Lessee also agrees to furnish Lessor from time to time such information relating to Lessee or the Equipment as Lessor may reasonably request.

Section 18. Notices.

All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when deposited in the United States mail, with proper postage for certified mail prepaid, addressed to the address shown herein or to such other address as such party shall from time to time designate for itself in writing to the other party. Lessor agrees that all notices required to be sent to Lessee shall simultaneously be sent to the Guarantor, Attention: Vice President & Treasurer, 500 W. Putnam Ave., Greenwich, Connecticut 06836.

Section 19. Effect of Invalid Provision.

Any provision of this Lease which may be determined by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

Section 20. Modification of Lease Agreement.

No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

Section 21. Lease Agreement; Title.

This Lease shall constitute an agreement of Lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in or to the Equipment except as a Lessee only.

Section 22. Appointment of Agent of Lessor.

Lessor shall have the right, at any time during the term of this Lease, to appoint any party selected by it to act as agent or trustee for it hereunder.

Section 23. Survival of Obligations.

The covenants, indemnities and obligations of Lessee and Lessor hereunder shall be continuing and survive the term of this Lease and the Declarations.

Section 24. Headings.

The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 25. Applicable Law.

This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

Section 26. Effective Date.

This Lease and other documents and agreements executed pursuant to it are not effective until they have been signed and accepted by Lessor at its offices within the State of Michigan.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on behalf of each of them on this 6th day of August, 1985, 1985, and the signatories warrant their authority to bind their principals.

Qualcorp, Inc.  
a Delaware corporation,

Whirlpool Leasing Services, Inc.

By: Thomas L. Flattery  
Thomas L. Flattery

By: Phillip R. Harrison  
Phillip R. Harrison

Its: Vice President

Its: Senior Lease Officer

Address:

Shelter Rock Road  
Danbury, CT 06810

17177 North Laurel Park Drive  
Suite 233  
Livonia, Michigan 48152





DECLARATION TO MASTER EQUIPMENT LEASE AGREEMENT  
(Certificate of Acceptance)

THIS DECLARATION is hereby integrated and incorporated by reference into and made a part of the Master Equipment Lease Agreement ("Lease") between the signatories hereof dated the 6th day of August, 1985, as if fully restated therein. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor the below-described items of equipment (hereinafter referred to collectively as the "Equipment" and individually as an "Item" or "Item of Equipment") for the term or terms and for the rental or rentals specified below subject to all terms and conditions of said Lease and this Declaration. The terms of said Lease govern except when contrary to the specific terms of this Declaration.

- A. Description of Equipment with Serial Numbers:  
New Sperry Rail Service Series 100 Rail Detector Car #148
- B. The above Items of Equipment are to be located and delivered to the following location:  
Shelter Rock Road  
Danbury, CT 06810
- C. Lessee warrants and represents that the above Items of Equipment have been delivered to, and accepted by, Lessee under Section 1D of the Lease and agrees to be bound by the terms of the Lease as to such Items as of the date stated above.
- D. The above Items may be subleased to any subsidiary or affiliate without written consent of Lessor or to an unrelated third party with consent of Lessor which will not be unreasonably withheld.
- E. Interim Term: From the closing date of August 6, 1985, until the base lease commencement date of September 1, 1985.
- F. Primary Term: The Lease, as to the above described equipment, commences on the base lease commencement date of September 1, 1985, and continues thereafter for a period of forty-eight (48) consecutive quarters.

G. Periodic Rent: Lessee agrees to pay the Lessor for the above-described equipment as follows:

1. Upon Execution Hereof	\$ -0-
2. Upon the base lease commencement date of September 1, 1985 equal to interim rent calculated at 10.5% per annum on the Lessor's Cost during the interim period.	\$ 8,919.78
3. And forty-eight (48) quarterly payments of \$34,941.58 due the first day of each consecutive quarter beginning December 1, 1985, during the term totaling	<u>\$1,677,195.84</u>
TOTAL PERIOD RENT	<u><u>\$1,686,115.62</u></u>

G. Insurance: The minimum amount of insurance required under the terms of the Lease shall be as follows:

1. Liability:	\$5,000,000.00
2. Physical Damage:	\$1,176,286.00

The foregoing amounts of insurance are minimum amounts only, Lessee expressly agreeing that in any event the insurance shall at all times be in an amount which shall be sufficient to provide full coverage against all loss and liability. Unless otherwise expressly specified herein, the hereinabove-described insurance shall expressly cover all the hereinabove-described Equipment.

H. Lessee warrants and represents that the aggregate invoice prices for the Items of Equipment subject to this Declaration is \$1,176,286.00 ("Total Price"), that Lessor's Cost, which is the aggregate of Total Price plus the charges outlined in Section 1C of the Lease, equals \$1,176,286.00, and that such Items constitute "5-year property" under the Code unless clearly identified to the contrary on the attached schedule.

This Declaration may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together but one and the same instrument.

Accepted by:

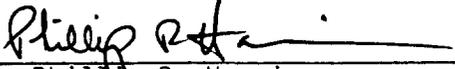
Date: August 6, 1985

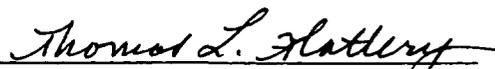
LESSOR:

LESSEE:

Whirlpool Leasing Services, Inc.

Qualcorp, Inc.

By:   
Phillip R. Harrison

By:   
THOMAS L. FLATTERY

Its: Senior Lease Officer

Its: VICE PRESIDENT

Lessor's Address:

Lessee's Address:

17177 North Laurel Park Drive  
Suite 233  
Livonia, Michigan 48152

Shelter Rock Road  
Danbury, CT 06810





CERTIFICATION OF INSURANCE PROTECTION ON LEASED EQUIPMENT

This is to certify that the policies enumerated below have been issued to the Named Insured (Lessee):

Qualcorp, Inc.  
Shelter Rock Road  
Danbury, CT 06810

Description of Property Leased to above Named Insured from Whirlpool Leasing Services, Inc. (Lease No.) 01807-02

New Sperry Rail Series 100 Rail Detector Car #148

1. Property Insurance covering "All Risk" of physical loss to property described above, including Whirlpool Leasing Services, Inc. (Lessor) as insured and endorsement indicating that payment of any loss will be made to Whirlpool Leasing Services, Inc. and the Named Insured.

Policy No. 831MSP 144772 SCA

Insurance Company Aetna Casualty and Surety

Policy Period  
Effective Date 01/01/85 Expiration Date 01/01/86

Amount of Insurance \$1,176,286.00

Deductible (if any) \$5000.00

2. Comprehensive General Liability including Contractual Liability as assumed under lease mentioned above and including Whirlpool Leasing Services, Inc. as a Named Insured as respects ownership, maintenance or use of above described equipment.

Policy No. 39 CSEJ 14938E

Insurance Company Hartford Accident and Indemnity Co.

Policy Period  
Effective Date 05/01/85 Expiration Date 05/01/86

Limits of Liability:

Bodily Injury \$2,000,000/2,000,000 Each Accident

Property Damage \$2,000,000/2,000,000 Each Accident

The Lessee agrees that insurance coverage will not lapse and that any change in the coverage will be communicated in writing to:

Whirlpool Leasing Services, Inc.  
17177 North Laurel Park Drive  
Suite 233  
Livonia, Michigan 48152

Name and Address of Authorized Representative

<u>Frank B. Hall and Co.</u>	<u>Allen, Hart, Franz &amp; Zehnder</u>
<u>2700 Two Ina Plaza/1622 Arch St.</u>	<u>261 S. Figueroa St. #100</u>
<u>Philadelphia, PA 19103</u>	<u>Los Angeles, CA 90012</u>

Signature David H. Street  
Penn Central Corporation  
Vice President + Treasurer

Date: August 6, 1985

CASUALTY LOSS VALUE SCHEDULE

Casualty Loss Schedule - Amount at the end of each period.

Casualty Loss Value for the purpose of this Schedule assumes all payments are received on or before the due date. The Casualty Loss Value is the value on the due date assuming the payment for that due date is received. The balance does not include late charges, use tax, property tax, or any other charges, fees or taxes that might be assessed from time to time or may become due in accordance with the terms of this lease.

<u>Payment Date</u>	<u>Casualty Payment (%)</u>
December, 1985	106.88
March, 1986	107.11
June, 1986	107.64
September, 1986	104.66
December, 1986	105.64
March, 1987	104.43
June, 1987	104.61
September, 1987	101.36
December, 1987	102.12
March, 1988	100.27
June, 1988	100.10
September, 1988	96.54
December, 1988	97.03
March, 1989	94.54
June, 1989	93.98
September, 1989	90.08
December, 1989	90.23
March, 1990	87.12
June, 1990	86.13
September, 1990	81.82
December, 1990	81.59
March, 1991	78.60
June, 1991	77.47
September, 1991	76.74
December, 1991	76.33
March, 1992	73.34
June, 1992	72.09
September, 1992	71.19
December, 1992	70.60

CASUALTY LOSS VALUE SCHEDULE

Page 2

<u>Payment Date</u>	<u>Casualty Payment (%)</u>
March, 1993	67.61
June, 1993	66.22
September, 1993	65.15
December, 1993	64.35
March, 1994	61.36
June, 1994	59.82
September, 1994	58.56
December, 1994	57.53
March, 1995	54.54
June, 1995	52.84
September, 1995	51.37
December, 1995	50.10
March, 1996	47.11
June, 1996	45.23
September, 1996	43.54
December, 1996	42.00
March, 1997	39.01
June, 1997	36.93
September, 1997	35.00

Whirlpool Leasing Services, Inc. Qualcorp, Inc. 

TERMINATION VALUE SCHEDULE

Termination Value Schedule - Amount at the end of each period.

Termination Value for the purpose of this Schedule assumes all payments are received on or before the due date. The Termination Value is the value on the due date assuming the payment for that due date is received. The balance does not include late charges, use tax, property tax, or any other charges, fees or taxes that might be assessed from time to time or may become due in accordance with the terms of this lease.

<u>Date</u>	<u>% of Equipment Cost</u>
December, 1985	106.88
March, 1986	107.11
June, 1986	107.64
September, 1986	104.66
December, 1986	105.64
March, 1987	104.43
June, 1987	104.61
September, 1987	101.36
December, 1987	102.12
March, 1988	100.27
June, 1988	100.10
September, 1988	96.54
December, 1988	97.03
March, 1989	94.54
June, 1989	93.98
September, 1989	90.08
December, 1989	90.23
March, 1990	87.12
June, 1990	86.13
September, 1990	81.82
December, 1990	81.59
March, 1991	78.60
June, 1991	77.47
September, 1991	76.74
December, 1991	76.33
March, 1992	73.34
June, 1992	72.09
September, 1992	71.19
December, 1992	70.60

TERMINATION VALUE SCHEDULE

Page 2

<u>Date</u>	<u>% of Equipment Cost</u>
March, 1993	67.61
June, 1993	66.22
September, 1993	65.15
December, 1993	64.35
March, 1994	61.36
June, 1994	59.82
September, 1994	58.56
December, 1994	57.53
March, 1995	54.54
June, 1995	52.84
September, 1995	51.37
December, 1995	50.10
March, 1996	47.11
June, 1996	45.23
September, 1996	43.54
December, 1996	42.00
March, 1997	39.01
June, 1997	36.93
September, 1997	35.00

Whirlpool Leasing Services, Inc. Qualcorp, Inc. 