

LAW OFFICES

ALVORD AND ALVORD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD  
ALBERT H. GREENE  
CARL C. DAVIS\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE  
MILTON C. GRACE\*  
GEORGE JOHN KETO\*\*  
RICHARD N. BAGENSTOS

\* NOT A MEMBER OF D.C. BAR  
\*\* ALSO A MEMBER OF OHIO BAR

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W. WASHINGTON, D.C. 20006

WASHINGTON, D.C.

20006

12169  
SEP 5 1980 -9 40 AM

August 31, 1980

INTERSTATE COMMERCE COMMISSION

OF COUNSEL  
JESS LARSON  
URBAN A. LESTER

CABLE ADDRESS  
"ALVORD"

TELEPHONE  
AREA CODE 202  
393-2266

TELEX  
440348 CDAA UI

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

SEP 5 1980  
50.00  
ICB Washington, D.C.

RECEIVED  
SEP 5 9 34 AM '80  
FEE OPERATIONS  
I.C.C.

Dear Madam:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. §11303(a) is a certified and two xerox copies of Lease dated July 31, 1980.

A general description of the railroad equipment covered by the enclosed document is as follows:

One (1) 1200 HP NW5 Diesel Locomotive  
Road Number 989 (formerly BN 989 and GN 189) CTR

The names and addresses of the parties to the enclosed document are:

Lessor: ITT Industrial Credit Company  
1025 Northern Federal Building  
St. Paul, Minnesota 55102

Lessee: Phoenix Steel Corporation  
4001 Philadelphia Pike  
Claymont, Delaware 19703

The undersigned is agent for the Lessor mentioned above for the purpose of recording the enclosed document.

Also enclosed is a check in the amount of \$50.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Very truly yours,

ALVORD AND ALVORD

By Charles T. Kappler  
Charles T. Kappler

CT. Kappler  
A. J.

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

9/5/80

OFFICE OF THE SECRETARY

**Charles T. Kappler, Esq.**  
**Alvord & Alvord**  
**200 World Center Building**  
**Washington, D.C. 20006**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **9/5/80** at **9:40am**, and assigned re-  
recording number(s). **12169**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

ITT Industrial Credit Company, Lessor

HOME OFFICE: HAMM BUILDING  
ST. PAUL, MINNESOTA 55102  
612/224-9601

REGIONAL OFFICE: 1025 Northern Federal Building  
St. Paul, MN 55102

RECORDATION NO. 12169  
Filed 1425

|         |                            |                                |            |   |
|---------|----------------------------|--------------------------------|------------|---|
| LESSEE  |                            | SEP 5 1980 - 9 40 AM           | SUPPLIER   |   |
| NAME    | Phoenix Steel Corporation  | INTERSTATE COMMERCE COMMISSION | NAME       | Diesel Electric Service Corporation, Inc. |
| ADDRESS | 4001 Philadelphia Pike     |                                | ADDRESS    | 4th Street and Commercial                 |
| CITY    | Claymont COUNTY New Castle |                                | CITY       | St. Paul STATE MN                         |
| STATE   | Delaware 19703             |                                | ATTENTION: | Jerry Wells                               |

|  |  |   |                  |
|--|--|---|------------------|
| QUANTITY AND DESCRIPTION OF EQUIPMENT (Model No., Serial No., Catalog No., etc.)               |  | LOCATION OF EQUIPMENT (If Different Than Above) |                  |
| One (1) 1200HP NW5 Diesel Locomotive<br>Road Numeral 989                                       |  | ADDRESS   |                  |
| I hereby certify this is an exact copy of the original.  |  | CITY  |                  |
| Witness my hand and seal this 1 <sup>ST</sup> day of AUGUST, 1980.                             |  | COUNTY  |                  |
| PETER VICENTO<br>NOTARY PUBLIC - MINNESOTA<br>HENNEPIN COUNTY<br>My Comm. Expires June 5, 1982 |  | STATE   |                  |
| Notary Public  |  | Advance Rental                                  | Security Deposit |
|  |  | \$ 6,500.00                                     | \$ 6,500.00      |

| LEASE TERM | EFFECTIVE DATE OF LEASE | PAYMENTS WILL BE MADE   | NO. OF RENT PAYMENTS | AMOUNT OF RENTAL PAYMENT | RENEWAL RENTAL (Payable Annually in Advance) |
|------------|-------------------------|---|----------------------|--------------------------|--|
| 3 Years    | 7-31-80                 | Monthly <input checked="" type="checkbox"/><br>Other (Specify) <input type="checkbox"/> | 36                   | \$6,500.00 Per month     | \$ -0- Per Year                              |

Additional Provisions:

TERMS AND CONDITIONS OF LEASE.

- LEASE AGREEMENT.** Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the machinery, equipment, and other personal property described above, together with attachments and accessories, all hereinafter referred to as the "equipment," upon the terms and conditions set forth in this Lease, for the lease term hereinabove specified, which lease term shall begin on the effective date of lease above specified.
- RENTAL PAYMENTS.** Lessee agrees to pay as rental for the use of the equipment the rental payments above specified, with the first such rental payment due on the effective date of lease above specified, and a like payment due on the same day of each month thereafter or as specified during the lease term. If no effective date of lease is inserted at the time of execution by Lessee, Lessee hereby authorizes Lessor to complete this Lease by inserting the date of delivery of the equipment to Lessee as the effective date of lease. All rent and other sums payable by Lessee to Lessor under the terms of this Lease shall be paid to Lessor at its office or as the Lessor may hereafter direct. Lessee agrees that Lessor may collect a late rental charge on each rental payment which is in arrears not less than ten (10) days, said charge to be in an amount equal to five percent (5%) of said rental payment or the maximum permissible under applicable law, whichever is the lesser amount.
- TITLE TO EQUIPMENT.** The leased equipment is and will at all times remain the property of Lessor. The equipment shall at all times be and remain personal property, regardless of whether it be affixed to realty. Lessor shall have the right to display notice of its ownership of the equipment by affixing to each item of equipment an identifying stencil or plate or any other indicia of ownership.
- REMOVAL, INSPECTION, AND RETURN OF EQUIPMENT.** The equipment shall not be removed from the premises of the Lessee to which originally delivered without the prior written consent of Lessor. Lessor shall have the right, upon reasonable prior notice to Lessee and during Lessee's regular business hours, to inspect the equipment at the premises of Lessee or wherever the equipment may be located. Upon the termination of the Lease the equipment shall be returned at Lessee's expense to Lessor at such place as may be designated by Lessor for such disposition.
- INSTALLATION AND MAINTENANCE.** Lessee will be solely responsible for installation and maintenance of equipment and keeping equipment in good mechanical condition and running order, normal wear and tear and depreciation excepted. All additions, attachments, accessories, and repairs made to or placed upon the equipment shall become part of the equipment and shall be the property of Lessor. Lessee has selected the equipment leased hereunder and has requested Lessor to purchase the equipment from the supplier for leasing to the Lessee. Lessor makes NO WARRANTIES, EXPRESS OR IMPLIED, including WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE in connection with the lease of this equipment. Lessor, however, shall deliver to the Lessee a copy of any warranty agreement it may receive from the manufacturer of any item of equipment, and Lessee shall look solely to the manufacturer for the enforcement of such warranty, and Lessee shall comply with all the conditions of such warranty imposed by the manufacturer.

Undersigned agrees to all terms and conditions set forth above and on reverse side hereof and acknowledges receipt of a copy of said Lease. This Lease is not binding upon Lessor until written acceptance by Lessor and receipt of executed Acceptance of Installation and Delivery Receipt form. Lessor is hereby authorized to issue confirming purchase order(s) for the equipment described above.

DATE EXECUTED BY LESSEE July 30 1980 LESSEE Phoenix Steel Corporation

WITNESS Samy Cavaliere By John F. Manning Treasurer  
Title

ACCEPTED AT REGIONAL OFFICE ON July 31 1980 By \_\_\_\_\_ Title

TERMS AND CONDITIONS OF LEASE.

6. **RISK OF LOSS AND INSURANCE.** Lessee shall bear all risks of damage, loss, theft or destruction, partial or complete, with respect to each item of equipment. Lessee shall at its own expense keep each item of equipment insured, at the full value thereof, against fire with extended coverage, and shall likewise insure all equipment adequately against such other risks and in such amounts as Lessor may reasonably require with companies satisfactory to Lessor with losses, if any, payable to Lessor. If requested by Lessor, Lessee agrees at its expense to obtain and maintain with insurance companies of recognized standings general public liability insurance for the protection of Lessor and Lessee, as their interests may appear, in amounts specified by Lessor, against claims for bodily injury or death or property damage rising out of the use, ownership, possession, operation or condition of the equipment. Each insurer shall agree by endorsement upon the policy or policies issued by it, or independent instruments furnished to Lessor, that it will give Lessor ten (10) days' written notice before the policy or policies in question shall be altered or cancelled, and that no act or default of any person other than the Lessor, or its agents, or those claiming under Lessor, shall affect Lessor's right to recover under such policy or policies in case of loss. Lessee shall deliver to Lessor the policies or evidence of insurance satisfactory to Lessor. The failure of Lessee to secure or maintain such insurance shall constitute a default under this Lease. In the event of such breach, Lessor may, but shall not be obligated to, obtain such insurance and an amount equal to the cost of such insurance shall be deemed additional rental to be paid forthwith by Lessee. Notwithstanding damage to leased equipment, the monthly rental shall continue to be paid by Lessee. Lessee shall have the responsibility for the repair of any damaged equipment, and Lessee agrees to repair or cause such equipment to be repaired promptly after damage. As reimbursement to Lessee for any sum expended by Lessee in connection with the repair of such equipment, Lessor shall assign to Lessee any and all right Lessor may have under insurance policies carried by Lessee with respect to such damage.
7. **TAXES, ASSESSMENTS AND LICENSES.** Lessee shall pay all sales taxes, use taxes, excise taxes, personal property taxes, assessments, ad valorem taxes, stamp and documentary taxes, and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor, Lessee or others, on or relating to the equipment or the use, registration, rental, shipment, transportation, delivery or operation thereof, other than federal or state income taxes of Lessor, and on/or relating to this Lease, and shall file all returns required therefor. Upon demand, Lessee shall reimburse Lessor for any such taxes, assessments, charges, fines or penalties which Lessor may be compelled to pay in connection with the equipment.
8. **LESSOR'S INDEMNITY.** Lessee shall indemnify, protect, and save and keep harmless Lessor, its agents, servants, successors, and assigns from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatsoever nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by it), or operation of any item of equipment, regardless of where, how, and by whom operated. Lessee shall assume the settlement of, and the defense of any suit or suits or other legal proceedings brought to enforce all such losses, damages, injuries, claims, demands, and expenses, and shall pay all judgments entered in any such suit or suits or other legal proceedings. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding and termination of this Lease, whether by expiration of time, by operation of law, or otherwise. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any item of equipment so as to incur or impose any liability or obligation for or on behalf of Lessor.
9. **LIABILITY OF LESSOR LIMITED.** Lessor shall not be liable for any loss or damage which is incurred as a result of delay, strikes, storms, war emergencies, labor troubles, belated or non receipt of equipment, fires, floods, water, acts of God, or circumstances beyond Lessor's control. Lessor shall not be held liable for any damages by reason of failure of equipment to operate or faulty operation of equipment or system. Lessor shall not be held responsible for any direct or consequential damages or losses resulting from the installation, operation or use of the equipment, products or materials furnished by Lessor.
10. **ASSIGNMENT BY LESSEE AND ENCUMBRANCES.** Lessee shall have no right to assign this Lease or any item of equipment covered hereunder or any interest therein without the prior written consent of Lessor. Lessee shall not during the term of this Lease, sublease, mortgage or otherwise encumber, remove or suffer to be removed from the stipulated premises, or part with possession of, any item of leased equipment or any part thereof, or permit to attach or exist any landlords, mortgages, mechanics, judgment creditors, or other lien on any item of equipment, and if such lien shall so attach or exist, Lessor may (but shall not be required to) pay or discharge the same, and Lessee shall immediately reimburse Lessor therefor as additional rental under this Lease.
11. **ASSIGNMENT BY LESSOR.** Lessor may at any time assign to any bank, or other financial institution, or any person, firm, or corporation all or part of its right, title and interest in and to each item of equipment and monies to become due to the Lessor hereunder. In such event, all the provisions of this Lease for the benefit of Lessor shall inure to the benefit of and be exercised by or on behalf of such assignee, and all rental payments due and to become due under this Lease and assigned by Lessor shall be paid directly to assignee, upon notice of such assignment to Lessee, and the right of the assignee to the payment of assigned rentals hereunder shall not be subject to any defense, counterclaim or setoff which the Lessee may have or assert against the Lessor, to the extent permitted by law.
12. **LESSEE'S DEFAULT.** The following events shall constitute defaults on the part of the Lessee hereunder: The failure of the Lessee to pay any rental payment within fifteen (15) days after the date on which the same shall become due; any breach or failure of Lessee to observe or perform any of its other obligations hereunder and the continuance of such default for fifteen (15) days after notice in writing to Lessee of the existence of such default; the insolvency or bankruptcy of Lessee or the making by the Lessee of an assignment for the benefit of creditors, or the appointment of a trustee or receiver for the Lessee or for a substantial part of its property; the institution by or against Lessee of bankruptcy, reorganization, arrangement or insolvency proceedings. Upon the occurrence of any such default or in the event that Lessor deems this Lease or any item of equipment hereunder to be insecure, Lessor may, at its option, do any or all of the following:
  - (i) terminate this Lease or any equipment subject thereto;
  - (ii) whether or not this Lease or any equipment is terminated, take immediate possession of any or all of the equipment, wherein situate, with or without process of law, and for this purpose may enter upon any premises of the Lessee without liability for suit, action or other proceeding by Lessee and remove the same; and
  - (iii) sell, dispose of, hold, use or lease any machine as Lessor in its sole discretion may desire, without any duty to account to Lessee.In the event that Lessor exercises its right to take possession of the equipment, LESSEE HEREBY WAIVES NOTICE AND OPPORTUNITY FOR HEARING. Lessee shall remain fully liable for reasonable damages as provided by law, and for all costs and expenses incurred by Lessor on account of such default including court costs and reasonable attorneys' fees. Reasonable damages may include any or all of the following: (i) unpaid rentals and residual value of the equipment, (ii) loss of rental income and, (iii) any deficiency measured by the total of the unpaid rentals and residual value of the equipment less the amount, if any, realized by the lessor upon disposition of the equipment."
13. **SECURITY DEPOSIT.** The amount specified above as Security Deposit shall be held by Lessor in a segregated Security Deposit account as security for the performance by Lessee of all of its obligations hereunder and Lessor may, but shall not be obligated to, apply amounts in the Security Deposit to cure any default of Lessee hereunder, in which event Lessee agrees to promptly restore the Security Deposit to the full amount specified above. Upon termination of this Lease, if Lessee has fulfilled all of the terms and conditions hereunder, Lessor shall return to Lessee any remaining balance of the Security Deposit made by Lessee.
14. **AUTOMATIC RENEWAL OF LEASE.** If a renewal rental is specified above, the initial lease term and any renewal term shall be automatically extended for additional lease terms of one (1) year each at that renewal rental unless Lessee gives Lessor written notice of cancellation of this renewal provision at least thirty (30) days before the expiration of any lease term. Except as to the renewal rental, all provisions applicable to the initial lease term shall apply to the extended lease term or terms.
15. **GENERAL PROVISIONS.** This Lease constitutes the entire agreement of the parties and neither party shall be bound except in accordance herewith. Failure of Lessor to enforce any of its rights shall not constitute a waiver of such rights or of any other rights. All paragraph headings and titles are for convenience only and shall in no way be held to explain, modify, amplify or aid in the interpretation of the provisions hereof. Subject to the terms and conditions of this lease, Lessee shall quietly have and enjoy the use of the equipment described during the term of this lease without disturbance from Lessor or from any one claiming by, through or under Lessor. This lease shall not be binding on Lessor until the same, executed by Lessee, shall be received and executed by Lessor whereupon it shall become binding on and inure to the benefit of Lessor and Lessee and their respective heirs, personal representatives, administrators and assigns. No amendment or modification of this lease shall be

CORPORATE FORM OF ACKNOWLEDGEMENT

State of Delaware ss:

County of New Castle ss:

On this 22nd day of August, 1980, before me personally appeared John F. Manning, to me personally known, who being by me duly sworn, says that he is the Treasurer of Phoenix Steel Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

*John F. Manning*  
Treasurer  
*Charles J. Kattenfuss*  
\_\_\_\_\_  
Notary Public

(NOTORIAL SEAL)

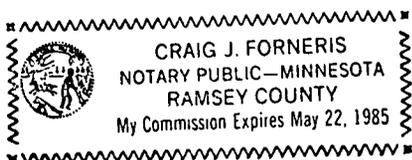
My commission expires May 25, 1983.

CORPORATE FORM OF ACKNOWLEDGEMENT

State of Minnesota ss:

County of Ramsey ss:

On this 18th day of August, 1980, before me personally appeared Allen M. Rudeen, to me personally known, who being by me duly sworn says that he is the Regional Manager of ITT Industrial Credit Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.



Craig J. Forneris  
Notary Public

(NOTORIAL SEAL)

My commission expires May 22, 1985.