

LAW OFFICES

ROSS & HARDIES

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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WASHINGTON, D.C. 20006-4103  
202-296-8600

No. 8-244A048  
Date AUG 31 1988  
Fee \$ 13<sup>00</sup>  
ICC Washington, D.C.

RECORDATION NO. 1 5797 FROM 1425  
August 30, 1988

AUG 31 1988-3 25 PM

INTERSTATE COMMERCE COMMISSION

VIA FEDERAL EXPRESS

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
12th Street and Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are one original executed copy and four copies of a Loan and Security Agreement, dated as of July 7, 1988 (a primary document as defined in the Commission's Rules for the Recordation of Documents).

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

Lender Irving Trust Company  
One Wall Street  
New York, New York 10015

Borrower MLB Consulting Corp.  
99 Cambridge Street  
Burlington, Massachusetts 01803

A description of the railroad equipment covered by the enclosed document is set forth on Schedule 1 to the Loan and Security Agreement.

Following is a short summary of the enclosed primary document:

100-244-048  
AUG 31 2 53 PM '88  
NOTIFICATION OF RECORDATION

Ms. Noreta R. McGee  
August 30, 1988  
Page 2

Loan and Security Agreement between Irving Trust  
Company and MLB Consulting Corp. dated July 7, 1988  
and covering up one locomotive owned by MLB  
Consulting Corp.

Kindly return four stamped copies of the enclosed Loan  
and Security Agreement in the envelope provided to T. Stephen  
Dyer, Esq., Ross & Hardies, 150 North Michigan Avenue, Chicago,  
Illinois 60601.

Enclosed is a check in the amount of \$13.00 payable to  
the order of the Interstate Commerce Commission covering the  
required recordation fee for the Loan and Security Agreement.

Very truly yours,

  
T. Stephen Dyer

TSD/lf  
Encl.

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

OFFICE OF THE SECRETARY

9/1/88

T. Stephen Dyer  
Ross & Hardies  
150 North Michigan Avenue  
Chicago, Illinois 60601

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 8/31/88 at 3:05pm, and assigned recordation number(s). 15797 & 15798

Sincerely yours,

*Nesta R. McGee*

Secretary

Enclosure(s)

orig. exec. doc.

1 5797

RECORDED IN \_\_\_\_\_ FILE NO.

AUG 31 1988-3 25 PM

INTERSTATE COMMERCE COMMISSION

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LOAN AND SECURITY AGREEMENT

BETWEEN

MLB CONSULTING CORP.

AND

IRVING TRUST COMPANY

DATED AS OF JULY 7, 1988

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LOAN AND SECURITY AGREEMENT

This LOAN AND SECURITY AGREEMENT dated as of the 7th day of July, 1988, by and between MLB CONSULTING CORP., a Delaware corporation ("Borrower") and IRVING TRUST COMPANY ("Lender").

W I T N E S S E T H:

WHEREAS, the defined terms in Exhibit A annexed hereto are hereby incorporated herein;

WHEREAS, Lender proposes to finance a portion of Borrower's cost for one (1) EMD GP-38 locomotive marked MLB/3804 (the "Locomotive"), such financing to be secured by Borrower's grant to Lender of a security interest in the Locomotive and to be evidenced by Borrower's Promissory Note, dated July 7, 1988.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

A. THE LOAN

A.1. The Loan. Subject to fulfillment of the terms and conditions specified herein, Borrower agrees to borrow from Lender, and Lender agrees to lend to Borrower on the Closing Date \$80,899.62. On the Closing Date, Borrower shall execute and deliver to Lender, to evidence the loan to be made to Borrower on

such date, its promissory note (the "Note") in substantially the form attached hereto as Exhibit B. The loan evidenced by the Note shall be payable in accordance with the terms of the Note.

A.2. Conditions Precedent to Loan on Closing Date. The obligation of Lender to make the loan hereunder on the Closing Date shall be subject to fulfillment of the following conditions to the satisfaction of Lender and its counsel:

(a) On or prior to the Closing Date, fully executed copies of the following documents shall have been delivered to each party thereto with executed counterparts delivered to Lender:

- (i) this Agreement;
- (ii) the Note;
- (iii) the Conditional Sale Agreement (the "CSA"), dated as of July 7, 1988, between Borrower and Kiamichi Railroad Company, Inc., in substantially the form of Exhibit C hereto;
- (iv) the Agreement and Assignment (the "Assignment"), dated as of July 7, 1988, between Borrower and Lender, in substantially the form of Exhibit D hereto;
- (v) the Acknowledgment of Notice and Assignment, dated as of July 7,

1988, from Kiamichi (the "Acknowledgment") in substantially the form of Exhibit E hereto;

(vi) the Guaranty, dated as of July 7, 1988, from Richard A. Peters, President of Borrower, to Lender (the "Guaranty"), in substantially the form of Exhibit F hereto; and

(vii) such other documents as Lender may reasonably require.

(b) On or prior to the Closing Date, Lender shall also have received:

(i) certificates of such insurance as Borrower is required to maintain pursuant to this Loan Agreement;

(ii) certified copies of the appropriate proceedings of the respective boards of directors of Borrower and Kiamichi with respect to this Agreement, the Note, the CSA, the Assignment, the Acknowledgment and the other instruments contemplated herein and therein and to the execution, delivery and performance thereof by the respective parties;

(iii) certified copies of the corporate organizational documents of Borrower and Kiamichi;

- (iv) a signed opinion dated the Closing Date of such legal counsel for Borrower as is acceptable to Lender in the form of Exhibit G hereto and such other opinions of counsel covering matters incidental to the transactions contemplated by this Agreement and the CSA as Lender may reasonably request;
- (v) evidence of filing of this Agreement, the CSA and the Assignment with the ICC pursuant to 49 U.S.C. §11303, together with a search request indicating that Lender's security interest in the Locomotive is a valid first priority security interest except for any other prior liens of Lender shown of record; and
- (vi) such other approvals, certificates, agreements and other documents as are listed on the closing list prepared in connection with the transactions contemplated hereby and by the CSA and as Lender may reasonably request.

(c) The representations and warranties of Borrower contained herein, of Kiamichi contained in the CSA and in the Acknowledgment and of each such party in any certificate delivered pursuant hereto shall be true and correct on and as of

the Closing Date with the same effect as though made on and as of the Closing Date, and on the Closing Date there shall be no default hereunder or under the CSA, or the occurrence of any event which, but for the lapse of time or the giving of notice, or both, would constitute such a default; and Lender shall have received on or prior to the Closing Date from Borrower and Kiamichi certificates to such effect dated the Closing Date, signed, respectively, by an officer of Borrower and Kiamichi;

(d) Lender shall have received such evidence of fulfillment of the foregoing conditions of this Section A.2 including, without limitation, certificates of officers of Borrower and Kiamichi, public officials and others, as Lender or its counsel may reasonably require to establish to their satisfaction the fulfillment of such conditions.

(e) Lender's obligation to make the loan (i) shall not be prohibited by any applicable law or governmental regulation, including, without limitation, Regulation G, T, U or X of the Board of Governors of the Federal Reserve System, (ii) shall not subject Lender to any penalty or, in its reasonable judgment, other onerous condition under or pursuant to any applicable law or governmental regulation, and (iii) shall be permitted by the laws and regulations of the jurisdictions to which Lender is subject. If requested by Lender, Borrower shall have delivered to Lender factual certificates or other evidence reasonably available to Borrower, in form and substance satisfactory to Lender, to enable Lender to establish compliance with this con-

dition, to the extent such compliance relates to the nature, condition, action or inaction of Borrower.

(f) On or prior to the Closing Date, Lender (or its designee) shall have inspected the Locomotive and Lender shall, in its sole discretion, be satisfied with the results of the inspection of the Locomotive.

A.3. Representations, Warranties and Covenants.

Borrower represents, warrants and covenants that:

(i) Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its property and carry on its business as currently conducted and is duly qualified to do business in such other jurisdictions in which the failure so to qualify would have a material adverse effect upon the financial condition of the Borrower;

(ii) Borrower is conducting its business in such a manner as to comply with all applicable laws and regulations of the United States of America, the several states and the District of Columbia and any subdivision of any thereof wherein Borrower is doing business and of all governmental agencies and authorities of any thereof having jurisdiction in the premises where the failure to so comply would have a material adverse affect on the business, present or prospective, or the operations, property, assets or condition, financial or otherwise, of Borrower;

(iii) Borrower has the full power and authority to execute, deliver and perform this Agreement, the CSA, the Assignment and the Note;

(iv) This Agreement, the CSA and the Assignment have each been duly authorized, executed and delivered by Borrower and assuming due authorization, execution and delivery by the other parties thereto constitute the legal, valid and binding obligations of Borrower enforceable against it in accordance with their respective terms;

(v) The Note has been duly authorized and executed by Borrower and delivered by Borrower to Lender, and constitutes the legal, valid and binding obligation of Borrower enforceable against it in accordance with the terms thereof, subject to the limitations as to enforceability contained therein;

(vi) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Borrower of this Agreement, the CSA, the Assignment or the Note, except for the filing of this Agreement, the CSA and the Assignment with the ICC pursuant to 49 U.S.C. §11303 and the filing of UCC-1 financing statements with the town clerk of Burlington, Massachusetts, the office of the Secretary of the Commonwealth of Massachusetts and the office of the County Clerk of Oklahoma County, Oklahoma;

(vii) Neither the execution, delivery or performance by Borrower of this Agreement, the CSA, the Assignment and the Note, nor compliance with the terms and provisions thereof, conflicts or will conflict with or will result in a breach or violation of any of the terms, conditions or provisions of any law,

governmental rule or regulation or the charter documents, as amended, or by-laws, as amended, of Borrower or any order, writ, injunction or decree of any court or governmental authority against Borrower or by which it or any of its properties is bound, or of any indenture, mortgage or contract or other agreement or instrument (except for the Loan and Security Agreement dated as of July 13, 1987 between Borrower and Lender) to which Borrower is a party or by which it or any of its properties is bound, or constitutes or will constitute a default hereunder or will result in the imposition of any lien not permitted hereby upon any of its properties;

(viii) Borrower has good and lawful title to the Locomotive and the good and lawful right to assign the same to Lender, free from all claims, liens, security interests and other encumbrances, except Permitted Encumbrances; and when this Agreement is filed with the ICC, it will represent a valid first priority, perfected lien on and first priority, perfected security interest in the Locomotive superior to the rights of all third persons. To the best of Borrower's knowledge, the Locomotive is in good condition and repair and adequate for the use to which it is being put;

(ix) Neither Borrower nor, to its knowledge, anyone acting on its behalf, has directly or indirectly offered the Note, or similar securities relating to the Locomotive, for sale to, or solicited any offer to acquire any of the same from, anyone other than Lender;

(x) The execution and delivery by Borrower of this Agreement, the CSA, the Assignment and the Note will not involve any prohibited transaction within the meaning of ERISA or Section 4975 of the Code;

(xi) This Agreement, the CSA and the Assignment will be, prior to the Closing Date, duly filed with the ICC pursuant to 49 U.S.C. §11303 and UCC-1 financing statements have been filed with respect thereto in the office of the town clerk of Burlington, Massachusetts, the office of the Secretary of the Commonwealth of Massachusetts and the office of the County Clerk of Oklahoma County, Oklahoma;

(xii) Except for the filings referred to in paragraph (xi) hereof and except for filings related to Permitted Encumbrances, there are no security agreements, financing statements or notices signed by Borrower on file in any appropriate public office naming Borrower as debtor and purporting to create or perfect a security interest in the Collateral (as defined hereinafter), and no other filing, depositing or recordation is necessary (A) for the protection of the title of Borrower to the Collateral in any State of the United States of America or the District of Columbia or (B) for the perfection of the lien and security interest of Lender under this Agreement as against creditors of and purchasers from Borrower;

(xiii) Borrower shall maintain a net worth, as determined in accordance with generally accepted accounting principles consistently applied, of not less than \$300,000 at all times

during which this Agreement is in effect and the Note is outstanding;

(xiv) Borrower shall, at all times during which this Agreement is in effect, maintain deposit accounts with Lender having an aggregate minimum balance of not less than \$25,000;

(xv) Borrower shall not make deposits or withdrawals from any of Borrower's deposit accounts for the benefit of any Affiliates or related persons and shall not make loans, distributions, dividends, advances or other transfers of any kind to any Affiliates or related persons, or guarantee or otherwise become responsible for the obligations of Affiliates or related persons, which deposits, withdrawals, loans, distributions, dividends, advances, guarantees and other transfers exceed \$50,000 in the aggregate for all such transactions until such date as the Locomotive is leased to a third party on terms and conditions reasonably acceptable to the Lender, and after such date, the amount of such deposits, withdrawals, loans, distributions, dividends, advances, guarantees and other transfers shall not exceed at any time, in the aggregate for all such transactions, the lesser of (a) \$200,000 or (b) the amount of balance sheet assets of the Borrower less (i) the amount of balance sheet liabilities of the Borrower and (ii) the aggregate amount of exposure on such deposits, withdrawals, loans, distributions, dividends, advances, guarantees and other transfers.;

(xvi) Within 90 days of the Closing Date, Borrower will lease the Locomotive to a third party on terms and conditions reasonably acceptable to Lender; and

(xvii) All statements contained in any certificate, document, financial statement or other instrument delivered by or on behalf of Borrower pursuant to or in connection with this Agreement shall be deemed to constitute representations and warranties under Section A.3 of this Agreement. All of Borrower's representations and warranties under this Agreement shall survive the execution and delivery of the same, any investigation by Lender and the issuance of the Note.

A.4 Mandatory Prepayment In The Event Of Casualty Occurrence. In the event that the Locomotive shall be lost, stolen, destroyed, irreparably damaged or otherwise determined to be permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a "Casualty Occurrence"), Borrower shall promptly and fully inform the Lender in regard thereto (but no later than 10 days after it has knowledge of such Casualty Occurrence). Borrower, within 60 days after it has knowledge of such event, shall promptly pay to Lender a sum equal to the outstanding principal amount of the loan hereunder plus interest accrued through the date of payment.

A.5 Insurance. Borrower will at all times prior to the payment in full of the indebtedness hereunder, together with interest thereon, and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Locomotive at the time subject hereto in amounts and against risks customarily insured against by railroad com-

panies on similar equipment, and in any event in amounts and against risks comparable to those insured against by Borrower on similar equipment owned by it. In addition, Borrower shall maintain liability insurance with respect to the Locomotive in amounts customarily insured against by railroad companies. Borrower agrees to obtain and maintain all such insurance with third party, unaffiliated insurers reasonably satisfactory to Lender.

Except for liability insurance in respect of which Lender shall be named as a co-insured with Borrower, all such insurance shall be taken for the benefit of Lender, as its interest may appear, and shall name Lender as loss payee and provide that the proceeds of such insurance shall be payable to Lender. In addition, all such insurance shall provide for at least thirty (30) days' written notice to Lender prior to the termination, cancellation or modification of said insurance. Borrower shall furnish to Lender certificates or other satisfactory evidence of the maintenance of the insurance required hereunder.

Insurance proceeds received by Lender with respect to the Locomotive (a) in the case of a Casualty Occurrence, shall be applied by Lender towards the satisfaction of Borrower's obligation to prepay the loan in full or (b) in the case of repairable damage or loss to the Locomotive not constituting a Casualty Occurrence and for so long as no event of default shall have occurred and be continuing hereunder, will be paid by Lender to

Borrower upon receipt by Lender of proof of the proper repair of such damage or loss, with all such repairs made within industry standards. Except as provided in the preceding sentence, all insurance proceeds received by Lender with respect to the Locomotive shall be applied by Lender in respect of the payment of the indebtedness hereunder, accrued and unpaid interest thereon, and other amounts owing to Lender hereunder, applying such proceeds first to interest and then to principal payments in inverse order of maturity.

A.6. Maintenance; Compliance with Laws and Rules. Borrower will at all times maintain the Locomotive or cause the Locomotive to be maintained in good order and repair at its own expense.

A.7. Financial Statements. Borrower shall maintain proper books of record and account, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all its business and affairs. Borrower shall furnish or cause to be furnished to Lender, as soon as practicable after the end of each fiscal year of Borrower, and in any event within 90 days thereafter, copies of audited financial statements of Borrower (including a consolidated balance sheet of Borrower at the end of such year and consolidated statements of income and retained earnings of the Borrower for such year), all in reasonable detail, accompanied by an opinion thereon of independent certified public accountants, which opinion shall state that such consolidated financial statements fairly present

the financial condition of Borrower, that such statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements had been made in accordance with generally accepted auditing standards, and accordingly, included such tests of accounting records and such other auditing procedures as were considered necessary in the circumstances.

Each set of financial statements so delivered will be accompanied by a certificate of the chief executive officer of Borrower certifying that said financial statements are true, complete and correct and that they fairly represent the financial position and results of operations of Borrower at and for the period indicated and that such officers have reviewed the relevant terms of this Agreement and there does not exist, as at the end of such reporting period, any condition or event which constitutes a default or an event of default under this Agreement or, if any such condition or event exists, specifying the nature thereof and what action Borrower has taken or proposes to take with respect thereto.

Borrower shall also furnish or cause to be furnished to Lender, as soon as practicable after the end of each fiscal quarter of Borrower, and in any event within 45 days thereafter, copies of unaudited financial statements as at the end of such quarter, accompanied by a certificate of the chief executive

officer of Borrower to the effect set forth in the preceding paragraph.

## B. SECURITY

B.1. Grant of Security. (a) In order to secure the prompt payment of the principal of and interest on the Note (whether now or hereafter outstanding) and of all other moneys payable and to be payable to Lender under this Agreement (collectively the "Indebtedness"), and the timely and faithful performance and observance by Borrower of all of the agreements, covenants and provisions contained in this Agreement and the Note, Borrower has granted, conveyed, pledged, sold, mortgaged, assigned, transferred and set over a security interest, and does hereby grant, convey, pledge, sell, mortgage, assign, transfer and set over a lien on and continuing security interest, unto Lender in (i) the Locomotive; (ii) Borrower's interest in accessions, accessories, equipment, appurtenances and replacement and added parts appertaining or attached to the Locomotive, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to the Locomotive described in items (i) and (ii) above being hereinafter sometimes collectively called the "Security Equipment"), together with all the rents, issues, income, profits, proceeds and avails therefrom and the proceeds thereof; (iii) all proceeds (including, without

limitation, insurance and indemnity payments) from the sale, loss or other disposition of the Security Equipment; (iv) all rights, claims and causes of action, if any, which Borrower may have against any manufacturer, rebuilder or seller of the Security Equipment (or any component thereof) or any other party, by contract or otherwise, in respect of any defect in the Security Equipment; (v) the bill of sale (the "Bill of Sale") pursuant to which the Locomotive was purchased, together with all of Borrower's estate, right, title, interest, claims and demand in, to and under said Bill of Sale, including all extensions of any of the terms thereof, together with all rights, powers, privileges, options, and other benefits of Borrower, including without limitation the right to receive notices, give consents, exercise any election or option, declare defaults and demand payments under said Bill of Sale, and (vi) all rent, damages and other moneys from time to time payable to or receivable by Borrower in respect of the Security Equipment (such Security Equipment, proceeds, rights, claims, causes of action and the Bill of Sale described in items (i) through (vi) above being herein sometimes collectively called the "Collateral"), to have and to hold all and every part of the Collateral unto Lender, and its successors and assigns, for its and their own use and benefit forever;

(b) PROVIDED FURTHER, and these presents are on the condition that, if Borrower, or its successors or assigns, shall pay or cause to be paid to Lender all of the indebtedness hereunder in accordance with its terms, as provided in this Agreement

and the Note and shall well and faithfully perform and observe all of the agreements, covenants, and provisions hereof and thereof at the time and in the manner specified, then all rights herein assigned to Lender shall cease and terminate, all estate, right, title and interest of Lender in and to the Collateral shall revert to Borrower and this Agreement and rights and powers granted herein and hereby shall cease to be binding and shall be of no further force and effect; and

(c) PROVIDED FURTHER, that, subject to the terms and provisions hereof and unless otherwise stated herein, Borrower may retain possession, use and enjoyment of the Collateral as long as no Default shall have occurred and be continuing.

B.2. Lender as Agent. Subject to Section B.1 hereof, Borrower hereby appoints Lender, and its successors and assigns, the true and lawful attorney of Borrower, irrevocably and with full power of substitution, in the name of Borrower or otherwise, to demand, receive, compromise, sue for, and give acquittance for, any and all rentals, profits, moneys and claims for money due and to become due with respect to the Security Equipment or arising out of this Article B, to endorse any checks or other instruments or orders in connection therewith, to make all waivers and agreements and to file any claims or take any actions or institute any proceedings with respect thereto which Lender may deem reasonably necessary or advisable. Anything herein contained to the contrary notwithstanding, neither Lender nor its nominee or assignee shall have any obligation or liability by

reason of or arising out of this Article B to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amount to which it may be entitled at any time or times by virtue of this Article B.

B.3. Perfecting Security. Borrower hereby represents and warrants that as of the Closing Date (and after giving effect to any filings which Lender has advised Borrower it has previously made) all recordings and filings shall have been made which are necessary or appropriate to perfect Lender's interest in the Collateral, including, without limitations, recordings and filings with the ICC and with the appropriate state and local UCC filing offices, and that no other filings, recordings, depositing or giving of notice is necessary in order to protect the rights of Lender in and to the Collateral. Borrower shall, from time to time and at its own expense, promptly execute, acknowledge, witness, deliver and file and/or record, or procure the execution, acknowledgment, witnessing, delivery and filing and/or recordation of, such documents or instruments, and shall take or cause to be taken such other actions, as Lender may reasonably request for the perfection against Borrower and all third parties whomsoever of the security interest created by this Article B, of the rights and powers herein granted to Lender and for the continuation and protection thereof and promptly give to Lender evidence satisfactory to Lender of such delivery and filing and/or recording. Without limiting the generality of the

foregoing, Borrower shall from time to time and at any time execute, acknowledge, witness and deliver such financing and continuation statements, notices and additional security agreements, make such notations on its records and take such other action as Lender may reasonably request for the purpose of so perfecting, maintaining and protecting such security interest of Lender, and shall cause this Agreement and each such financing and continuation statements, notices and additional security agreements to be filed or recorded in such manner and in such places as may be required by applicable law and as Lender may reasonably request for such purpose. Borrower hereby authorizes Lender to effect any filing or recording which Lender has requested pursuant to this Section B.3 without the signature of Borrower to the extent permitted by applicable law. The costs and expenses of Lender with respect to such actions shall be payable by Borrower on demand.

B.4. After-Acquired Property. Any and all property described or referred to in Section B.1 hereof which is hereafter acquired shall, without any further conveyance, assignment or act on the part of Borrower or Lender, become and be subject to the security interest herein granted as fully and completely as though specifically described herein. Borrower shall, at its expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired.

B.5. Usage. So long as no Default shall have occurred and be continuing, Borrower shall be entitled to the possession and use of the Locomotive wholly within the Continental United States in accordance with the terms of this Agreement.

B.6. Marking of Equipment. Borrower shall, at its expense, cause the Locomotive to be kept numbered with the identifying road number set forth in Schedule 1 hereto, or in the case of any item of equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotive, the words "Ownership Subject to a Security Agreement filed with the Interstate Commerce Commission," or other appropriate markings approved in writing by Lender, with appropriate changes thereof in order to protect Lender's security interest in the Locomotive and its rights under this Agreement. Borrower shall, at its expense, replace promptly any such markings which may be removed, defaced, obliterated or destroyed and shall not change the number of the Locomotive except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Lender and filed, recorded and deposited by Borrower in all public offices where this Agreement shall have been filed, recorded and deposited.

B.7. Registration of Equipment. Borrower shall, at its expense, register or cause to be registered the Locomotive and

any substitute<sup>e</sup> equipment in accordance with any and all applicable federal, state, and local registration requirements of the AAR and the ICC or any of their successor organizations.

B.8 Protection of Security. Borrower shall not:

(a) permit any of the Collateral to be levied upon under legal process or to fall under any other lien or encumbrance of whatever nature arising as a result of claims against Borrower, except Permitted Encumbrances; and

(b) except with the prior written consent of Lender and upon the terms and conditions, if any, specified in such consent, sell, assign (including by virtue of assignments by operation of law), mortgage, pledge or otherwise transfer or encumber any of the Collateral (except as contemplated herein) or take any action which would permit any party other than Lender to perfect any security interest in the Collateral, whether for purchase money or otherwise.

B.9 Indemnity for Acts and Omissions of Borrower.

Borrower covenants and agrees with Lender that in any suit, proceeding or action brought or taken by Lender under this Agreement, the CSA, the Assignment or any bill of sale relating to the Security Equipment, Borrower will save, indemnify and keep Lender harmless from and against all expense (including legal fees), loss or damage suffered by Lender as a result of any action, or failure to act, of Borrower.

B.10 Taxes. Borrower will pay all taxes in connection with the issuance, sale or delivery of the Note and the execution

and delivery of this Agreement and any other agreements and instrument contemplated hereby and any modification of the Note, this Agreement or such other agreements and instruments and will save Lender harmless, without limitation as to time, against any and all liabilities with respect to all such taxes. Borrower will also pay all other taxes, assessments or charges which may be levied on the Note or interest thereon, except any income tax imposed under the laws of the United States of America or of any foreign country, and will save the Lender harmless, without respect to all such taxes, assessments or charges. The obligations of Borrower under this Section B.10 shall survive the payment or prepayment of the Note and the termination of this Agreement.

B.11 Disclaimer by Lender. Lender makes no representations or warranties with respect to the Collateral or any part thereof; Lender shall not be chargeable with any obligations or liabilities of Borrower with respect thereto; and Lender shall have no liability or obligation arising out of any such claims, known or unknown, with respect to the Collateral.

### C. DEFAULT

C.1. Defaults. The following events are defaults hereunder:

(a) Borrower shall fail to pay an installment of the principal of or interest on the Note within ten (10) days after

the same shall be due and payable, whether at the due date thereof, by acceleration, as part of a prepayment or otherwise;

(b) Borrower shall default in performance of its obligations under this Agreement and such default shall continue for ten (10) days after written notice thereof to Borrower from Lender;

(c) Any representation or warranty on the part of Borrower made herein or in any report, certificate, financial or other statement furnished in connection with this Agreement or the transactions contemplated herein shall prove to have been false or misleading in any material respect when made;

(d) Any claim, lien or charge shall be asserted against or levied or imposed upon the Collateral which is prior to or on a parity with the security interest granted hereunder, and such claim, lien or charge shall not be discharged or removed, or bonded against to the reasonable satisfaction of Lender, within ten (10) days after written notice from Lender to Borrower demanding the discharge or removal thereof;

(e) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against Borrower and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Borrower under this Agreement shall not have been (and shall not continue to have been) duly assumed in

writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within sixty (60) days after the commencement of such proceedings or otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(f) any other proceedings shall be commenced by or against Borrower for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Borrower under this Agreement shall not have been (and shall continue not to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Borrower or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within sixty (60) days after such proceedings shall have been commenced.

C.2. Effect of a Default.

(a) Remedies. Upon the occurrence of any Default and at any time thereafter so long as the same shall be continuing, Lender may, at its option, do any one or more or all of the following acts, as Lender in its sole and complete discretion may then elect:

(i) by written notice to Borrower declare the entire principal amount of the Note to be due and payable, forthwith, whereupon the Note shall become due and payable, both as to principal and interest, without presentment, demand or protest of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding;

(ii) institute legal proceedings to foreclose upon and against the security interest granted herein to recover judgment for all amounts then due and owing as indebtedness hereunder, and to collect the same;

(iii) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any of the Collateral;

(iv) institute legal proceedings for the appointment of a receiver or receivers pending foreclosure hereunder or the sale of any of the Collateral under the order of a court of competent jurisdiction or under other legal process;

(v) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part

thereof may then be located, and take possession of all or any part thereof or render it unusable, and, without being responsible for loss or damage, hold, store and keep idle, or operate, lease or otherwise use or permit the use of the same or any part thereof for such time and upon such terms as Lender may determine, in a commercially reasonable manner;

(vi) personally, or by agents or attorneys, enter into and upon any premises wherein the Collateral or any part thereof may then be located, and take possession of all or any part thereof with or without process of law and without being responsible for loss or damage and sell or dispose of all or any part of the same, free from any and all claims of Borrower or of any other party claiming by, through or under Borrower at law, in equity or otherwise, at one or more public or private sales, in such place or places, at such time or times and upon such terms as Lender may determine, in a commercially reasonable manner with or without any previous demand on or notice to Borrower or advertisement of any such sale or other disposal, except that Lender shall provide Borrower with at least ten (10) days prior notice of such sale by certified mail, return receipt requested; and for the aforesaid purposes, all other notice of sale, advertisement and demand and any right or equity of redemption otherwise required by, or available to Borrower under, applicable law are hereby waived by Borrower to the fullest extent permitted by applicable law; the power of sale hereunder shall not be

exhausted by one or more sales, and Lender may from time to time adjourn any sale to be made hereunder;

(vii) demand, collect, and retain all rentals, earnings and all other sums due and to become due pursuant to subsections (v) or (vi) of this Section C.2(a) from any party whomsoever, accounting only for net earnings arising after charging against all receipts from the use of or sale of the Collateral, all costs and expenses of, and damages or losses by reason of, such use or sale power;

(viii) if and to the extent the Default results from a breach by Borrower of any representation, warranty or covenant of Borrower contained herein, institute legal proceedings against Borrower to enforce performance of the applicable covenant of Borrower or to recover damages for the breach of any such representation, warranty or covenant; and

(ix) exercise any other right, power, privilege or remedy which may be available to a secured party under the Uniform Commercial Code or any other applicable law.

(b) Notice. If Lender must give prior notice to Borrower of any of the foregoing acts, Borrower hereby covenants and agrees that a notice sent to it in writing by certified mail, return receipt requested, at least ten (10) business days before the date of any such act (or such longer period as may be required by applicable law), at its address provided hereunder shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time and place of

any public sale hereunder and the time after which any private sale or other intended disposition is to be made hereunder.

(c) Application of Proceeds. The proceeds from the sale of the Collateral pursuant to any of the provisions of this Section C.2 shall be applied by Lender as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all proper expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by the Lender, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment to the Lender of the amounts of principal and accrued interest unpaid on the Note; and in case such proceeds shall be insufficient to pay in full the amount unpaid on the Note, then ratably according to the aggregate of such principal and the accrued and unpaid interest, if any, with application on each Note to be made, first, to the unpaid interest thereof, and thereafter to the unpaid principal payments thereof in inverse order of maturity; and

(c) Third, to the payment of the surplus, if any, to Borrower, its successors and assigns, or to whosoever may be lawfully entitled to receive the same.

C.3. Waiver by Borrower. To the fullest extent that it may lawfully so agree, Borrower shall not at any time insist upon, claim, plead, or take any benefit or advantage of, any

appraisal, valuation, stay, extension, moratorium, redemption or any similar law now or hereafter in force in order to prevent, delay or hinder the enforcement of this Agreement or the absolute sale of any part or all of the Collateral or the possession thereof by any purchaser at any sale pursuant to Section C.2 above; and Borrower, for itself and all who may claim through it, as far as it or they now or hereafter lawfully may so do, hereby waives the benefit of all such laws and all right to have the Collateral marshalled upon any foreclosure hereof, and agrees that any court having jurisdiction to foreclose under this Agreement may order the sale of the Collateral as an entirety.

C.4. Right to Purchase Collateral. At any sale pursuant to Section C.2 hereof, Lender or its agent may, to the extent permitted by applicable law, bid for and, if Lender is the highest bidder, purchase the Collateral offered for sale, may use any claim for Indebtedness payable to it as a credit against the purchase price and, upon compliance in full with the terms of such sale, may hold, retain and dispose of such property without further accountability therefor to Borrower or any other party.

C.5. Cumulative Rights. Each right, power and remedy herein specifically granted to Lender or otherwise available to it shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or otherwise; and each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to

time, as often and in such order as may be deemed expedient by Lender in its sole and complete discretion; and the exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by Lender in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of Borrower or an acquiescence therein. No waiver by Lender of any breach or default of or by Borrower under this Agreement shall be deemed to be a waiver of any other or similar, previous or subsequent breach or default.

#### D. MISCELLANEOUS

D.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors and assigns, provided that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender.

D.2. Governing Law, Amendments, and Counterparts. The terms of this Agreement and all rights and obligations of the parties hereto shall be governed by the laws of the State of New York, without regard to its conflicts of law doctrine. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought. This Agree-

ment may be executed in any number of counterparts and by the parties hereto on separate counterparts, but all of such counterparts shall together constitute a single instrument.

D.3. Fees and Expenses. Borrower agrees to pay all of Lender's reasonable out-of-pocket expenses relating to the negotiation, execution, delivery and preparation of this Agreement and the Note, including recording costs and filing fees in respect of documents filed or recorded with the ICC and the fees and disbursements of Ross & Hardies, special counsel for Borrower; provided, however, that prior to an Event of Default hereunder Borrower shall not be required to pay any charge imposed by Lender for the time of Lender's in-house counsel.

D.4. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered:

if to Borrower, at its address at

MLB Consulting Corp.  
99 Cambridge Street  
Burlington, Mass. 01803  
Attention: Richard Peters

and if to Lender, at its address at

Irving Trust Company  
One Wall Street  
New York, N.Y. 10015  
Attention: Transportation Department

with copies to:

Robert W. Kleinman, Esq.  
Ross & Hardies  
150 N. Michigan Avenue  
Suite 2500  
Chicago, Illinois 60601

All such notices shall be deemed given upon delivery to an officer of Borrower or Lender, as the case may be, or three days after deposit into the United States mail, certified mail, return receipt requested, postage prepaid and addressed to the address indicated herein for such party or to such other address as such party may designate in writing pursuant hereto.

D.5. Survival. All warranties, representations, agreements and covenants made by Borrower herein or in any certificate or other instrument delivered by Borrower shall be considered to have been relied upon by Lender hereto and shall survive the consummation of the transactions contemplated hereby regardless of any investigation made by Lender or on behalf of Lender. All statements in any such certificate or other instrument shall constitute warranties and representations by Borrower to the same effect as if set forth herein.

D.6. Headings and Tables of Contents. The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

D.7. Entire Agreement. This Agreement, together with the Note, is intended by the parties as a final expression of

their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein and therein. This Agreement, together with the Note, supercedes all prior agreements and understanding between the parties with respect to such subject matter.

D.8. Attorneys' Fees. In any action or proceeding brought to enforce any provision of this Agreement or the Note, or where any provision hereof or thereof is validly asserted as a defense, the successful party shall be entitled to recover reasonable attorneys' fees in addition to any other available remedy.

D.9. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all of the Lender's rights and privileges shall be enforceable to the fullest extent permitted by law.

D.10. Reproduction of Documents. This Agreement and all documents relating hereto, including without limitation  
(a) consents, waivers and modifications which may hereafter be

executed, (b) documents received on or as of the Closing Date, and (c) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process; and such party may destroy any original document so reproduced, all at the cost of such party. The parties hereto agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement as of the date first written above.

[CORPORATE SEAL]

Attest:

James C. R. Bullock  
Authorized Officer

MLB CONSULTING CORP., Borrower

By [Signature]  
Title: PRESIDENT

IRVING TRUST COMPANY, Lender

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

executed, (b) documents received on or as of the Closing Date, and (c) financial statements, certificates and other information previously or hereafter furnished to any party hereto, may be reproduced by such party by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process; and such party may destroy any original document so reproduced, all at the cost of such party. The parties hereto agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

IN WITNESS WHEREOF, the parties hereto have executed this Loan and Security Agreement as of the date first written above.

[CORPORATE SEAL]

MLB CONSULTING CORP., Borrower

Attest:

\_\_\_\_\_  
Authorized Officer

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

IRVING TRUST COMPANY, Lender

By *Jeffrey Foreman*  
Title *Assistant Vice President*





EXHIBIT A  
DEFINED TERMS

The terms defined in the Loan where used therein shall have the same meanings as set forth herein unless the context otherwise requires.

"AAR" shall mean the Association of American Railroads or any successor organization.

"Affiliate" shall have the same meaning prescribed by Rule 12b-2 of the regulations promulgated pursuant to the securities Exchange Act of 1934, as amended.

"Closing Date" shall mean date on which the loan is funded.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Default" shall mean any of the defaults described in Section C.1 hereof.

"Default Interest Rate" shall mean the greater of 13% per annum or 125% of the rate per annum which Irving Trust Company, New York, New York publicly announces from time to time as its prime rate as in effect from time to time, but in no event greater than 18% per annum.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ICC" shall mean the Interstate Commerce Commission or any successor organization.

"Kiamichi" shall mean Kiamichi Railroad Company, Inc., a Delaware corporation.

"Permitted Encumbrances" shall mean with respect to the Locomotive: (i) the security interest created by this Agreement; (ii) the security interest created by the Loan and Security Agreement, dated July 13, 1987, between Borrower and Lender; (iii) liens for taxes either not yet due or being contested in good faith and by appropriate proceedings diligently conducted so long as such proceedings shall stay the enforcement thereof and the sale or forfeiture of the Locomotive or any part thereof or interest therein and (iv) undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or employees' liens or other like liens arising in the ordinary course of business and securing obligations which are not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension).

EXHIBIT B

PROMISSORY NOTE

PROMISSORY NOTE

\$80,899.62

Dated: June 30, 1988

FOR VALUE RECEIVED, MLB CONSULTING CORP., a Delaware corporation ("Borrower"), hereby promises, subject to conditions hereinafter set forth, to pay to the order of IRVING TRUST COMPANY ("Lender"), at the principal office of Lender at One Wall Street, New York, N.Y. 10015, or such other place as the holder hereof shall from time to time specify to Borrower, the principal amount of \$80,899.62 in lawful money of the United States, together with interest, in like money, from the date hereof (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid principal amount hereof from time to time outstanding at the rate of 10.44 percent per annum.

It is intended that, pursuant to this Note, Borrower will be obligated to make the payments which would otherwise be made by Borrower pursuant to the provisions of that certain Nonrecourse Promissory Note, dated as of July 24, 1987 (and being cancelled simultaneously with the execution of this Note), to the extent relating to one EMD GP-38 Locomotive owned by Borrower and marked MLB/3804.

This Note shall be payable in consecutive monthly installments of principal and interest, on the dates, in the aggregate amounts, and in the component amounts of principal and interest, as are set forth on Schedule A hereto, provided that in all events the last such payment of principal and interest shall

be in an amount sufficient to discharge the accrued interest on, and the unpaid principal of, this Note.

This Note is the Note referred to in, and is entitled to the benefit of, the Loan and Security Agreement, dated as of June 30, 1988 ("Agreement"), between Borrower and Lender. The Note is secured by a grant of security made by Borrower to Lender pursuant to the Agreement. Reference is hereby made to the Agreement for a description of the property assigned, the nature and extent of the security and the rights of Lender in respect of such security.

This Note, to the extent permitted by applicable law, shall bear interest at the Default Interest Rate (as defined in the Agreement) on any part of the principal or interest hereof not paid when due for any period during which the same shall become overdue. If any payment of principal or interest on this Note shall become due on a Saturday, Sunday or any other day in which banking institutions in the State of New York are closed for business, such payment shall be made on the next succeeding business day. All payments hereunder shall be applied first, to the payment of accrued and unpaid interest and second, to the payment of principal.

The Note is subject to mandatory prepayment and the maturity of the Note may be accelerated, all as provided in the Agreement. Borrower hereby waives presentment, demand or protest of any kind otherwise required in connection with the payment of principal of or interest on the Note or the acceleration of

maturity, notice of nonpayment, notice of protest and notice of dishonor. This Note shall be construed in accordance with and governed by the laws of the State of New York.

Borrower:

MLB CONSULTING CORP.

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

Title: \_\_\_\_\_

SCHEDULE A

NOTE PAYMENT DATE	INTEREST EXPENSE	PRINCIPAL PAYMENT	TOTAL PAYMENT	PRINCIPAL BALANCE
				80,899.62
7/24/88	703.83	1,805.54	2,509.37	79,094.08
8/24/88	688.12	1,821.25	2,509.37	77,272.83
9/24/88	672.27	1,837.10	2,509.37	75,435.73
10/24/88	656.29	1,853.08	2,509.37	73,582.65
11/24/88	640.17	1,869.20	2,509.37	71,713.45
12/24/88	623.91	1,885.46	2,509.37	69,827.99
1/24/89	607.50	1,901.87	2,509.37	67,926.12
2/24/89	590.96	1,918.41	2,509.37	66,007.71
3/24/89	574.27	1,935.10	2,509.37	64,072.60
4/24/89	557.43	1,951.94	2,509.37	62,120.67
5/24/89	540.45	1,968.92	2,509.37	60,151.74
6/24/89	523.32	1,986.05	2,509.37	58,165.70
7/24/89	506.04	2,003.33	2,509.37	56,162.37
8/24/89	488.61	2,020.76	2,509.37	54,141.61
9/24/89	471.03	2,038.34	2,509.37	52,103.27
10/24/89	453.30	2,056.07	2,509.37	50,047.20
11/24/89	435.41	2,073.96	2,509.37	47,973.24
12/24/89	417.37	2,092.00	2,509.37	45,881.24
1/24/90	399.17	2,110.20	2,509.37	43,771.03
2/24/90	380.81	2,128.56	2,509.37	41,642.47
3/24/90	362.29	2,147.08	2,509.37	39,495.39
4/24/90	343.61	2,165.76	2,509.37	37,329.63
5/24/90	324.77	2,184.60	2,509.37	35,145.03
6/24/90	305.76	2,203.61	2,509.37	32,941.42
7/24/90	286.59	2,222.78	2,509.37	30,718.64
8/24/90	267.25	2,242.12	2,509.37	28,476.52
9/24/90	247.75	2,261.62	2,509.37	26,214.90
10/24/90	228.07	2,281.30	2,509.37	23,933.60
11/24/90	208.22	2,301.15	2,509.37	21,632.45
12/24/90	188.20	2,321.17	2,509.37	19,311.28
1/24/91	168.01	2,341.36	2,509.37	16,969.92
2/24/91	147.64	2,361.73	2,509.37	14,608.19
3/24/91	127.09	2,382.28	2,509.37	12,225.91
4/24/91	106.37	2,403.00	2,509.37	9,822.91
5/24/91	85.46	2,423.91	2,509.37	7,399.00
6/24/91	64.37	2,445.00	2,509.37	4,954.00
7/24/91	43.10	2,466.27	2,509.37	2,487.73
8/24/91	21.64	2,487.73	2,509.37	0.00
	14,456.44	80,899.62		

EXHIBIT C

CONDITIONAL SALE AGREEMENT

TSD-13-10  
MOE/GJH

*See*  
*# 15798*

CONDITIONAL SALE AGREEMENT

Dated as of July 7, 1988

between

MLB CONSULTING CORP.

and

KIAMICHI RAILROAD COMPANY, INC.

## CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of July 7, 1988, between MLB CONSULTING CORP., a Delaware corporation (the "Vendor"), and KIAMICHI RAILROAD COMPANY, INC., a Delaware corporation ("Kiamichi").

WHEREAS, the Vendor has agreed to sell to Kiamichi, and Kiamichi has agreed to purchase, three (3) EMD GP-38 locomotives (the "Series A Units") and three (3) EMD GP-9 locomotives (the "Series B Units," with each of the Series A Units and the Series B Units referred to individually as a "Unit," and with the Series A Units and the Series B Units referred to collectively herein as the "Units"), all as more specifically described in Schedule A hereto;

NOW, THEREFORE, in consideration of the foregoing, the mutual promises, covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1. Sale. Pursuant to this Agreement, the Vendor hereby agrees to sell the Units conditionally to Kiamichi, and Kiamichi hereby agrees to purchase from the Vendor and pay for the Units as hereinafter provided.

ARTICLE 2. Delivery. The Vendor has previously delivered the Units to Kiamichi. Kiamichi accepts each Unit described in Schedule A hereto "AS IS" and "WHERE IS" and, with-

out limiting the foregoing, THE VENDOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE UNITS, THE MERCHANTABILITY OR FITNESS FOR USE OR ANY PARTICULAR PURPOSE OF THE UNITS, THE DESIGN, CONDITION OF, OR THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE UNITS, OR THE INFRINGEMENT OF ANY PATENT, TRADEMARK OR OTHER RIGHTS IN RESPECT OF THE UNITS.

Kiamichi hereby assumes the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit. Kiamichi agrees that the Vendor shall not be liable to Kiamichi for any liability, claim, loss, damage or expense of any kind or nature caused, directly or indirectly, by any Unit or any inadequacy thereof for any purpose, or any deficiency or defect therein, or the use or maintenance thereof, or any repairs, servicing or adjustments thereto, or any interruption or loss of service or use thereof, or any loss of business, or any damage whatsoever and howsoever caused.

**ARTICLE 3. Purchase Price and Payment.** Kiamichi hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby agrees to pay by wire transfer or other payment agreeable to the parties to the Vendor at such place as the Vendor may designate, the Total Purchase Price of the Units (as set forth in Schedule B hereto), which amount is hereinafter referred to as the "CSA Indebtedness." The CSA Indebtedness shall be payable as follows:

- (a) \$137,500 on the date hereof; and
- (b) installment payments on the dates and in the amounts set forth on Schedule B.

Interest shall accrue and be payable on demand on any overdue installment payments at the rate of interest equal to the greater of 13% per annum or 125% of the rate per annum which Irving Trust Company, New York, New York publicly announces from time to time as its prime rate as in effect from time to time, but in no event greater than 18% per annum.

The Vendor has previously financed its purchase of the Units (and one additional EMD GP-38 locomotive) through three separate loans, under which the Vendor agreed to repay the debts incurred to finance its purchases of the Units (and one additional EMD GP-38 locomotive) by making equal monthly payments of principal and interest in amounts sufficient to repay each loan in its entirety on the fourth anniversary date thereof with respect to the EMD GP-38 Units and on the third anniversary date thereof with respect to the EMD GP-9 Units. The parties hereto have also previously entered into a certain Locomotive Lease Agreement (the "Lease") for the Units (and one additional EMD GP-38 locomotive), dated as of June 19, 1987. Payments made by Kiamichi under the Lease have been substantially identical to the amounts which the Vendor has paid on the loans described above.

The parties to this Agreement contemplate that payment of the CSA Indebtedness will be made in the same amounts and on the same dates as payments would have been made by Kiamichi to the Vendor under the Lease and that for the purpose of deter-

mining the amounts to be paid by Kiamichi under this Agreement, the CSA Indebtedness shall be deemed to have borne interest as follows:

- (a) with respect to the two GP-38 EMD locomotives marked MLB/3801 and MLB/3802 (the "3801-3802 Units"), constituting a portion of the Units, the CSA Indebtedness shall be deemed to have borne interest from July 13, 1987 to and including the date hereof at the rate of 10.37 percent per annum as if the indebtedness were outstanding from July 13, 1987 to and including the date hereof;
- (b) with respect to the three GP-9 EMD locomotives marked MLB/901, MLB/902 and MLB/903 (the "GP-9 Units"), constituting a portion of the Units, the CSA Indebtedness shall be deemed to have borne interest from July 13, 1987 to and including the date hereof at the rate of 10.15 percent per annum as if the CSA Indebtedness were outstanding from July 13, 1987 to and including the date hereof; and
- (c) with respect to the remaining GP-38 EMD locomotive marked MLB/3803 (the "3803 Unit"), constituting a portion of the Units, the CSA Indebtedness shall be deemed to have borne interest from July 24, 1987 to and including the date hereof at the rate of 10.44 percent per annum as if the CSA Indebtedness were outstanding from July 24, 1987 to and including the date hereof.

Interest shall be deemed to have accrued on the CSA Indebtedness from the date of the last payment by Kiamichi under the Lease (and Kiamichi shall receive credit, against the interest which is deemed to have accrued, for the payments previously made under the Lease), and the unpaid portion of the CSA Indebtedness outstanding from time to time after the date hereof shall bear interest as follows:

- (a) with respect to the portion of the CSA Indebtedness relating to the 3801-3802 Units, at the rate of 10.37 percent per annum until paid in full;
- (b) with respect to the portion of the CSA Indebtedness relating to the GP-9 Units, at the rate of 10.15 percent per annum until paid in full; and
- (c) with respect to the portion of the CSA Indebtedness relating to the 3803 Unit, at the rate of 10.44 percent per annum until paid in full.

The CSA Indebtedness shall be payable on the dates and in the amounts set forth on Schedule B. The CSA Indebtedness will be payable without setoff, counterclaim or other deduction of any kind. All interest under this Agreement shall be calculated on the basis of a 360 day year of twelve 30 day months.

**ARTICLE 4. Taxes; Expenses.** All payments to be made by Kiamichi hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes [other than income, gross receipts (except gross receipts taxes in the nature of or in lieu of sales or use taxes), excess profits and similar taxes] or license fees, assessments, charges, fines or penalties incurred, levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof after the date of this Agreement and not otherwise the obligation of Kiamichi (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions

Kiamichi assumes and agrees to pay on demand. Kiamichi will also pay promptly all Impositions which may be imposed upon the Units or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Units free and clear of all Impositions which might in any way affect the security interest of the Vendor or result in a lien upon any of the Units or any part thereof; provided, however, that Kiamichi shall be under no obligation to pay any Impositions of any kind as long as it notifies the Vendor of the existence of the Imposition and is contesting in good faith and by appropriate legal proceedings such Imposition or Impositions and the nonpayment thereof does not, in the opinion of the Vendor in its sole discretion, adversely affect the interest or rights of the Vendor in or to the Units or otherwise under this Agreement. If any such Impositions (i) shall have been charged or levied against the Vendor directly, or (ii) shall have become secured by a lien on a Unit or Units (or any part thereof), and in either case paid by the Vendor, Kiamichi shall reimburse the Vendor upon presentation of an invoice therefore, and any amounts so paid by the Vendor shall be secured by and under this Agreement and shall bear interest as provided in Article 3 hereof until paid in full; provided, however, that Kiamichi shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor, which counsel may be an

employee of Vendor), or the Units, a Unit or any part thereof shall have become encumbered by a lien securing such Imposition, or Kiamichi shall have approved the payment thereof.

**ARTICLE 5. Purchase Money Security Interest in the Units.** The Vendor shall and hereby does retain a purchase money security interest in the Units until Kiamichi shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Units to and the possession and use thereof by Kiamichi as provided in this Agreement. Any and all additions to the Units [other than such additions (the cost of which was paid by Kiamichi) not required for the normal use of the Units and as are readily removable without causing damage to the Units] and any and all substitutions or replacements of the Units and of parts thereof and additions thereto shall constitute accessions to the Units and shall be subject to all the terms and conditions of this Agreement and included in the term "Units" as used in this Agreement.

Kiamichi hereby grants a security interest in any and all the payments, rentals, and other charges payable to it for the use of the Units by persons other than Kiamichi, which payments, rentals and other charges are hereby assigned to the Vendor; provided, however, that, prior to the occurrence of an event of default hereunder, the aforesaid amounts may be paid or remitted directly to Kiamichi for its use; and provided further that, upon the occurrence of an event of default hereunder, any

claims or right of Kiamichi hereunder to any of the aforesaid payments, rentals and other charges shall be automatically revoked and the same shall be paid or remitted directly to the Vendor and may be applied by the Vendor against the CSA Indebtedness hereunder or any other amount owing by Kiamichi to the Vendor pursuant to this Agreement.

When and only when the CSA Indebtedness, together with interest and all other payments as herein provided, shall have been paid, and all of Kiamichi's obligations herein contained shall have been performed by Kiamichi, absolute right to the possession of and title to the Units shall pass to and vest in Kiamichi without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by Kiamichi at that time, will (a) execute a bill or bills of sale for the Units transferring and releasing its interest therein to Kiamichi, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to Kiamichi, and (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Units. Kiamichi hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instru-

ments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after receipt of written demand from Kiamichi.

ARTICLE 6. Marking of the Units. Kiamichi will cause each Unit to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Units not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Units, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION," or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property interest in the Units and its rights under this Agreement. Kiamichi will cause such markings to be placed on each Unit prior to the date hereof or, if that is not feasible, within a reasonable time thereafter, and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. Kiamichi will not change the reporting marks or numbers of any Unit, except in accordance with a statement of new number or numbers to be substituted therefore, which statement shall have previously been filed with the Vendor

and in all public offices where this Agreement or a financing statement in respect hereof shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, Kiamichi will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that Kiamichi may cause the Units to be lettered with the names or initials or other insignia of Kiamichi, its affiliates or its lessees.

ARTICLE 7. Casualty Occurrences; Insurance. In the event that any Unit shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a "Casualty Occurrence"), Kiamichi shall promptly and fully inform the Vendor in regard thereto (but no later than 30 days after it has knowledge of such Casualty Occurrence). Kiamichi, within 30 days after it has knowledge of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such Units as of the date of the Casualty Occurrence and shall file with the Vendor a certificate of an officer of Kiamichi setting forth the Casualty Value of each Unit suffering a Casualty Occurrence.

The Casualty Value of each Unit shall be deemed to be that amount set forth on Schedule C hereto as of the date of the Casualty Occurrence.

Upon payment by Kiamichi to the Vendor of the Casualty Value of any Unit having suffered a Casualty Occurrence, absolute right to the possession of, title to, and property in, such Unit shall pass to and vest in Kiamichi, without further transfer or action on the part of the Vendor, and in the manner contemplated by the third paragraph of Article 5.

Kiamichi will at all times prior to the payment in full of the CSA Indebtedness, together with interest thereon, and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by Kiamichi on similar equipment owned by it. In addition, Kiamichi shall maintain liability insurance with respect to the Units in amounts customarily insured against by railroad companies. Kiamichi agrees to obtain and maintain all such insurance with third party, unaffiliated insurers reasonably satisfactory to the Vendor.

Except for liability insurance in respect of which the Vendor shall be named as a co-insured with Kiamichi, all such insurance shall be taken for the benefit of the Vendor, as its interest may appear, and shall name the Vendor as an additional named insured and loss payee and provide that the proceeds of such insurance shall be payable to the Vendor. In addition, all such insurance shall provide for at least thirty (30) days'

written notice to the Vendor prior to the termination, cancellation or modification of said insurance. Kiamichi shall furnish to the Vendor certificates or other satisfactory evidence of the maintenance of the insurance required hereunder.

Insurance proceeds received by the Vendor with respect to any Unit (a) in the case of a Casualty Occurrence, shall be applied by the Vendor towards the satisfaction of Kiamichi's obligation to pay to the Vendor the Casualty Value of such Unit as set forth above or (b) in the case of repairable damage or loss to such Unit not constituting a Casualty Occurrence and for so long as no event of default shall have occurred and be continuing hereunder, will be paid by Vendor to Kiamichi upon receipt by the Vendor of proof of the proper repair of such damage or loss, with all such repairs made within industry standards. Except as provided in the preceding sentence, all insurance proceeds received by the Vendor with respect to any Unit shall be applied by the Vendor in respect of the payment of CSA Indebtedness, accrued and unpaid interest thereon, and other amounts owing to the Vendor hereunder.

**ARTICLE 8. Maintenance; Compliance with Laws and Rules.** Kiamichi will at all times maintain the Units or cause the Units to be maintained in good order and repair at its own expense.

During the term of this Agreement, Kiamichi will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Units may extend and with

all lawful rules of any legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of any part on any Unit in its sole discretion, Kiamichi will conform therewith, at its own expense; provided, however, that Kiamichi may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor in its sole discretion, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 9. Reports and Inspections. On or before May 1 in each year, commencing with the year 1989, Kiamichi shall furnish to the Vendor an accurate statement signed by an officer of Kiamichi (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Vendor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and marking required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Units and Kiamichi's records with

respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. Possession and Use; Classification.

Kiamichi, so long as no event of default shall have occurred under this Agreement and be continuing, shall be entitled to the unrestricted right to the possession and use by Kiamichi of the Units upon any lines of railroad then owned or operated by Kiamichi, either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by or under common control with Kiamichi over which it has trackage rights, or upon lines of railroad of connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements.

Kiamichi represents, warrants and agrees that the Units are rolling stock equipment or accessories used on such equipment as specified in § 1168 of the Federal Bankruptcy Code.

ARTICLE 11. Prohibition Against Liens. Kiamichi will pay or discharge any and all sums claimed by any party from, through or under Kiamichi or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Units, or any Unit individually; provided, however, that Kiamichi shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Units or other-

wise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Units shall be secured by and under this Agreement and shall bear interest as provided in Article 3 hereof until paid in full.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

Kiamichi shall not, without the prior written consent of the Vendor, assign, transfer, pledge or hypothecate, or grant any security interest in or to, any Unit, any part thereof or any interest therein, whether by operation of law or otherwise.

ARTICLE 12. Kiamichi's Indemnities. Kiamichi agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, whether well-founded or otherwise, and expenses in connection therewith, including counsel fees, arising out of (a) retention by the Vendor of a security interest in the Units, (b) the use, possession and operation of the Units by Kiamichi or its lessees and assigns during the period when said security interest remains in the Vendor, (c) any accident in connection with the use, possession or operation of the Units by Kiamichi, its lessees and assigns, resulting in damage to property, death of or injury to any person, or (d) the transfer of said security

interest in the Units by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of the Vendor's gross negligence or willful misconduct. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 13. Assignments. Kiamichi will not sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor. The Vendor may sell, assign, transfer or otherwise dispose of its rights under this Agreement and any further assignee may sell, assign, transfer or otherwise dispose of its rights under this Agreement without the consent of Kiamichi.

ARTICLE 14. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) Kiamichi shall fail to pay in full the CSA Indebtedness or any installment thereof or interest thereon, or any other sum payable by Kiamichi as provided in this Agreement when the same shall be due and payable, whether at the due date thereof, by acceleration, as part of a prepayment or otherwise; or

(b) Kiamichi shall, for more than ten (10) days after the Vendor shall have demanded in writing performance

thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or of any agreement entered into concurrently herewith relating to the financing of the Units on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any representation or warranty on the part of Kiamichi made herein or in any report, certificate, financial or other statement furnished in connection with this Agreement or the transactions contemplated hereby shall prove to have been false or misleading in any material respect when made;

(d) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against Kiamichi and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Kiamichi under this Agreement shall not have been (and shall continue not to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within sixty (60) days after the commencement of such proceedings or otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(e) any other proceedings shall be commenced by or against Kiamichi for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Kiamichi under this Agreement shall not have been (and shall continue not to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Kiamichi or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within sixty (60) days after such proceedings shall have been commenced; or

(f) Kiamichi shall make or allow any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the Units or any Unit; then at any time after the occurrence of such an event of default the Vendor may, upon written notice to Kiamichi and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire CSA Indebtedness

then outstanding, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the CSA Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of Kiamichi wherever situated. Kiamichi shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to Kiamichi in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed that time is of the essence of this Agreement and no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

**ARTICLE 15. Remedies.** At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force

and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Units, or some portion thereof, without liability to return to Kiamichi any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of Kiamichi or any other person and for such purpose may enter upon Kiamichi's premises or any other premises where the Units may be located, without judicial process if this can be done without breach of the peace, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Kiamichi.

In case the Vendor shall demand possession of the Units pursuant to this Agreement and shall reasonably designate a point or points upon the premises of Kiamichi for the delivery of the Units to the Vendor, Kiamichi shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads, and all railroads to which the Units, or any of them, have been interchanged, to return the Units so interchanged), cause (a) the Units to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Units or cause them to be delivered to the Vendor and (b) the Units to be moved to such interchange point or points on its lines as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the

Units by the Vendor. At the option of the Vendor, the Vendor may keep the Units on any of the lines or premises of Kiamichi until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose Kiamichi agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to Kiamichi and, to permit inspection of the Units by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Units and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against Kiamichi requiring specific performance hereof. Kiamichi hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Units as hereinbefore in this Article 15 provided) may, at its election and upon such notice as is required by law, retain the Units in satisfaction of the entire CSA Indebtedness and all other amounts secured hereby and make such disposition thereof as the Vendor shall deem fit.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof,

at its election and upon reasonable notice to Kiamichi and to any other persons to whom the law may require notice of the time and place, may sell the Units, or any portion thereof, free from any and all claims of Kiamichi or any other party claiming from, through or under Kiamichi at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or Kiamichi may bid for and become the purchaser of the Units, or any portion thereof, so offered for sale. Kiamichi shall be given written notice of such sale not less than ten days prior thereto, by actual delivery or by telegram or registered mail addressed to Kiamichi as provided in Article 19 hereof. In the event that the Vendor shall be the purchaser of the Units it shall not be accountable to Kiamichi (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from Kiamichi hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and

remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to Kiamichi shall not otherwise alter or affect the Vendor's rights or Kiamichi's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect Kiamichi's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, Kiamichi shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand specified in Article 3 hereof. If Kiamichi shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against Kiamichi. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor,

such surplus shall be paid to Kiamichi, after the payment of all expenses of the Vendor as provided herein.

Kiamichi will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 16. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by Kiamichi to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, Kiamichi, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Units or any portion thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

**ARTICLE 17. Recording.** Kiamichi will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303 and with all appropriate state and local governmental authorities. Kiamichi will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Units and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. Kiamichi will furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording reasonably satisfactory to the Vendor.

**ARTICLE 18. Article Headings; Effect and Modification of Agreement.** All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and Kiamichi with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units including, without limitation, the Lease. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and Kiamichi.

ARTICLE 19. Notices. All notices and other communications provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered:

(a) if to Vendor at its address at:

MLB Consulting Corp.  
99 Cambridge Street  
Burlington, Mass. 01803  
Attention: Richard A. Peters

(b) if to Kiamichi at its address at:

Kiamichi Railroad Company, Inc.  
109 E. Jackson Street  
Hugo, Oklahoma 74743  
Attention: Jack Hadley

All such notices shall be deemed given upon delivery to an officer of the Vendor or Kiamichi, as the case may be, or three days after deposit into the United States mail, certified or registered mail, return receipt requested, postage prepaid and addressed to the address indicated herein for such party or to such other address as such party may designate by notice in writing given in the manner specified in this Article 19.

ARTICLE 20. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, without regard to its conflicts of law doctrine; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be con-

ferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 21. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract.

ARTICLE 22. Further Assurances. Kiamichi agrees from time to time throughout the term of this Agreement to execute such additional documents and to perform such further acts as may be reasonably requested by the Vendor in order to carry out and effectuate the purposes and intents of this Agreement.

ARTICLE 23. Payments. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 24. Prepayment. Kiamichi may at any time prepay the CSA Indebtedness, in whole, together with all accrued and unpaid interest thereon to and including the date of such prepayment, without premium or penalty of any kind. Upon a Casualty Occurrence affecting all of the Units or upon sale of all of the Units, Kiamichi must prepay the CSA Indebtedness, in whole, together with all accrued and unpaid interest thereon to and including the date of such prepayment, without premium or penalty of any kind; provided, however, that in the event of a Casualty Occurrence, Kiamichi may credit any amount paid to the Vendor in respect of the Casualty Occurrence against its obliga-

tion, under this Article 24 to pay the CSA Indebtedness plus accrued interest. In the event of a Casualty Occurrence affecting less than all of the Units or a sale of less than all of the Units, Kiamichi must prepay an amount equal to the portion of the CSA Indebtedness represented by the Unit or Units sold by Kiamichi or affected by the Casualty Occurrence, as the case may be, together with all accrued and unpaid interest on that portion of the CSA Indebtedness to and including the date of prepayment, without premium or penalty of any kind.

ARTICLE 25. Lease. In consideration of entering into this Agreement, the Vendor and Kiamichi hereby terminate the Locomotive Lease Agreement, dated as of June 19, 1987, by and between the Vendor and Kiamichi.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective

corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

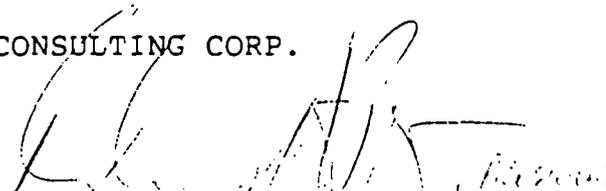
[Corporate Seal]

Attest:

\_\_\_\_\_

MLB CONSULTING CORP.

By:

  
Richard A. Peters, President

[Corporate Seal]

Attest:

\_\_\_\_\_

KIAMICHI RAILROAD COMPANY, INC.

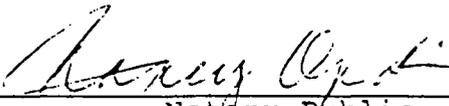
By:

\_\_\_\_\_   
Jack Hadley, President



STATE OF NEW YORK )  
CITY )  
COUNTY OF NEW YORK ) ss.

On this 6 day of ~~June~~<sup>July</sup>, 1988, before me personally appeared Richard A. Peters, to me personally known, who being by me duly sworn, says that he is the President of MLB Consulting Corp., a Delaware corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and the foregoing 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.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
(Seal)

NANCY OJEDA  
Notary Public, State of New York  
No. 24-4924225  
Qualified in Kings County  
Commission Expires April 4, 1990

~~STATE OF \_\_\_\_\_ )~~  
~~COUNTY OF \_\_\_\_\_ )~~ ss.

On this \_\_\_\_\_ day of June, 1988, before me personally appeared Jack Hadley, to me personally known, who being by me duly sworn, says that he is the President of Kiamichi Railroad Company, Inc., a Delaware corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and the foregoing 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.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
(Seal)

~~STATE OF NEW YORK )~~

~~CITY OF NEW YORK )~~

) ss.  
)

On this \_\_\_\_\_ day of June, 1988, before me personally appeared Jeffrey A. Foreman, Peters, to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of Irving Trust Company that the seal affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank 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 bank.

\_\_\_\_\_  
Notary Public

~~My Commission Expires:~~

STATE OF Oklahoma )  
COUNTY OF Choctaw )

) ss.  
)

On this 6<sup>th</sup> day of July, 1988, before me personally appeared Jack Hadley, to me personally known, who being by me duly sworn, says that he is the President of Kiamichi Railroad Company, Inc., a Delaware 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.

Delphine Kay Luna  
Notary Public

My Commission Expires: July 27, 1988

SCHEDULE A

DESCRIPTION OF LOCOMOTIVES

<u>Road</u> <u>Unit No.</u>	<u>Description</u>	<u>Engine</u> <u>Serial No.</u>
3801	EMD GP-38, 129-Ton, 2,000 HP Locomotive	62-A-76R
3802	EMD GP-38, 129-Ton, 2,000 HP Locomotive	77-83-1524
3803	EMD GP-38, 129-Ton, 2,000 HP Locomotive	78-A3-1513
901	EMD GP-9, 190-TON 1,750 HP Locomotive	56-J-16
902	EMD GP-9, 120-TON 1,750 HP Locomotive	58-C-65
903	EMD GP-9, 120-TON 1,750 HP Locomotive	78-L3-1513

to CSA

SCHEDULE B

TOTAL PURCHASE PRICE OF THE UNITS

On the Closing Date: \$137,500.00

Payments for the 3801 -3802 Units

<u>INSTALLMENT PAYMENT DATE</u>	<u>PRINCIPAL BALANCE</u>	<u>INTEREST EXPENSE</u>	<u>PRINCIPAL PAYMENT</u>	<u>TOTAL PAYMENTS</u>
07/13/88	158,353.07	\$1,368.43	3,650.31	\$5,018.74
08/13/88	154,702.76	\$1,336.89	3,681.85	\$5,018.74
09/13/88	151,020.91	\$1,305.07	3,713.67	\$5,018.74
10/13/88	147,307.24	\$1,272.98	3,745.76	\$5,018.74
11/13/88	143,561.48	\$1,240.61	3,778.13	\$5,018.74
12/13/88	139,783.35	\$1,207.96	3,810.78	\$5,018.74
01/13/89	135,972.57	\$1,175.03	3,843.71	\$5,018.74
02/13/89	132,128.86	\$1,141.81	3,876.93	\$5,018.74
03/13/89	128,251.94	\$1,108.31	3,910.43	\$5,018.74
04/13/89	124,341.51	\$1,074.52	3,944.22	\$5,018.74
05/13/89	120,397.28	\$1,040.43	3,978.31	\$5,018.74
06/13/89	116,418.98	\$1,006.05	4,012.69	\$5,018.74
07/13/89	112,406.29	\$971.38	4,047.36	\$5,018.74
08/13/89	108,358.93	\$936.40	4,082.34	\$5,018.74
09/13/89	104,276.59	\$901.12	4,117.62	\$5,018.74
10/13/89	100,158.98	\$865.54	4,153.20	\$5,018.74
11/13/89	96,005.78	\$829.65	4,189.09	\$5,018.74
12/13/89	91,816.69	\$793.45	4,225.29	\$5,018.74
01/13/90	87,591.39	\$756.94	4,261.80	\$5,018.74
02/13/90	83,329.59	\$720.11	4,298.63	\$5,018.74
03/13/90	79,030.96	\$682.96	4,335.78	\$5,018.74
04/13/90	74,695.18	\$645.49	4,373.25	\$5,018.74
05/13/90	70,321.93	\$607.70	4,411.04	\$5,018.74
06/13/90	65,910.89	\$569.58	4,449.16	\$5,018.74
07/13/90	61,461.73	\$531.13	4,487.61	\$5,018.74
08/13/90	56,974.12	\$492.35	4,526.39	\$5,018.74
09/13/90	52,447.73	\$453.24	4,565.50	\$5,018.74
10/13/90	47,882.22	\$413.78	4,604.96	\$5,018.74
11/13/90	43,277.27	\$373.99	4,644.75	\$5,018.74
12/13/90	38,632.51	\$333.85	4,684.89	\$5,018.74
01/13/91	33,947.62	\$293.36	4,725.38	\$5,018.74
02/13/91	29,222.25	\$252.53	4,766.21	\$5,018.74
03/13/91	24,456.04	\$211.34	4,807.40	\$5,018.74
04/13/91	19,648.64	\$169.80	4,848.94	\$5,018.74
05/13/91	14,799.69	\$127.89	4,890.85	\$5,018.74
06/13/91	9,908.85	\$85.63	4,933.11	\$5,018.74
07/13/91	4,975.74	\$43.00	4,975.74	\$5,018.74

Payments for the GP 9 Units

INSTALLMENT PAYMENT DATE	PRINCIPAL BALANCE	INTEREST EXPENSE	PRINCIPAL PAYMENT	TOTAL PAYMENTS
07/13/88	102,421.05	\$866.31	3,696.18	\$4,562.49
08/13/88	98,724.87	\$835.05	3,727.44	\$4,562.49
09/13/88	94,997.43	\$803.52	3,758.97	\$4,562.49
10/13/88	91,238.46	\$771.73	3,790.76	\$4,562.49
11/13/88	87,447.70	\$739.66	3,822.83	\$4,562.49
12/13/88	83,624.87	\$707.33	3,855.16	\$4,562.49
01/13/89	79,769.70	\$674.72	3,887.77	\$4,562.49
02/13/89	75,881.93	\$641.83	3,920.66	\$4,562.49
03/13/89	71,961.28	\$608.67	3,953.82	\$4,562.49
04/13/89	68,007.46	\$575.23	3,987.26	\$4,562.49
05/13/89	64,020.20	\$541.50	4,020.99	\$4,562.49
06/13/89	59,999.21	\$507.49	4,055.00	\$4,562.49
07/13/89	55,944.22	\$473.19	4,089.30	\$4,562.49
08/13/89	51,854.92	\$438.61	4,123.88	\$4,562.49
09/13/89	47,731.04	\$403.73	4,158.76	\$4,562.49
10/13/89	43,572.27	\$368.55	4,193.94	\$4,562.49
11/13/89	39,378.33	\$333.08	4,229.41	\$4,562.49
12/13/89	35,148.92	\$297.30	4,265.19	\$4,562.49
01/13/90	30,883.73	\$261.22	4,301.27	\$4,562.49
02/13/90	26,582.46	\$224.84	4,337.65	\$4,562.49
03/13/90	22,244.82	\$188.15	4,374.34	\$4,562.49
04/13/90	17,870.48	\$151.15	4,411.34	\$4,562.49
05/13/90	13,459.15	\$113.84	4,448.65	\$4,562.49
06/13/90	9,010.50	\$76.21	4,486.28	\$4,562.49
07/13/90	4,524.22	\$38.27	4,524.22	\$4,562.49

Payments for the 3803 Unit

INSTALLMENT PAYMENT DATE	INTEREST EXPENSE	PRINCIPAL PAYMENT	TOTAL PAYMENT	PRINCIPAL BALANCE
				80,899.62
7/24/88	703.83	1,805.54	2,509.37	79,094.08
8/24/88	688.12	1,821.25	2,509.37	77,272.83
9/24/88	672.27	1,837.10	2,509.37	75,435.73
10/24/88	656.29	1,853.08	2,509.37	73,582.65
11/24/88	640.17	1,869.20	2,509.37	71,713.45
12/24/88	623.91	1,885.46	2,509.37	69,827.99
1/24/89	607.50	1,901.87	2,509.37	67,926.12
2/24/89	590.96	1,918.41	2,509.37	66,007.71
3/24/89	574.27	1,935.10	2,509.37	64,072.60
4/24/89	557.43	1,951.94	2,509.37	62,120.67
5/24/89	540.45	1,968.92	2,509.37	60,151.74
6/24/89	523.32	1,986.05	2,509.37	58,165.70
7/24/89	506.04	2,003.33	2,509.37	56,162.37
8/24/89	488.61	2,020.76	2,509.37	54,141.61
9/24/89	471.03	2,038.34	2,509.37	52,103.27
10/24/89	453.30	2,056.07	2,509.37	50,047.20
11/24/89	435.41	2,073.96	2,509.37	47,973.24
12/24/89	417.37	2,092.00	2,509.37	45,881.24
1/24/90	399.17	2,110.20	2,509.37	43,771.03
2/24/90	380.81	2,128.56	2,509.37	41,642.47
3/24/90	362.29	2,147.08	2,509.37	39,495.39
4/24/90	343.61	2,165.76	2,509.37	37,329.63
5/24/90	324.77	2,184.60	2,509.37	35,145.03
6/24/90	305.76	2,203.61	2,509.37	32,941.42
7/24/90	286.59	2,222.78	2,509.37	30,718.64
8/24/90	267.25	2,242.12	2,509.37	28,476.52
9/24/90	247.75	2,261.62	2,509.37	26,214.90
10/24/90	228.07	2,281.30	2,509.37	23,933.60
11/24/90	208.22	2,301.15	2,509.37	21,632.45
12/24/90	188.20	2,321.17	2,509.37	19,311.28
1/24/91	168.01	2,341.36	2,509.37	16,969.92
2/24/91	147.64	2,361.73	2,509.37	14,608.19
3/24/91	127.09	2,382.28	2,509.37	12,225.91
4/24/91	106.37	2,403.00	2,509.37	9,822.91
5/24/91	85.46	2,423.91	2,509.37	7,399.00
6/24/91	64.37	2,445.00	2,509.37	4,954.00
7/24/91	43.10	2,466.27	2,509.37	2,487.73
8/24/91	21.64	2,487.73	2,509.37	0.00
	14,456.44	80,899.62		

SCHEDULE C

CASUALTY VALUE OF UNITS

<u>Installment Payment Number</u>	<u>Casualty Value For Each Unit of the 3801-3802 Units and the 3803 Unit</u>	<u>Casualty Value For Each of the GP-9 Units</u>
1	106,250	40,925
2	105,000	40,100
3	103,750	39,275
4	102,500	38,450
5	101,250	37,625
6	100,000	36,800
7	98,750	35,975
8	97,500	35,150
9	96,250	34,235
10	95,000	33,500
11	93,750	32,675
12	92,500	31,850
13	91,250	31,025
14	90,000	30,200
15	88,750	29,375
16	87,500	28,550
17	86,250	27,725
18	85,000	26,900
19	83,750	26,075
20	82,500	25,250
21	81,250	24,425
22	80,000	23,600
23	78,750	22,775
24	77,500	21,950
25	76,250	21,125
26	75,000	
27	73,750	
28	72,500	
29	71,250	
30	70,000	
31	68,750	
32	67,500	
33	66,250	
34	65,000	
35	63,750	
36	62,500	
37	61,250	

EXHIBIT D

AGREEMENT AND ASSIGNMENT

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ASSIGNMENT AND AGREEMENT

Dated as of July 7, 1988

Among

MLB CONSULTING CORP.,

KIAMICHI RAILROAD COMPANY, INC.

and

IRVING TRUST COMPANY

---

## ASSIGNMENT AND AGREEMENT

ASSIGNMENT AND AGREEMENT, dated as of July 7, 1988 among MLB Consulting Corp., a Delaware corporation ("MLB"), Kiamichi Railroad Company, Inc., a Delaware corporation ("Kiamichi"), and Irving Trust Company ("Lender").

WHEREAS, MLB and Kiamichi have entered into a Conditional Sale Agreement, dated as of the date hereof (the "Conditional Sale Agreement"), covering the sale and delivery by MLB and the purchase by Kiamichi of certain locomotives, (individually a "Locomotive" and collectively the "Locomotives") described on Schedule A to the Conditional Sale Agreement, on the terms and conditions set forth therein;

WHEREAS, MLB previously financed its purchase of the Locomotives pursuant to a Loan and Security Agreement, dated as of July 13, 1987, between MLB and Lender; and Lender secured its loan to MLB by taking a security interest in the Locomotives (and one other locomotive) and a Locomotive Lease Agreement (the "Lease") with respect thereto entered into as of June 19, 1987 between MLB and Kiamichi;

WHEREAS, Lender is willing to release its security interest in the Locomotives and to permit the termination of the Lease, in consideration of an assignment by MLB of its rights under the Conditional Sale Agreement; and MLB is willing to assign such rights to Lender; and

WHEREAS, Lender, as assignee of the rights of the MLB under the Conditional Sale Agreement, is willing to release all of its rights, title and interest in and to the Locomotives upon satisfaction of performance by Kiamichi of all of its obligations hereunder and under the Conditional Sale Agreement.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and conditions herein contained;

1. MLB hereby assigns, transfers and sets over unto Lender, its successors and assigns, all of MLB's right, title and interest in, to and under the Conditional Sale Agreement, including but not limited to:

- (a) the security interest of MLB in and to the Locomotives being purchased by Kiamichi pursuant to the terms of the Conditional Sale Agreement and any other collateral security

now or hereafter provided under the Conditional Sale Agreement;

- (b) the immediate right to receive and collect any and all installment payments of the CSA Indebtedness (as defined in the Conditional Sale Agreement) which may be or become due or owing under the Conditional Sale Agreement and any other sums payable to or receivable by MLB under the Conditional Sale Agreement; and
- (c) all of MLB's rights, powers, privileges and remedies under the Conditional Sale Agreement, including but not limited to the right to consent or fail to consent pursuant to the terms of the Conditional Sale Agreement.

In furtherance of the foregoing assignment and transfer, MLB hereby authorizes and empowers Lender, its successors and assigns, in Lender's own name or in the name of the Lender's nominee, or in the name of or as attorney hereby irrevocably constituted for MLB, to ask, demand, sue for, collect, receive and enforce any and all sums to which Lender is or may become entitled under this Assignment and Agreement and to ask, demand, sue for and enforce compliance by Kiamichi with the terms and agreements on its part to be performed under the Conditional Sale Agreement. Kiamichi further agrees that, except as provided in this Assignment and Agreement and Articles 7, 14(b), 15 and 19 of the Conditional Sale Agreement, Lender shall not, by virtue of this Assignment and Agreement, be or become subject to any liability or obligation of MLB to Kiamichi, whether arising under the Conditional Sale Agreement or otherwise.

2. Until written notice to the contrary from Lender, Kiamichi agrees to make all payments required to be made by Kiamichi to Lender pursuant to the Conditional Sale Agreement Lender by wire transfer of immediately available funds to:

Irving Trust Company  
One Wall Street  
New York, New York 10015

Att'n: Transportation Department  
ABA No. \_\_\_\_\_

Re: MLB Conditional Sale Agreement dated  
as of July 7, 1988

3. Promptly upon completion of performance by Kiamichi of all of its obligations under the Conditional Sale Agreement and under this Assignment and Agreement, Lender agrees that it will execute and deliver a bill or bills of sale and releases, in

forms reasonably acceptable to MLB and Kiamichi, of its right, title and interest in and to the Locomotives.

4. Lender acknowledges that Kiamichi is entitled to quiet possession and enjoyment of the Locomotive as more fully described in the Conditional Sale Agreement. If MLB should default in any of its obligations to Lender, Lender agrees, so long as Kiamichi is not in default under the Conditional Sale Agreement or under this Assignment and Agreement, that (1) it will not attempt to obtain possession of the Locomotives or otherwise interfere with Kiamichi's full, complete and quiet possession and enjoyment of the Locomotives; (2) it will continue to accept all payments from Kiamichi, in accordance with Paragraph 2 of this Assignment and Agreement and, (3) upon completion of Kiamichi's obligations under the Conditional Sale Agreement and under this Assignment and Agreement, it will release all of its right, title and interest in and to the Locomotives, as provided in Paragraph 3 of this Assignment and Agreement.

5. Kiamichi shall file and record the Conditional Sale Agreement and this Assignment and Agreement with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303.

6. Lender may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from Kiamichi thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges of Lender hereunder; provided, however, that no such assignment shall adversely affect the rights and privileges of Kiamichi set forth in Paragraphs 3 and 4 hereof.

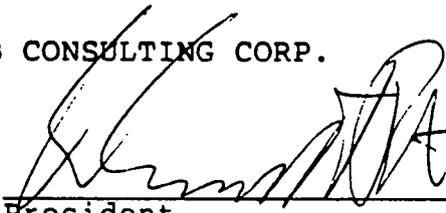
7. Kiamichi and Lender agree that Lender's lien on the Locomotives, pursuant to a Security Agreement, dated as of July 13, 1987, from Kiamichi to Lender, does not violate Section 11 of the Conditional Sale Agreement.

8. The terms of this Assignment and Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York, without regard to its conflicts of law doctrine; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. This Assignment and Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, but the counterpart delivered to Lender shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By  \_\_\_\_\_

President

KIAMICHI RAILROAD COMPANY, INC.

By \_\_\_\_\_

President

IRVING TRUST COMPANY

By \_\_\_\_\_

Assistant Vice President

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By \_\_\_\_\_  
President

KIAMICHI RAILROAD COMPANY, INC.

By Jack Halley  
President

IRVING TRUST COMPANY

By \_\_\_\_\_  
Assistant Vice President

IN WITNESS WHEREOF, the parties have caused this Assignment and Agreement to be executed and delivered by their duly authorized officers, all as of the date first above written.

MLB CONSULTING CORP.

By \_\_\_\_\_  
President

KIAMICHI RAILROAD COMPANY, INC.

By \_\_\_\_\_  
President

IRVING TRUST COMPANY

By Jeffrey J. Foreman  
Assistant Vice President

STATE NEW YORK  
COMMONWEALTH OF MASSACHUSETTS )  
CITY ) SS  
COUNTY OF NEW YORK )

On this 6 day of ~~June~~<sup>July</sup>, 1988, before me, the subscriber, Nancy Ojeda, a Notary Public, duly commissioned, qualified and acting, within and for said County and Commonwealth appeared in person the within named Richard A. Peters, to me personally known, who stated and acknowledged that he is the President of MLB Consulting Corp., a Delaware corporation, and duly authorized by authority of the board of directors or the by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 6 day of ~~June~~<sup>July</sup>, 1988.

Nancy Ojeda

NANCY OJEDA  
Notary Public, State of New York  
No. 24- 4924225  
Qualified in Kings County  
Commission Expires April 4, 1990

My commission expires: 4/4/90

STATE OF OKLAHOMA )  
 )  
COUNTY OF choctaw ) SS

On this 6<sup>TH</sup> day of ~~June~~ JULY, 1988, before me, the subscriber, Delphine Kay Luna, a Notary Public, duly commissioned, qualified and acting, within and for said County and State, appeared in person the within named Jack Hadley, to me personally known, who stated and acknowledged that he is the President of Kiamichi Railroad Company, Inc., a Delaware corporation, and duly authorized by authority of the board of directors or the by-laws of said corporation in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said corporation, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 6<sup>TH</sup> day of ~~June~~ JULY, 1988.

Delphine Kay Luna

My commission expires: July 27, 1988

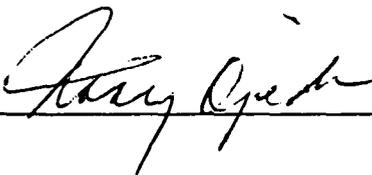
STATE OF NEW YORK

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) SS  
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CITY OF NEW YORK

On this 5 day of ~~June~~ <sup>July</sup>, 1988, before me, the subscriber, NANCY OJEDA, a Notary Public, duly commissioned, qualified and acting, within and for said City and State, appeared in person the within named Jeffrey A. Foreman, to me personally known, who stated and acknowledged that he is an Assistant Vice President of Irving Trust Company, and duly authorized by authority of the board of directors or the by-laws of said bank in his capacity as such officer to execute and acknowledge the foregoing instrument for and in the name and on behalf of said corporation and further stated and acknowledged that he was so signed, executed and delivered the foregoing instrument as the free and voluntary act and deed of said bank, for the consideration, uses and purposes therein mentioned and set forth and desired that the same might be recorded as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 5 day of ~~June~~ <sup>July</sup>, 1988.

  
\_\_\_\_\_

My commission expires: 4/4/1990

NANCY OJEDA  
Notary Public, State of New York  
No. 24- 4924225  
Qualified in Kings County  
Commission Expires April 4, 1990

EXHIBIT E

ACKNOWLEDGEMENT OF NOTICE AND ASSIGNMENT

ACKNOWLEDGMENT OF NOTICE AND ASSIGNMENT

TO: Irving Trust Company  
One Wall Street  
New York, NY 10015

Reference is made to the Conditional Sale Agreement, dated as of June 30th, 1988 (the "CSA") between MLB Consulting Corp., Delaware corporation ("MLB") and Kiamichi Railroad Company, Inc., a Delaware corporation ("Kiamichi"), relating to the sale of the units of railroad locomotives described in Schedule A thereto. Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the CSA.

Kiamichi has been notified by MLB that MLB has assigned the CSA to Irving Trust Company (the "Lender").

Kiamichi, intending to be legally bound hereby and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Kiamichi, does hereby:

A. Acknowledge and consent to the assignment by MLB to Lender all of MLB's right, title, interest, claims and demands of MLB in, to and under the CSA, including without limitation:

(i) the immediate and continuing right to receive and collect all payments now or hereafter payable to or receivable by MLB from Kiamichi under the CSA;

(ii) the right to make all waivers and amendments and to enter into any agreements relating to the or any provisions thereof; and

(iii) the right to take such action upon the occurrence of an Event of Default under the CSA as shall be permitted by the CSA or by law, and to do any and all other things whatsoever which MLB is or may be entitled to do under the CSA.

B. Acknowledge and agree that, notwithstanding the assignment by MLB to Lender, the Lender has not assumed and does not assume the responsibility to discharge or perform any liability, duty or obligation of MLB to be performed under the CSA other than the obligations of MLB contained in Articles 7, 14(b), 15 and 19 of the CSA, and Kiamichi agrees that it shall look solely to MLB for the discharge, performance or satisfaction of any such liability, duty or obligation.

C. Represent and warrant that the CSA and this Acknowledgment of Notice and Assignment have been duly authorized, executed and delivered by Kiamichi and constitute the legal, valid and binding agreements of Kiamichi enforceable against Kiamichi in accordance with their respective terms.

D. Represent and warrant that no Event of Default, or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under the CSA has occurred and is continuing.

E. Represent and warrant that it has made no pre-payment of installment payments to MLB and that no offset or deduction exists with respect to Kiamichi's obligation to pay the installment payments casualty value or any other sums payable by Kiamichi under and pursuant to the terms of the CSA.

F. Agree to make all payments to be made by it under the CSA directly to Lender at the following address, or such other address as Lender shall notify to Kiamichi in writing:

Irving Trust Company  
One Wall Street  
New York, NY 10015

Payment Instructions:

MLB Consulting Corp.  
Account # 890-0143-851

G. Represent and warrant that the document attached as Exhibit A hereto is a true, correct and complete copy of the CSA, that such document has not since the date of its execution and delivery been amended or modified in any respect and that the CSA sets forth the entire agreement between MLB and Kiamichi with respect to the subject matter thereof.

This Acknowledgment of Notice and Assignment, when accepted by Lender by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said state.

KIAMICHI RAILROAD COMPANY, INC.

By \_\_\_\_\_

Attest:

\_\_\_\_\_  
Its:

Dated: June 30, 1988

EXHIBIT F

GUARANTY



In consideration of the making at the request of the undersigned of loans and advances to \_\_\_\_\_  
IRVING TRUST COMPANY

(hereinafter called the "Customer"), the undersigned (who, if two or more in number, are hereby jointly and severally bound) hereby guarantees(s) to Irving Trust Company (hereinafter called the "Trust Company"), its successors and assigns, the prompt payment at maturity, or whenever they may become due in accordance with any of their terms, of all existing or future bills, notes, checks, drafts and all other existing or future debts or liabilities, direct or contingent, made or endorsed, or in any way contracted by the Customer, or by any successor of the Customer, and whether the same may now be or hereafter become due to the Trust Company from the Customer or the executors, administrators, successors or assigns of the Customer, together with the cost of protest and all legal expenses of or for collection, or for realization upon any underlying collateral or other guaranty. If this guaranty and/or any debt or liability of the Customer is placed with an attorney for collection, the undersigned further agrees to pay an attorney's fee of 15% of any principal and interest due and demanded, which is hereby agreed to be just and reasonable and which shall be recoverable with the amount due under this guaranty.

Demand of payment, presentment, protest and notice of dishonor or non-payment are hereby expressly waived, and if any of the obligations, debts and/or liabilities hereby guaranteed are payable on demand, the Trust Company may, in its sole arbitrary discretion, determine the reasonableness of the period which may elapse prior to the making of demand.

The undersigned hereby consent(s) and agree(s) that, without notice to or further assent from the undersigned, the time of payment of all or any of the obligations, debts and/or liabilities hereby guaranteed, or any other provisions of said obligations, debts and/or liabilities may be extended, changed or modified, the parties thereto discharged, any or all collateral thereto released without obtaining other collateral in substitution therefor, and any composition or settlement consummated and accepted, and that the undersigned will remain bound upon this guaranty notwithstanding one or more such extensions, changes, modifications, discharges, releases, compositions or settlements. The undersigned further consent(s) and agree(s) that this guaranty shall not be impaired or otherwise affected by any failure to call for, take, hold, protect or perfect, continue the perfection of or enforce any security interest in or other lien upon, any collateral for the obligations, debts and/or liabilities hereby guaranteed or by any failure to exercise, delay in the exercise, exercise or waiver of, or forbearance or other indulgence with respect to, any right or remedy available to the Trust Company.

The Trust Company may also at any time, in its discretion, and when the Trust Company may deem it advisable, compromise, settle, or extend time of payment of any of the demands or obligations represented by any collateral now or hereafter held by it to secure payment of said bills, notes, checks, drafts, or other obligations hereby guaranteed, or it may sell, assign, transfer and deliver the whole of such collateral, or any part thereof, or any substitutes therefor, or any additions thereto, at public or private sale, at any time or place selected by the Trust Company, at such prices as it may deem best and either for cash or for credit or future delivery, at the option of the Trust Company without either demand, advertisement or notice of any kind to the undersigned, which are hereby expressly waived.

The undersigned further agree(s) that any money or property at any time in the possession of the Trust Company belonging to the undersigned including any deposit balances and all property or the proceeds thereof held by the Trust Company for any purpose including safekeeping, custody, transmission, collection, or pledge, may, at the option of the Trust Company, be held as collateral security for the payment of any liability under this guaranty and of any liabilities of the undersigned to the Trust Company whether due or not, with full power and authority to apply any deposit balances to the extinguishment of any such liabilities and to sell, enforce, collect or otherwise realize on said money or property in accordance with applicable law.

The undersigned agree(s) that the Trust Company is not to be obligated in any manner to inquire into the powers of the Customer, or its successors, its or their directors, officers, or agents, acting or purporting to act on its or their behalf, and any liabilities purporting to be contracted for the Customer, or its successors, by its or their directors, officers, or agents, in the professed exercise of such powers, shall be deemed to form a part of the liabilities guaranteed hereunder even though the incurrence of such liabilities be in excess of the powers of the Customer, its successors, its or their directors, officers, or agents aforesaid, or shall be in any way irregular, defective or informal.

The liability of the undersigned on this guaranty shall be direct, immediate, absolute, continuing, unconditional and unlimited and not conditional or contingent upon the pursuit by the Trust Company of whatever remedies it may have against the Customer or the Customer's successors, executors, administrators or assigns, or the securities or liens it may possess, and this guaranty shall be and shall be construed as being and intended to be, a continuing guaranty of the payment of any and all such bills, notes, checks, drafts and other debts or liabilities either made, endorsed, or contracted by the Customer, or any successor of the Customer, prior to the receipt by the Trust Company of written notice of the revocation of this guaranty by the undersigned, and of all extensions or renewals thereof in whole or in part; and notwithstanding the death of, or the revocation of this guaranty by, any undersigned guarantor, the liability of the guarantor so revoking and of the estate of the guarantor so dying shall continue as to obligations, debts and/or liabilities to the Trust Company incurred or contracted by the Customer, or any successor of the Customer, prior to such revocation or death and as to all extensions and renewals thereof, in whole or in part. If the undersigned are two or more, then, notwithstanding the death of, or the revocation of this guaranty by, any one or more of the undersigned, this guaranty shall nevertheless so continue in full force and effect as to all of the other undersigned guarantors not only as to all such then existing obligations, debts and/or liabilities, but also as to all such obligations, debts and/or liabilities which may thereafter be incurred or arise.

The undersigned agree(s) that in the event that any of the obligations, debts and/or liabilities hereby guaranteed are paid by the Customer, the liability of the undersigned as guarantor(s) shall continue and remain in full force and effect in the event that all or any part of any such payments is recovered from the Trust Company as a preference or fraudulent transfer under Title 11 of the United States Code or any other applicable federal or state law. The undersigned agree(s) that if the Trust Company gives to the undersigned written notice of the institution of any action or proceeding, legal or otherwise, between the Trust Company and the Customer, the undersigned shall be conclusively bound by the adjudication in any such legal or other proceeding, or by any judgment or award decree entered therein.

The undersigned waive(s) the right to trial by jury in all actions brought by or against the Trust Company. The undersigned also waive(s) the right to assert in any action or proceeding upon this guaranty any offsets or counterclaims which the undersigned may have with respect thereto. This guaranty shall be governed by and construed and interpreted in accordance with the laws of the State of New York. This guaranty cannot be altered or discharged orally. Notice of the acceptance of this guaranty is hereby waived.

In witness whereof, the undersigned has duly executed these presents this \_\_\_\_\_ 29th  
day of \_\_\_\_\_ June \_\_\_\_\_ 88

Name of Corporation, Partnership, or Individual \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

Richard A. Peters  
Name of Corporation, Partnership, or Individual \_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
c/o MLB Consulting Corp.  
Address: 99 Cambridge Street  
Burlington, MA 01803

Acknowledgment  
For  
Individual

State of  
County of

} s.s.:

On this 16 day of July, 1988, before me personally came

Richard A. Peters

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same.



NANCY OJEDA  
Notary Public, State of New York  
No. 24- 4924225  
Qualified in Kings County  
Commission Expires April 4, 1990

Acknowledgment  
For  
Partnership

State of  
County of

} s.s.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came

to me known and known to me to be the individual(s) described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same as member(s) of the firm of \_\_\_\_\_

and as the act and deed of said firm.

Acknowledgment  
For  
Corporation

State of  
County of

} s.s.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came

to me known, who, being by me duly sworn, did depose and say that he reside(s) at \_\_\_\_\_

that he is/are the \_\_\_\_\_

of \_\_\_\_\_

the Corporation described in and which executed the foregoing instrument; that he know(s) the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his/her/their name(s) thereto by like order.

EXHIBIT G

OPINION OF BORROWER'S COUNSEL

June 30, 1988

Irving Trust Company  
One Wall Street  
New York, NY 10015

Gentlemen:

We have acted as special counsel to MLB Consulting Corp., a Delaware corporation ("MLB"), in connection with the authorization of certain transactions relating to a Conditional Sale Agreement (the "CSA"), dated as of June 30, 1988, between MLB and Kiamichi Railroad Company, Inc. ("Kiamichi"), an Assignment and Agreement (the "Assignment") dated as of June 30, 1988, among MLB, Kiamichi and Irving Trust Company ("Lender"), a Termination of Lease, dated as of June 30, 1988, between MLB and Kiamichi (the "Lease Termination"), a Loan and Security Agreement between MLB and Lender, dated as of June 30, 1988 (the "Loan and Security Agreement"), a Promissory Note, dated as of June 30, 1988, from MLB to Lender (the "Note") and a Guaranty (the "Guaranty"), dated as of June 30, 1988, from Richard A. Peters, the President of MLB, to Lender guaranteeing the obligations of MLB under the Note and the Loan and Security Agreement.

For purposes of this opinion, all terms which are not specifically defined herein shall have the meanings attributed to them in the Loan and Security Agreement.

In connection with this opinion, we have reviewed the CSA, the Assignment, the Lease Termination, the Loan and Security Agreement and the Note to be executed by MLB on this date (collectively the "Documents"), and the Guaranty to be executed by Richard A. Peters on this date, in each case solely for the purposes of providing this opinion. We have also reviewed the Certificate of Incorporation, bylaws and corporate minute book of MLB. We have assumed (i) the genuineness of the signatures of persons signing all documents in connection with this opinion,

(ii) the authenticity of all documents submitted to us as originals or executed copies, (iii) the conformity to authentic original documents of all documents submitted to us as certified, confirmed or photostatic copies, (iv) that Lender has full power, authority and legal right to execute and deliver the Documents being executed by Lender, (v) that the Documents being executed by Lender have each been duly authorized, executed and delivered by Lender, (vi) that the CSA, the Assignment and the Lease Termination have each been duly authorized, executed and delivered by Kiamichi, and (vii) that Kiamichi's residence and principal place of business is in the State of Oklahoma.

This opinion is subject to the following:

- A. any opinion as to the enforceability of the rights and remedies provided in any agreement or instrument against any particular party is subject to any applicable bankruptcy, reorganization, insolvency, moratorium or similar law of general application relating to or affecting enforcement of creditors' rights from time to time in effect;
- B. with respect to any opinion pertaining to the enforceability of any agreement or instrument, no opinion is expressed as the specific remedy that any court or governmental authority may grant, impose or render; and
- C. any opinion with regard to enforceability of rights and remedies provided in any agreement or instrument providing for unilateral attachment or seizure of property or collateral is subject to qualification with respect to the effect of any law or judicial decision requiring pre-notice to debtors generally and prior hearings with respect to the enforceability of such rights and remedies.

Based on the foregoing it is our opinion that:

1. MLB is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has full power and authority to own its property and carry on its business as currently conducted and is duly qualified to do business in the Commonwealth of Massachusetts.

2. To the best of our knowledge, after due inquiry, MLB is conducting its business in such a manner as to comply with all applicable laws and regulations of the United States of America, the several states and the District of Columbia and any subdivision of any thereof wherein MLB is doing business and of all governmental agencies and authorities of any thereof having jurisdiction in the premises where the failure to so comply would have a material adverse effect on the business, present or prospective, or the operations, property, assets or condition, financial or otherwise, of MLB.

3. MLB has the full power and authority to execute, deliver and perform the Documents.

4. The Documents have each been duly authorized, executed and delivered by MLB and, assuming due authorization, execution and delivery by the other parties thereto, constitute the legal, valid and binding obligations of MLB, enforceable against it in accordance with their respective terms.

5. The Guaranty has been duly executed and delivered by Richard A. Peters, and, assuming due authorization, execution and delivery by Lender, constitutes the legal, valid and binding obligation of Richard A. Peters, enforceable against him in accordance with the terms thereof, subject to the limitations as to enforceability contained therein.

6. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by MLB of the Documents except for the filing of the Loan and Security Agreement, the CSA, the Assignment and the Lease Termination with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and the filing of UCC-1 financing statements with the Office of the Town Clerk of Burlington, Massachusetts, the Secretary of the Commonwealth of Massachusetts and the Office of the County Clerk of Oklahoma County.

7. Neither the execution, delivery or performance by MLB of the Documents nor compliance with the terms and provisions thereof, conflicts or will conflict with or result in a breach or violation of any of the terms, conditions or provisions of any law, governmental rule or regulation or the Certificate of Incorporation or bylaws of MLB or to our knowledge any order, writ, injunction or decree of any court or governmental authority against MLB or by which it or any of its properties is bound, or to our knowledge, of any indenture, mortgage or contract or other

Irving Trust Company  
June 30, 1988  
Page 4

agreement or instrument to which MLB is a party or by which it or any of its properties is bound, or constitutes or will constitute a default thereunder or will result in the imposition of any lien not permitted hereby upon any of its properties.

Very truly yours,

RUBIN QUINN MOSS & HEANEY

SCHEDULE 1

DESCRIPTION OF THE COLLATERAL  
(including road number)

<u>Road</u> <u>Unit No.</u>	<u>Description</u>	<u>Engine</u> <u>Serial No.</u>
3804	EMD GP-38, 129-Ton, 2,000 HP Locomotive	62-C-73R