

Melcorp Leasing, Inc.  
~~SS~~ Suite 3629  
Mellon BANK Building  
Pittsburgh, Pennsylvania 15219  
412/232-5061

November 13, 1981

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

RECORDATION NO. 13315 FILED 11/13/81

NOV 13 1981 1 15 PM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Mergenovich:

Pursuant to 49 USC Sec. 11303 of ~~the~~ the Interstate Commerce Act, there are transmitted herewith for filing AND RECORDING four executed copies of Agreement and Lease dated as of November 2, 1981, between Mellon International Leasing Company as Lessor, and Consolidated Rail Corporation as Lessee.

The ~~name~~ name and address of Lessor is:

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

The ~~name~~ name and address of Lessee is:

Consolidated Rail Corporation  
6 Penn Central ~~XXXX~~

Yours very truly,

Sylvia Goldstein  
acting ~~for~~ for  
Mellon Leasing Corp.

*Consolidated - Sylvia Goldstein*

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

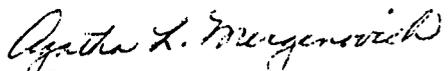
**OFFICE OF THE SECRETARY**

Sylvia Goldstein  
Acting For  
Mellon Leasing Corp.  
Suite 3629-Mellon Bnk. Bldg/  
Pittsburgh, PA. 15219

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/13/81 at 1:15PM , and assigned re-  
recording number(s). 13315

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. **13315** Filed 1425

NOV 13 1981 - 1 15 PM  
INTERSTATE COMMERCE COMMISSION

1-317A073

No.   
NOV 13 1981  
Date...  
Fee \$ 50.00  
ICC Washington, D. C.

AGREEMENT AND LEASE  
dated as of November 2, 1981

between  
MELLON INTERNATIONAL LEASING COMPANY  
Lessor

and  
CONSOLIDATED RAIL CORPORATION  
Lessee

NOV 13 1 07 PM '81

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. <u>Certain Definitions</u> .....	1
ARTICLE II. <u>Agreement to Lease</u> .....	3
ARTICLE III. <u>Delivery and Acceptance</u>	
3.1. Delivery and Acceptance of Equipment....	3
3.2. Certificate of Acceptance.....	4
ARTICLE IV. <u>Term and Rent; Security</u>	
4.1. Term.....	4
4.2. Basic Rent.....	4
4.3. Additional Rent.....	4
4.4. Payment of Rent.....	4
4.5. No Set-Off.....	5
4.6. Security.....	5
ARTICLE V. <u>Representations and Warranties</u>	
5.1. Lessor's Representations and Warranties.	6
5.2. ERISA.....	7
5.3. Lessee's Representations and Warranties.	7
ARTICLE VI. <u>Conditions to Lessor's Obligations</u>	
6.1. Conditions.....	8
6.2. Accuracy of Representations and Warranties; No Default .....	8
6.3. Initial Acceptance.....	8
6.4. Each Acceptance.....	9
6.5. Other Matters.....	10
ARTICLE VII. <u>Reports</u>	
7.1. Financial Reports.....	10
7.2. Annual Certificate.....	10
7.3. Due Diligence.....	11
7.4. Additional Reports.....	11
7.5. Accidents .....	11
7.6. Tax Liens.....	12
ARTICLE VIII. <u>Maintenance, Use and Operation</u>	
8.1. Maintenance and Operation.....	12
8.2. Location and Insignia.....	12
8.3. Accessories.....	13
8.4. Personal Property.....	13
8.5. Sublease and Assignment.....	13
8.6. Recording.....	14

	<u>Page</u>
ARTICLE IX. <u>Liens</u> .....	14
9.1. In General.....	14
9.2. Interest of Owner, etc. of Railcars.....	14
ARTICLE X. <u>Insurance</u>	
10.1. Physical Damage Insurance.....	15
10.2. Liability Insurance.....	15
10.3. General Insurance Provisions.....	15
10.4. Payment of Premium by Lessor.....	16
ARTICLE XI. <u>Assumption of Risk; Indemnification</u>	
11.1. General.....	16
11.2. Federal Income Tax Matters.....	17
11.3. Survival of Obligations.....	20
ARTICLE XII. <u>Damage to Property</u>	
12.1. Duty to Notify.....	21
12.2. Stipulated Loss Value.....	21
12.3. Insurance and Condemnation Proceeds.....	21
ARTICLE XIII. <u>Return of Property</u> .....	21
ARTICLE XIV. <u>Defaults; Remedies</u>	
14.1. Default; Remedies.....	22
14.2. Remedies Cumulative; Waiver of Requirements.....	24
ARTICLE XV. <u>Assignment by Lessor</u> .....	24
ARTICLE XVI. <u>Quiet Possession</u> .....	25
ARTICLE XVII. <u>Further Assurances</u> .....	25
ARTICLE XVIII. <u>Miscellaneous</u> .....	26
ARTICLE XIX. <u>Notices</u> .....	26
Attachments:	
Lease Supplement	
Lease Schedule (with Annex, Stipulated Loss Value)	
Exhibits	
A. Form of Certificate of Acceptance	
B. Form of Assignment as to Purchase Orders, Etc.	
C. Form of Consent by Vendor to Assignment	
D. Form of Vendor's Bill of Sale	
E. Form of Security Agreement	

## AGREEMENT AND LEASE

THIS AGREEMENT AND LEASE, dated as of NOVEMBER 2, 1981 between MELLON INTERNATIONAL LEASING COMPANY, a Pennsylvania corporation ("Lessor"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Lessee");

W I T N E S S E T H    T H A T :

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

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

### ARTICLE I.    Certain Definitions

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

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

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

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

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

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

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

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

"Interest Payment Rate" shall mean the lesser of the rate per annum identified as such in the Lease Schedule or the maximum rate permitted by law.

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

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

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

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

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

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

"Stipulated Loss Value" shall mean with respect to each Unit the amount equal to the applicable percentage of Lessor's Cost determined in accordance with the table set forth on Annex 1 to the Lease Schedule.

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

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

## ARTICLE II. Agreement to Lease

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

## ARTICLE III. Delivery and Acceptance

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

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

Lessee hereby acknowledges and represents and warrants to Lessor with respect to each Unit so accepted that (i) such Unit is of a size, design, capacity and manufacture selected by Lessee, (ii) such Unit conforms to the applicable description set forth in the Lease Schedule, and (iii) Lessee is satisfied that such Unit is suitable for its purposes; provided, however, that

nothing contained in this Agreement or in any Certificate of Acceptance shall in any way diminish or otherwise affect any rights which Lessor or Lessee may have against the vendor or manufacturer of any Unit or any subcontractor of such vendor or manufacturer.

3.2. Certificate of Acceptance. On or before November 13, 1981, Lessee shall promptly complete, execute and deliver to Lessor a Certificate of Acceptance with respect to each Unit so determined acceptable, and in conjunction shall take such other action as may be necessary to fulfill the applicable conditions specified in Article VI hereof.

#### ARTICLE IV. Term and Rent; Security

4.1. Term. The Term shall commence on the date of acceptance by Lessee of the first Unit accepted for lease hereunder, as evidenced by the execution and delivery by Lessee of the Certificate of Acceptance with respect thereto. Unless earlier terminated or extended in accordance with the express provisions hereof, the Term shall expire on the date determined in accordance with the Lease Schedule.

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

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

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

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

4.6 Security. As security for its obligations hereunder, including without limitation all payments of Basic Rent and Additional Rent, Lessee shall enter into a security agreement, in substantially the form of Exhibit E hereto (the "Security Agreement"), whereby Lessee will, prior to or simultaneously with delivery of the first Certificate of Acceptance hereunder, deposit \$1,000,000 with Lessor to be used by Lessor to purchase United States government securities with maturities not in excess of one year (the "Collateral") in accordance with the Security Agreement and create in favor of Lessor a security interest in the Collateral and any proceeds thereof. Lessor shall hold the Collateral as security for the obligations of Lessee hereunder and, in case of an Event of Default hereunder, shall have all the rights and remedies with respect to the Collateral of a secured party under the Pennsylvania Uniform Commercial Code; provided, however, that so long as no Default or Event of Default shall have occurred and be continuing, Lessor shall remit or cause to be remitted all interest on the Collateral to Lessee.

On the sixth anniversary of the commencement date of the Base Term, if no Default or Event of Default shall have occurred and be continuing, Lessor shall return the Collateral to Lessee, whereupon all obligations of lessee under this Section 4.6 shall terminate.

#### ARTICLE V. Representations and Warranties

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

by Lessor, express or implied, whether arising pursuant to the Uniform Commercial Code or any similar law now or hereafter in effect, or otherwise.

5.2. ERISA. Lessor represents and warrants to Lessee that Lessor is purchasing the Units with its general assets and not directly or indirectly with the assets of, or in connection with any arrangements or understandings in any way involving any employee benefit plan with respect to which it or Lessee is a party in interest or a Disqualified Person within the meaning of the Employee Retirement Income Security Act of 1974, as amended, or the Code, respectively.

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

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

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

(c) This Agreement constitutes a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting generally the enforcement of creditors rights;

(d) Except as disclosed in the "Consolidated Rail Corporation Memorandum for Private Investors dated October 20, 1981" and Supplement No. 1 thereto dated October 27, 1981 (the "Memorandum"), a complete and correct copy of which was furnished by Lessee to Lessor at or before the time of execution of this Agreement, there are no pending or threatened actions or proceedings against Lessee or any of its affiliates before any court, administrative agency or other tribunal or body which may materially adversely affect

Lessee's financial condition or operations or which question the legality or validity of this Agreement or which may affect Lessee's ability to perform its obligations hereunder; and

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

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

6.1. Conditions. Lessor's duties and obligations under this Agreement are subject to the execution and delivery by Lessee of a Certificate of Acceptance with respect to each Unit and to fulfillment of the applicable conditions precedent set forth in Sections 6.2 through 6.5 hereof, in each case in form, substance and manner satisfactory to Lessor and its counsel.

6.2. Accuracy of Representations and Warranties; No Default. The representations and warranties contained in Section 5.2 hereof shall have been true and correct when made and shall be true and correct on and as of the date of delivery of each Certificate of Acceptance; on each such delivery date no Event of Default and no condition, event, act or omission which, with notice or the lapse of time or both, would constitute an Event of Default shall have occurred and be continuing; and on each such delivery date Lessee shall deliver to Lessor a certificate to both such effects, dated such date and signed by the President, any Vice President or the Treasurer of Lessee.

6.3. Initial Acceptance. Prior to or simultaneously with delivery of the Certificates of Acceptance (the "Closing Date"), Lessee shall have furnished to Lessor:

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

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

(c) A certified copy of the letter addressed to Lessee from General Motors Corporation ("GMC") containing an agreement by GMC to reimburse Lessee on a pro-rata basis for any portion of the unamortized cost of the Equipment in the event General Motors Corporation fails to use the Equipment for any period or periods during the first five full years from the Closing Date (the "Letter Agreement"), together with an assignment under which Lessee shall assign all of its rights under said Letter Agreement to Lessor.

(d) An opinion of counsel for Lessee dated the Closing Date as to the matters set forth in Section 5.2 other than subparagraph (e) thereof, that Lessee is not an agency or instrumentality of the United States government, that all filings and recordations required pursuant to Section 8.7 hereof have been filed or recorded in proper form in all locations necessary or appropriate to protect Lessor's title to the Equipment and as to such other matters as Lessor may reasonably request.

(e) Evidence satisfactory to lessor that each owner, lessor, mortgagee or any other person having an interest in the Railcars on which the Equipment shall be placed has delivered the waiver referred to in Section 9.2 hereof, together with the other information referred to in Section 9.2.

(f) An executed copy of the Security Agreement and<sup>1</sup> the funds referred to in Section 4.6 hereof.

6.4. Each Acceptance. Prior to or simultaneously with delivery of the Certificates of Acceptance, Lessee shall have furnished to Lessor the following:

- (a)(i) A true and correct copy of all purchase orders, invoices and other contract documents relating to such Unit between the vendor thereof and Lessee
- (ii) An executed copy of an assignment of such purchase orders, invoices and other contract documents in substantially the form of Exhibit B hereto,
- (iii) An executed copy of a consent to each such assignment substantially in the form of Exhibit C hereto,
- (iv) Tender of an executed bill of sale for such Units substantially in the form of Exhibit D hereto and

(v) Evidence satisfactory to Lessor that the person or persons signing each such consent to assignment and each such bill of sale was duly authorized to do so.

(b) Evidence satisfactory to Lessor that Lessee has obtained insurance with respect to the Units as required by Article X.

(c) Evidence satisfactory to Lessor that Lessee has complied with the requirements of Section 8.1.

(d) Evidence satisfactory to Lessor as to the due compliance by Lessee with the provisions of Section 8.8 and Section 9.1 hereof.

(e) A list setting forth for each Unit the machine record number assigned to such Unit by Lessee for purposes of Lessee's computerized inventory control system referred to in Section 8.2(b).

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

#### ARTICLE VII. Reports

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

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

(a) The manufacturer's serial number of each Unit;

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

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

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

7.3. Due Diligence. Lessee shall furnish to Lessor, concurrently with the delivery of the annual financial statements of Lessee required by Section 7.1 hereof, a certificate signed on behalf of Lessee by the Vice President-Treasurer or his delegate stating as of a recent date (but not more than three months prior thereto) that the signer of the certificate has made, or caused to be made by persons under his authority and direction, a reasonable investigation concerning the Equipment and Lessee's compliance with its obligations hereunder, and that no Event of Default, and no condition, event, act or omission which with notice or lapse of time or both would be an Event of Default, has occurred and is continuing or, if any such event, condition, act or omission has occurred and is continuing, the nature thereof and the steps which Lessee has taken or is taking to cure the same.

7.4. Additional Reports. Upon the written request of Lessor at any time and from time to time, Lessee will also deliver to Lessor, within thirty (30) days of such request, a certificate executed on behalf of Lessee by a duly authorized officer containing the information, as of a date not earlier than the date of such request, called for by Section 7.3. Lessee shall also furnish to the Lessor such additional information concerning the location, condition, use and operation of the Equipment and the financial condition and operations of Lessee as Lessor may reasonably request from time to time, and Lessee shall permit any person designated by Lessor to visit and inspect the Equipment and the records maintained in connection therewith and to discuss the affairs, finances and accounts of Lessee with the principal officers of Lessee, all at such reasonable times and as often as Lessor may reasonably request.

7.5. Accidents. In the event of an accident arising out of alleged or apparent defective design or manufacture or out of the use or operation of any Unit, Lessee shall promptly file with the appropriate governmental agencies all notices required by law and shall promptly deliver to its insurance carriers all

notices called for under each policy of insurance relating to such Unit. Concurrently with such filing or delivery, Lessee shall deliver to Lessor a copy of the notice so filed or delivered. Lessee shall also deliver to Lessor any additional information with respect to such accident which Lessor shall reasonably request and shall promptly make available to Lessor all correspondence, papers, notices and documents whatsoever received by Lessee in connection with any claim or demand involving or relating to any such accident.

7.6. Tax Liens. Lessee shall notify Lessor in writing, within ten (10) business days after Lessee having been notified of any tax lien having attached to any Unit, of such lien.

#### ARTICLE VIII. Maintenance, Use and Operation

8.1. Maintenance and Operation. Lessee, at its own cost and expense, shall service, repair and maintain each Unit so as to keep it (i) in as good operating condition as it was when delivered to Lessee hereunder, ordinary wear and tear excepted, and (ii) subject to Lessee's Right to Contest, in such condition as shall meet all applicable federal, state or local laws or regulations (including without limitation all applicable regulations of the United States Department of Transportation and the Interstate Commerce Commission) and the applicable rules of the American Association of Railroads. Lessee shall not use, operate, maintain or store any Unit improperly, carelessly or in violation of this Agreement, of any instructions therefor furnished by the manufacturer or vendor thereof or, subject to Lessee's Right to Contest, of any applicable federal, state or local law or regulation (including without limitation all applicable regulations of the United States Department of Transportation and the Interstate Commerce Commission) or the applicable rules of the American Association of Railroads; nor use or operate any Unit other than in a manner and for the use contemplated by the manufacturer thereof. In case any equipment or appliance on any Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on any Unit in order to comply with such laws, regulations or rules, Lessee shall make such changes, additions and replacements at its own expense.

#### 8.2 Location and Insignia.

(a) Lessee shall, within fifteen (15) days of the Final Delivery Date, plainly, distinctly, permanently and conspicuously mark on each Unit, the words "Property of and leased from Mellon International Leasing Company subject to an agreement filed with the Interstate Commerce Commission" or such other insignia or identification as Lessor shall request and shall not remove, or permit the removal, of such insignia or identification without the prior written consent of Lessor. Except as above provided, the Lessee will not

allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership. Subject to the foregoing, the Lessee may cause the Units to be lettered with the names or initials or other insignia used by the Lessee or any sublessee on railroad equipment of the same or similar type for convenience of identification of the right of the Lessee or any sublessee to use the Unit under this Agreement.

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

8.3. Accessories. Lessee shall not, without the prior written consent of Lessor, affix or install any accessory, equipment or device on any Unit if such addition will impair the value or the originally intended function or use of such Unit unless such accessory, equipment or device shall be necessary in order to comply with the third sentence of Section 8.1 hereof. All repairs, parts, supplies, accessories, equipment and devices furnished or affixed to the Equipment shall thereupon become the property of Lessor (except such as may be removed without in any way affecting or impairing the value or the originally intended function or use of the Equipment). Immediately upon any replacement part becoming incorporated or installed in or attached to the Equipment, without further act, title to the removed part shall thereon vest in Lessee, free and clear of all rights of Lessor.

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

8.5. Sublease and Assignment. So long as no Event of Default exists hereunder, Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Agreement and, without the prior written consent of Lessor, Lessee may sublease (which sublease shall be subject to the rights and remedies of Lessor and any vendor hereunder) the Units to, or permit their use by, a Class I Railroad incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by Lessee, such user or a railroad company or companies incorporated in the United States of America (or any state thereof or the District of

Columbia), or over which the Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connection and other carriers in the usual interchange of traffic or in-through or run-through service, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that Lessor's prior written consent, not to be unreasonably withheld, must be obtained for any sublease that is for a term longer than six months or is renewable for a term more than six months; provided further, however, that Lessee shall not sublease or permit the sublease or use of any Unit for service involving operation or maintenance outside the United States of America except that occasional service in Canada shall be permitted so long as such service in Canada does not involve regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provisions of Section 8.1 hereof. No such assignment or sublease shall relieve Lessee of its obligations hereunder which shall be and remain those of a principal and not a surety.

8.6. Recording. Prior to or simultaneously with delivery of the Certificate of Acceptance with respect to a Unit, Lessee will at its expense cause this Lease to be filed, registered, recorded and deposited in all places and with all federal, state, local and foreign governmental authorities, including without limitation, in accordance with 49 U.S.C. §11303 and with the Registrar General of Canada, and Lessee from time to time will do and perform any other act and will execute, file, register, record and deposit any further instruments, as may be required by law or reasonably requested by Lessor for the purpose of proper protection to the satisfaction of Lessor of Lessor's title to such Unit and of Lessor's security interest in the Collateral referred to in Section 4.6. Lessee will pay or cause to be paid all taxes and fees incident to any such filing, registering, recording or depositing. Lessee will cause this Agreement to be filed, within thirty (30) days of the delivery of the initial Certificate of Acceptance, with the Registrar General of Canada and shall not use or permit any Unit to be used in Canada until this Agreement shall have been so filed.

#### ARTICLE IX. Liens

9.1. In General. Lessee will not permit any Unit to be subject to any lien, charge or encumbrance whatsoever except (i) the respective rights of Lessor and Lessee as herein provided, (ii) liens asserted by any person claiming by, through or under Lessor and resulting from acts or omissions of Lessor, except to the extent that such liens, charges or encumbrances arise from the failure of Lessee to perform any of Lessee's obligations hereunder, (iii) liens for taxes either not yet due or which are subject to Lessee's Right to Contest, (iv) inchoate, materialmen's, mechanics', workmen's, repairmen's, employees' or other like liens arising in the ordinary course of business and

not delinquent and (v) liens arising out of judgments or awards against Lessee which are subject to Lessee's Right to Contest.

9.2 Interest of Owner, etc. of Railcars. Lessee intends to use the Equipment by attaching each Unit to a railroad flat car (a "Railcar") which shall either be owned by Lessee free of any liens, charges or encumbrances (other than liens permitted by Section 9.1) or leased by lessee for a period at least equal to the Base Term; provided, however, that the lessor under any such lease may have the right to terminate such lease upon twelve (12) months' prior written notice to lessee. Lessee will send a copy of each such notice of termination to Lessor immediately upon receipt thereof by Lessee. In the event any such lease is so terminated, Lessee, at its expense, shall cause the Units which were attached to the Railcars subject to such lease to be attached to other Railcars and shall complete such new attachment and notify Lessor of such completion and of the identifying numbers of the new Railcars within nine (9) months from the date of such notice of termination. Lessee agrees to cause each owner of, Lessor of and holder of any security interest in any Railcar to which any Unit is attached to waive any and all rights it may have with respect to the ownership, possession or use of such Unit and to authorize Lessee and Lessor and their authorized employees and agents to remove such Unit from such Railcar at any time. Prior to or simultaneously with delivery of a Certificate of Acceptance with respect to any Unit, Lessee shall furnish Lessor with the identifying number of, and the name and address of each owner or Lessor of and holder of any security interest in, each Railcar to which a Unit is to be attached, together with the waivers referred to in the preceding sentence in form and substance satisfactory to Lessor. Lessee shall promptly notify Lessor in writing of any change during the Base Term in the identifying number of, or the name or address of any owner or lessor of or holder of any security interest in, any such Railcar.

#### ARTICLE X. Insurance

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

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

fined by the rules and regulations of the Interstate Commerce Commission and by the American Association of Railroads).

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

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

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

11.1 General. Lessee does hereby assume liability for, and does hereby agree to indemnify, protect, save and keep harmless Lessor and its successors, assigns, representatives, directors, officers, employees, agents and servants from and against, and, subject to Lessee's Right to Contest, does hereby agree to pay, when due, as Additional Rent, all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind or nature, whether seen or unforeseen, imposed upon, incurred by or with respect to or asserted against any Unit, Lessor or its successors, assigns, representatives, directors, officers, employees, agents or servants, in any way relating to or arising out of the manufacture, purchase, acceptance or rejection, ownership, delivery, lease, use, possession, operation, condition, repair, replacement, reconstruction, return or other disposition of any Unit, including without limitation those in any way relating to or arising out of or alleged to arise out of (i) any latent or other defects whether or not discoverable by Lessor or Lessee, (ii) any claim for patent, trademark or copyright infringement, (iii) any claim based on strict liability in tort and (iv) any and all license fees, assessments and sales, use, rent, property and other taxes now or hereafter imposed by any federal, state or local government upon any Unit or its use or payments hereunder, or upon this Agreement (excluding, however, taxes, fees and other charges based upon or measured by Lessor's net income, together with interest and penalties with respect thereto), whether the same shall be payable by or billed or assessed to Lessor or Lessee, together with any penalties or interest in connection therewith; provided, however, that nothing in this Section 11.1 shall be construed so as to

require Lessee to indemnify Lessor for its own gross negligence or willful misconduct. Lessee shall be obligated under this Section 11.1 irrespective of whether Lessor or any of its successors, assigns, representatives, directors, officers, employees, agents or servants shall also be indemnified with respect to the same matter under any other agreement by any other person. In the event Lessee is required to make any payment under this Section 11.1, Lessee shall pay to Lessor an amount which after deduction of all taxes required to be paid by Lessor or any other person indemnified hereunder in respect of the receipt of such payment (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of such other taxes) shall be equal to the amount of such payment. Lessee and Lessor each agree to give the other promptly upon obtaining knowledge thereof written notice of any claim or liability hereunder indemnified against; provided, however, that the failure to give such notice shall not in any way affect, impair or diminish Lessee's obligations hereunder.

#### 11.2. Federal Income Tax Matters.

(a) As between Lessor and Lessee, Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of property, including, without limitation, (i) an allowance for an investment tax credit as provided by Section 38 of the Code and (ii) a deduction for recovery property as provided by Section 168 of the Code. Accordingly, Lessee represents and warrants that (i) at the time the Equipment is placed in service under this Agreement, the Equipment constitutes "new Section 38 property" (within the meaning of Section 48(b) of the Code) of the Lessee within the meaning of Section 168(f)(8)(D) of Code, (ii) the Term with respect to each Unit is not longer than the greater of (x) 90% of the useful life of such Unit (for purposes of Section 167(m) of the Code) or (y) 150% of the midpoint of the "class life" of such Unit under Section 167(m) of the Code, (iii) at all times during the Term relating to the respective Units, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code, and (iv) each of the Units is "recovery property" as defined in Section 168(c)(1) of the code which is "5-year property" as defined in Section 168(c)(2)(B) of the Code.

(b) Lessee acknowledges that the anticipated availability to Lessor of a specified amount of investment tax credit and an annual deduction for recovery property are fundamental to the economics of this Agreement. Accordingly, the basis upon which the investment tax credit and the recovery deduction will be determined are set forth on the Lease Schedule.

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

(d) If, for any reason whatsoever, there shall be a disallowance, elimination, recomputation, reduction, recapture or disqualification (hereinafter called "Loss"), in whole or in part, of the ITC for any Unit, Lessee shall pay to Lessor as Additional Rent, within ten days after receipt of written request from Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, is equal to such Loss of the ITC.

(e) If there shall be a Loss, in whole or in part, of Recovery Deductions for any Unit, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor and upon the presentation of reasonable documentation of the calculation of such amount to Lessee) cause Lessor's net yield and cash flows in respect of such Unit to equal the net yield and cash flows that Lessor had expected to receive if Lessor had not suffered a Loss with respect to the Recovery Deductions. Such Additional Rent shall be payable over the then remaining Term commencing with the first Rental Payment Date occurring more than ten days after Lessor notifies Lessee of the required Additional Rent; or if no part of the Term shall then be remaining, such Additional Rent shall be payable on demand.

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

(g) Notwithstanding the provisions of paragraph (e) of this Section 11.2, Lessee shall not be required to make any payment on account of any Loss of the Recovery Deductions due solely to (i) the failure to properly claim the Recovery

Deductions in the tax returns filed by Lessor or (ii) the sale or disposition of the Equipment, any Unit or this Agreement by Lessor prior to any Default by Lessee.

(h) In the event the Internal Revenue Service or any state or local taxing authority proposes adjustments to the ITC or Recovery Deductions which, if successful, could result in a Loss for which Lessee would be required to indemnify Lessor pursuant to this Section 11.2, Lessor hereby agrees to notify Lessee promptly of such proposed adjustment, to withhold payment of the tax claimed to be due for a period of 30 days after giving such notice, and to exercise in good faith its best efforts (determined by Lessor in Lessor's sole discretion to be reasonable, proper and consistent with the overall tax interests of Lessor and its affiliated companies) to avoid requiring Lessee to pay such indemnity, provided that Lessee shall have agreed to indemnify Lessor in a manner satisfactory to Lessor for any liability or loss which Lessor may incur as a result of contesting such adjustments and shall have agreed to pay Lessor on demand all costs and expenses which Lessor may incur in connection with contesting such adjustments, including without limitation, reasonable attorneys', accountants', engineers' and like professional fees and disbursements. In the event the Additional Rent due from Lessee pursuant to this Section 11.2 over the then remaining Term ("aggregate indemnity") is less than \$400,000, Lessor's duty to contest the adjustments shall not require proceedings above the level of an Internal Revenue Service examining agent. In those cases where the aggregate indemnity is \$400,000 or more, at the request of Lessee, Lessor shall contest the adjustments in a court of original jurisdiction, selected by Lessor in its sole discretion, it being understood that Lessor may first contest the adjustments through Internal Revenue Service administrative proceedings or forego such administrative proceedings, as Lessor shall deem appropriate; provided, however, that Lessor shall have first received an opinion of its independent tax counsel to the effect that a meritorious defense exists to such adjustments.

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

(j) It is the intention of Lessor and Lessee that this Agreement shall be treated as a lease in accordance with Section 168(f)(8) of the Code. Lessor and Lessee hereby irrevocably elect to have the provisions of Section 168(f)(8) of the Code apply to the transactions described herein and to treat Mellon International Leasing Company as the lessor of the Equipment and Consolidated Rail Corporation as the lessee of the Equipment. Lessor and Lessee each agree to do all things required of it to effect said election in the manner and at the time required by the Code or any regulations, rulings or instructions of the Department of the Treasury or the Internal Revenue Service (including, without limitation, the filing of all information returns required thereby).

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

In the event any amount includable in the gross income of Lessor with respect to any one or more of the Units of any deduction allowable to Lessor with respect to such Unit or Units shall be treated as derived from or allocable to sources outside the United States, Lessee shall pay to Lessor as Additional Rent, after written request of Lessor, an amount which, after deduction of Federal, state and local income taxes, and interest and penalties required to be paid by Lessor with respect to the receipt of such Additional Rent, will (in the reasonable opinion of Lessor) cause Lessor's net yield and cash flows in respect of such unit or units to equal the net yield and cash flows that Lessor had expected to realize had such income or deductions not been treated as having been derived from or allocable to sources outside the United States. Such Additional Rent shall be payable within ten days after receipt of written request from Lessor. In determining the Additional Rent due under this paragraph, Lessor shall take into account any additional Federal income tax benefits actually realized by Lessor for the taxable year as a result of such income or deductions being treated as "foreign source" items, provided however, Lessor shall not be required to maximize such additional Federal income tax benefits available to Lessor with respect to such "foreign source" items if it is not in the best tax interests of Lessor as determined by Lessor, in its sole discretion.

(l) Reference in this Section 11.2 to Lessor shall include any affiliated group of which Lessor is a member for purposes of filing consolidated tax returns, provided that

only Lessor shall be obligated with respect to the covenants and duties imposed herein on Lessor.

11.3. Survival of Obligations. This Article XI shall become and be effective and in full force and effect from the date of this Agreement and shall remain in effect notwithstanding the expiration or other termination of the Term insofar as it relates to an event or state of facts which occurred or existed or which is alleged to have occurred or existed prior to such expiration or termination.

#### ARTICLE XII. Damage to Property

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

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

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

#### ARTICLE XIII. Return of Property

If the Lessee does not exercise its purchase option pursuant to the Lease Supplement hereto, at the expiration or sooner termination of the Term, Lessee shall return the respec-

tive Units to Lessor, free of all Lessee advertising or insignia placed thereon by Lessee, and in the same operating order, repair, condition and appearance as when originally received by Lessee, excepting only for reasonable wear and tear and damage by any cause covered by collectible insurance. Lessee shall pay or reimburse Lessor for the cost of all repairs necessary to restore such Unit to such condition. Lessee shall return each Unit to Lessor at the location designated by Lessor. If Lessor so requests, the Lessee will defer such return of any of the Units and will, without expense to Lessor, store same at premises of Lessee used by Lessee for the storage of similar property and approved by Lessor, for a period not to exceed 120 days from the date of the expiration or sooner termination of the Term, the obligations of Lessee during that interval in respect to the Units being that of reasonable care under all the circumstances; provided, however, that the foregoing shall not impose upon Lessee any responsibility for maintenance, overhaul, or any other expense during such storage. If Lessor so requests, Lessee shall continue to maintain insurance upon such Units in accordance with Article X hereof and Lessor shall reimburse Lessee for the cost of such insurance allocable to such Equipment.

#### ARTICLE XIV. Defaults; Remedies

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

(a) Default shall be made in the payment when due of any Rent herein provided and such default shall continue for five (5) days after such due date;

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

(c) Default shall be made in the observance or performance of any other covenants, conditions and agreements on the part of Lessee contained herein and such Default shall continue for thirty (30) days after written notice from Lessor to Lessee specifying the Default and demanding the same to be remedied;

(d) A proceeding shall have been instituted in a court having jurisdiction in the premises, seeking a decree or order (i) for relief in respect of Lessee in an involuntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of Lessee or of its property, or (iii) for the winding up or liquidation of the affairs of Lessee; and either (I) any such proceeding shall remain undismissed or unstayed and in effect for a

period of 30 consecutive days or (II) such court shall enter a decree or order granting the relief sought in such proceeding;

(e) Lessee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, shall consent to the entry of an order for relief in an involuntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official of Lessee or for any substantial part of its property, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing;

(f) Lessee shall have knowledge that there has occurred and is continuing any condition, event, act or omission which it reasonably believes constitutes, or with notice or lapse of time would constitute, an Event of Default, and shall fail promptly to notify Lessor of such condition, event, act or omission; or

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

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

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

B. By notice in writing to Lessee, terminate this Agreement, whereupon all right of Lessee to the use of the Equipment shall absolutely cease and terminate as though this Agreement had never been made, but Lessee shall deliver possession of the Equipment to Lessor in accordance with Article XIII hereof and Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents and without notice to Lessee enter upon the premises of Lessee or other premises where the Units may be located and take possession of all or any such Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purpose whatever.

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

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

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

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

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

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

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

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

ARTICLE XV. Assignment by Lessor

Lessee acknowledges and understands that the terms and conditions of this Agreement have been agreed to by Lessor in anticipation of its being able to assign its interest under this Agreement and in and to the Equipment leased hereunder to a bank or other lending institution or to others having an interest in the Equipment or this transaction, all or some of which will rely upon and be entitled to the benefit of the provisions of this Article XV. Lessee agrees with Lessor and with such bank or other lending institution or such other party (for whose benefit this covenant is expressly made) and in consideration of the provisions hereof, as follows: (i) to recognize any such assignment, (ii) to accept the directions or demands of such assignee in place of those of Lessor, (iii) to surrender the Equipment only to such assignee, (iv) to pay all Rent payable hereunder and to do any and all things required of Lessee hereunder and not to terminate this Agreement, notwithstanding any Default by Lessor or the existence of any offset as between Lessor and Lessee or the existence of any other liability or obligation of any kind or character on the part of Lessor to Lessee whether or not arising hereunder, and (v) not to require any assignee of this Agreement to perform any duty, covenant or condition required to be performed by Lessor under the terms of this Agreement, all rights of Lessee in any such connection being hereby waived as to any and all of such assignees; provided, however, that nothing contained in this Article XV shall relieve Lessor from its obligations to Lessee hereunder; and, provided further, that Lessor shall not assign its interest under this Agreement and in and to the Equipment unless (i) no Loss of the ITC or Recovery Deductions would be caused thereby, and (ii) the transferee agrees to recognize Lessee's purchase option under the Lease Supplement.

ARTICLE XVI. Quiet Possession

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

ARTICLE XVII. Further Assurances

Lessee and Lessor will promptly and duly execute and deliver to the other party hereto such further documents and assurances and take such further action as Lessor or Lessee may from time to time reasonably request in order to carry out more effectively the intent and purpose of this Agreement and to establish and protect the rights and remedies created or intended

to be created in favor of Lessor or Lessee hereunder, including, without limitation, if requested by Lessor or Lessee, in either case at the expense of Lessee, the execution and delivery of supplements or amendments hereto, in recordable form subjecting to this Agreement any replacement property and the recording or filing of counterparts hereof, or of financing statements with respect thereto in accordance with the laws of such jurisdiction as Lessor or Lessee may from time to time deem advisable.

#### ARTICLE XVIII. Miscellaneous

Nothing herein contained shall give or convey to Lessee any right, title or interest in and to any Unit leased hereunder except as a lessee. The obligations of Lessor hereunder and the obligations of Lessee under Section 8.1 and Article XIII shall be suspended to the extent that Lessor or Lessee, as the case may be, is hindered or prevented from complying therewith because of labor disturbances (including strikes and lockouts), war, Acts of God, fires, storms, accidents, governmental regulations or interference or any cause whatever beyond its control. No obligation of Lessor hereunder shall survive the Term, and should Lessor permit the use of any Unit beyond such Term, the obligations of Lessee hereunder shall continue and such permissive use shall not be construed as a renewal of the Term hereof nor as a waiver of any right or continuation of any obligation of Lessor hereunder, and Lessor may take possession of any such Unit at any time after the Term upon demand after five days' notice. Any cancellation or termination by Lessor pursuant to the provisions of this Agreement shall not release Lessee from any then outstanding obligations to Lessor hereunder. This Agreement constitutes the entire agreement between the parties and there are no warranties (in respect of the Equipment or otherwise), express or implied, or collateral or contemporaneous agreements that affect its import other than such as are contained herein. This Agreement may be modified, amended or mutually rescinded only by a written instrument executed by each of the parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and, subject to Section 8.6 hereof, their respective successors and assigns. Time is of the essence of this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania. Any document required to be delivered hereunder in executed form or otherwise may be delivered by telecopier.

#### ARTICLE XIX. Notices

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

party's signature hereto, or to such other address as such party shall specify by like notice.

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

Mellon International Leasing Company

Lessor

By: Michael Blodley

Title: VICE PRESIDENT

Address: 3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

Consolidated Rail Corporation

Lessee

By: J.W. B

Title: Vice President & Treasurer

Address: Six Penn Center Plaza  
Philadelphia, PA 19104

Attest:

[CORPORATE SEAL]

J. D. Mc GEEHAN

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF ~~ALLEGHENY~~ Philadelphia )

SS:

On this, the 12th day of November, 1981, before me, a Notary Public, the undersigned officer, personally appeared, who <sup>Michael B. Woolley</sup> acknowledged himself to be the Vice President of Mellon International Leasing Company, a corporation, and that he as such <sup>VP</sup> President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as <sup>VP</sup> President.

IN WITNESS WHEREOF, I hereto set my hand and official seal.

Margaret B. Wilkinson  
Notary Public

(Notarial Seal)

My Commission Expires:

MARGARET B. WILKINSON  
Notary Public, Phila., Phila. Co.  
My Commission Expires Nov. 21, 1983

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF ALLEGHENY *Philadelphia* )

SS:

On this, the <sup>th</sup> 12 day of November, 1981, before me, a Notary Public, the undersigned officer, personally appeared, who *H. W. Brown* acknowledged himself to be the Vice President & Treasurer of CONSOLIDATED RAIL CORPORATION, a corporation, and that he as such ~~and Collections~~, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as

**Vice President & Treasurer**

**Vice President & Treasurer**

IN WITNESS WHEREOF, I hereto set my hand and official seal.

*Margaret B. Wilkinson*  
\_\_\_\_\_  
Notary Public

(Notarial Seal)

My Commission Expires: MARGARET B. WILKINSON  
Notary Public, Phila., Phila. Co.  
My Commission Expires Nov. 21, 1983

LEASE SUPPLEMENT  
to  
AGREEMENT AND LEASE  
dated as of November 2, 1981  
between  
MELLON INTERNATIONAL LEASING COMPANY, Lessor  
and  
CONSOLIDATED RAIL CORPORATION, Lessee

Purchase Option. If Lessee is not in default hereunder, Lessee shall have the right to purchase all, but not less than all, Units at the expiration of the Base Term at a price of \$1.00. Lessee shall give Lessor written notice 30 days prior to the end of the Base Term of its election to exercise such option. Payment of the option price shall be made on the last day of the Base Term at the place of payment specified in Section 4.4 by cash or immediately available funds against delivery of a bill of sale transferring each Unit to Lessee as is, where is, and with all faults.

LEASE SCHEDULE  
to  
AGREEMENT AND LEASE  
dated as of November 2, 1981  
between  
MELLON INTERNATIONAL LEASING COMPANY, Lessor  
and  
CONSOLIDATED RAIL CORPORATION, Lessee

1. Description of Equipment: One hundred twenty 120 fully enclosed bi-level auto racks manufactured by Whitehead & Kales.
2. Location of Equipment: Installed on Railcars owned or leased by Lessee.
3. Final Delivery Date: November 13, 1981
4. Interest Payment Rate: 18%
5. Base Term: A period of 120 months beginning on the Final Delivery Date.
6. Purchase Price: Not to exceed \$4,000,000 in the aggregate.
7. Basic Rent: On the first Basic Rental Payment Date and on each of the 19 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor by wire transfer Basic Rent equal to 5.2382% of the Lessor's Cost of the Unit. On the twenty-first Basic Rental Payment Date and on each of the 19 succeeding Basic Rental Payment Dates Lessee shall pay to Lessor by wire transfer Basic Rent equal to 3.4922% of Lessor's cost of the Unit. Each installment of Basic Rent shall be for the quarter immediately preceding the Basic Rental Payment Date on which such installment is due and payable.
8. Basic Rental Payment Dates: The ninetieth day of the Base Term and the last day of each succeeding quarter during the Base Term; provided, however, that if a Basic Rental Payment Date shall fall on a Saturday, Sunday, legal holiday or day on which banking institutions are authorized to close under the laws of the Commonwealth of Pennsylvania, then the next succeeding business day shall be the Basic Rental Payment Date.

9. Bases for Computation of ITC and Depreciation Deductions:

a. ITC. 10% of Lessor's Cost of each Unit available to Lessor in the calendar year 1981.

b. Recovery Deductions. Lessor shall be allowed, beginning in 1981, the deductions provided in Section 168(b)(1)(A) of the Code with respect to 5-year property under the Accelerated Cost Recovery System with respect to Lessor's Cost of each Unit.

10. Stipulated Loss Value. See Annex 1 to this Lease Schedule.

APPROVED AND AGREED TO as of the 13th day of November, 1981 as the Lease Schedule to and forming a part of the above-described Agreement and Lease.

MELLON INTERNATIONAL LEASING COMPANY

Lessor

By: Michael Hooley

Title: VICE PRESIDENT

CONSOLIDATED RAIL CORPORATION

Lessee

By: J. W. [Signature]

Title: Vice President & Treasurer

ANNEX 1  
 TO  
 LEASE SCHEDULE  
 TO  
 AGREEMENT AND LEASE  
 DATED AS OF NOVEMBER 2, 1981  
 BETWEEN  
 MELLON INTERNATIONAL LEASING COMPANY, LESSOR AND  
 CONSOLIDATED RAIL CORPORATION, LESSEE

"Stipulated Loss Value" on any Unit of the Equipment at any particular date shall mean the product derived from multiplying (1) the % figure opposite the notation for the appropriate time period as set forth in the table below by (2), the Lessor's Cost of such Unit.

<u>BASIC RENT PAYMENT</u> <u>DATE NUMBER</u>	<u>% OF</u> <u>LESSOR'S COST</u>	<u>BASIC RENT PAYMENT</u> <u>DATE NUMBER</u>	<u>% OF</u> <u>LESSOR'S COST</u>
1	100% of cost	21	49.6967% of cost
2	99.3045%	22	44.7723%
3	98.4954%	23	43.4379%
4	97.5727%	24	41.9900%
5	96.5364%	25	40.4286%
6	91.6829%	26	38.7535%
7	90.4196%	27	36.9649%
8	89.0426%	28	35.0627%
9	87.5521%	29	33.0470%
10	82.2443%	30	30.9177%
11	80.5267%	31	28.6748%
12	78.6955%	32	26.3184%
13	76.7507%	33	23.8484%
14	70.9887%	34	21.2648%
15	68.8168%	35	18.5677%
16	66.5313%	36	15.7570%
17	64.1323%	37	12.8327%
18	57.9160%	38	9.7949%
19	55.2898%	39	6.6435%
20	52.5500%	40	3.3785%
		AND THEREAFTER	0.0000%

CERTIFICATE OF ACCEPTANCE

No. \_\_\_\_\_ dated the \_\_\_\_\_ day of  
November, 1981  
to Agreement and Lease (the "Agreement")  
dated  
as of November 2, 1981  
between  
Mellon International Leasing Company ("Lessor")  
and  
Consolidated Rail Corporation ("Lessee")

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

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

Lessor's Cost: \$ \_\_\_\_\_  
Rent: \$ \_\_\_\_\_ per quarter  
for the first  
20 Basic  
Rental Payment  
Dates  
\$ \_\_\_\_\_ per quarter  
for the second  
20 Basic  
Rental Payment  
Dates

Lessee confirms that it has caused or will cause within fifteen (15) days to be affixed to each Unit described in

Attachment 1 hereto the identification tag indicating Lessor's ownership of such Unit as required by the Agreement.

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

LESSEE:

CONSOLIDATED RAIL CORPORATION

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

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

LESSOR:

MELLON INTERNATIONAL LEASING  
COMPANY

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

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

ASSIGNMENT

Pursuant to Agreement and Lease  
dated  
as of November 2, 1981 (the "Agreement")  
between  
Mellon International Leasing Company ("Lessor")  
and  
Consolidated Rail Corporation ("Lessee")

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Lessee has bargained, sold, transferred and assigned and by these presents does hereby bargain, sell, transfer and assign to Lessor, its successors and assigns, forever, all right, title and interest of Lessee in and to the \_\_\_\_\_

\* at-  
tached hereto. Lessee agrees that, except as specifically set forth in the Agreement and subject to the terms and conditions set forth therein, none of the duties or obligations of Lessee under said purchase orders, invoices or agreements is or has been delegated to or in any manner assumed by Lessor.

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

CONSOLIDATED RAIL CORPORATION  
Lessee

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

Title Vice President & Treasurer

---

\* List and describe purchase orders, invoices or agreements between Lessee and the manufacturer or vendor of the Equipment.

Mellon International Leasing Company  
3629 Mellon Bank Building  
Pittsburgh, Pennsylvania 15219

Gentlemen:

The undersigned, \_\_\_\_\_ ("Vendor")  
hereby consents to the assignment by Consolidated Rail Corpora-  
tion ("Lessee") to Mellon Internation Leasing Company ("Lessor")  
of Lessee's rights under \_\_\_\_\_

\_\_\_\_\_. \* Ven-  
dor understands that such assignment is made in contemplation of  
the leasing by Lessor to Lessee of the personal property covered  
by such \_\_\_\_\_ \*  
(the "Units"). Vendor agrees that Lessor intends to purchase the  
Units from Vendor upon receipt from Lessee of (among other  
things) an executed Certificate of Acceptance in the form pro-  
vided in the Agreement and Lease between Lessor and Lessee and  
that Lessor will pay Vendor for the Units within two business  
days of the date of such Certificate of Acceptance. Vendor agrees  
that none of the duties or obligations of Lessee under any agree-  
ments of any nature between Vendor and Lessee have been delegated  
to or in any manner assumed by Lessor, except as stated in the  
immediately preceding sentence.

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

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

---

\* List and describe purchase orders, invoices or agreements  
between Lessee and Vendor relating to the Units.

EXHIBIT C

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

Very truly yours,

[NAME OF VENDOR]

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

[Name]

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

CERTIFICATE OF ACCEPTANCE

No. 1 dated the 13th day of  
November, 1981  
to Agreement and Lease (the "Agreement")  
dated  
as of November 2, 1981  
between  
Mellon International Leasing Company ("Lessor")  
and  
Consolidated Rail Corporation ("Lessee")

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

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

Lessor's Cost:	\$ 3,928,680.00	
Rent:	\$ <u>205,792.12</u>	per quarter for the first 20 Basic Rental Payment Dates
	\$ <u>137,197.36</u>	per quarter for the second 20 Basic Rental Payment Dates

Lessee confirms that it has caused or will cause within fifteen (15) days to be affixed to each Unit described in

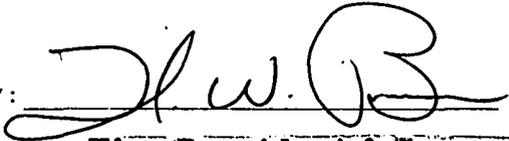
Attachment 1 hereto the identification tag indicating Lessor's ownership of such Unit as required by the Agreement.

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

LESSEE:

CONSOLIDATED RAIL CORPORATION

By:



Title: Vice President & Treasurer

LESSOR:

MELLON INTERNATIONAL LEASING  
COMPANY

By:



Title: Vice President

Attachment 1 to  
Certificate of Acceptance No. 1  
dated the 13th day of November, 1981.

120 "Roofless" Bi-Level Superstructures as described on  
the attached Whilehead and Kales Company invoice

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, and intending to be legally bound hereby, \_\_\_\_\_ (the "Vendor") has bargained, sold, conveyed, transferred and assigned and by these presents does hereby bargain, sell, convey, transfer and assign to Mellon International Leasing Company ("Lessor"), its successors and assigns, forever, good and marketable title to the personal property described in SCHEDULE 1 attached hereto (the "Units").

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

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

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

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

Title \_\_\_\_\_

EXHIBIT "A"

Page 1 of 3

<u>Car Number</u>	<u>Serial No.</u>	<u>Rack No.</u>	<u>Destination</u>
TTSX 964399	73437-38	CR 1700	Pontiac, Michigan
" 962341	73439-40	" 1701	" "
" 961437	73441-42	" 1702	" "
" 963669	73443-44	" 1703	" "
" 962271	73445-46	" 1704	" "
" 962676	73447-48	" 1705	" "
" 964222	73449-50	" 1706	" "
" 962684	73451-52	" 1707	" "
" 962668	73453-54	" 1708	" "
" 964428	73455-56	" 1709	" "
" 961457	73457-58	" 1710	" "
" 962652	73459-60	" 1711	" "
" 961401	73461-62	" 1712	" "
" 964163	73463-64	" 1713	" "
" 962692	73465-66	" 1714	" "
" 963672	73467-68	" 1715	" "
" 961394	73469-70	" 1716	" "
" 961388	73471-72	" 1717	" "
" 964438	73473-74	" 1718	" "
" 961435	73475-76	" 1719	" "
" 964415	73477-78	" 1720	Moraine, Ohio
" 964220	73479-80	" 1721	" "
" 962183	73481-82	" 1722	" "
" 964436	73483-84	" 1723	" "
" 962645	73485-86	" 1724	" "
" 961409	73487-88	" 1725	" "
" 962648	73489-90	" 1726	" "
" 962332	73491-92	" 1727	" "
" 962650	73493-94	" 1728	" "
" 961434	73495-96	" 1729	" "
" 962351	73497-98	" 1730	" "
" 963761	73499-500	" 1731	" "
" 962680	73501-02	" 1732	" "
" 962353	73503-04	" 1733	" "
" 964228	73507-08	" 1735	" "
" 964441	73509-10	" 1736	" "
" 962639	73511-12	" 1737	" "
" 964230	73513-14	" 1738	" "
" 962701	73515-15	" 1739	" "
" 962649	73517-18	" 1740	" "
" 961374	73519-20	" 1741	" "
" 961433	73521-22	" 1742	" "
" 964427	73523-24	" 1743	" "

excess of one year (the "Collateral"). Promptly after the settlement of such purchase, Lessor shall deposit in Lessee's checking account with Mellon Bank, N.A. (account number 1153068) an amount equal to the difference between the purchase price of the Collateral and \$1,000,000.

(b) As long as no Event of Default (as herein defined) has occurred and is continuing or exists, upon maturity of any securities comprising the Collateral, Lessor or its agent shall surrender the same for payment and use the proceeds thereof to purchase additional United States government securities, having maturities not in excess of one year, which shall also be deemed Collateral hereunder; provided, however, that the aggregate purchase price of the Collateral held at any time shall not exceed \$1,000,000. Lessor shall promptly deposit in Lessee's Mellon Bank checking account any proceeds of the sale of Collateral not re-invested in additional Collateral hereunder.

Section 3. Security Interest. Lessee agrees that Lessor shall have and there is hereby granted to and created in favor of Lessor a security interest under the Uniform Commercial Code of Pennsylvania (the "Code") in and to the Collateral, the proceeds thereof, both cash and non-cash, and interest thereon as collateral security for all indebtedness of Lessee to Lessor arising under the Lease. Lessee shall faithfully preserve and protect Lessor's security interest in the Collateral and the proceeds thereof and shall perform, at Lessee's sole expense, all such acts and things and execute and deliver all such documents and instruments, including without limitation, financing statements and continuation statements,

CONSOLIDATED RAIL CORPORATION

Security Agreement

THIS SECURITY AGREEMENT (the "Agreement"), dated as of November 13, 1981, between MELLON INTERNATIONAL LEASING COMPANY, a Pennsylvania corporation ("Lessor"), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation ("Lessee");

WITNESSETH THAT:

WHEREAS, Lessor and Lessee have entered into an Agreement and Lease, dated as of November 2, 1981 (the "Lease"), whereby Lessor has agreed to lease certain auto racks to Lessee upon the terms and conditions therein stated; and

WHEREAS, pursuant to Sections 4.6 and 6.3 of the Lease, Lessee has agreed to enter this Agreement to secure the due and punctual payment by Lessee of all amounts owed to Lessor under the Lease.

NOW, THEREFORE, in consideration of the Lease, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Transfer by Lessee. Lessee shall, as of the date hereof, transfer to Lessee \$1,000,000 in immediately available funds to be invested by Lessor in accordance with Section 2 hereof.

Section 2. Investment by Lessor. (a) Lessor shall use the funds received from Lessee pursuant to Section 1 to purchase United States government securities, having maturities not in

24861

# WHITEHEAD & KALLES COMPANY

58 HALLMARK STREET  
D-U-N-S (00 535-6258)

RIVER ROUGE, MICHIGAN 48218  
Phone: (313) 849-1200

### Agreement

YOUR ORDER NO. dated 5-1-81	OUR ORDER NO. AB 75196-74148	INVOICE DATE 8-31-81
CAR INITIAL & NO.	SHIPPED VIA Various Rail	FO.O.B. Our Plant
		TERMS Due 11-2-81

MAIL ALL REMITTANCES TO ABOVE ADDRESS

## PLEASE PAY FROM THIS INVOICE

NO STATEMENT WILL BE ISSUED UNLESS REQUESTED

PAYABLE IN U.S. FUNDS

SOLD TO

Mellon International Leasing Company  
3629 Mellon Bank Building  
Pittsburgh, PA 15219

SHIPPED TO

DESTINATION See Attached Exhibit "A"

SHIPPER'S NO " " " "

Form C10279

QTY.	DESCRIPTION	UNIT PRICE	AMOUNT	W & K USE ONLY
120	"Roofless" Bi-Level Superstructures mounted on 39'-4" Flat Car with W&K Radial Doors  Car Numbers, Serial Numbers and Rack Numbers See Attached Exhibit "A"	32739.00	\$3,928,680.00	

No Michigan Sales Tax or Use Tax is included in this billing. We will issue additional billing for such tax if it is determined at any time that the items herein are taxable.

WHITEHEAD & KALLES COMPANY

**NOTICE** \* ACCOUNTS NOT PAID WHEN DUE BEAR THE INTEREST AT RATE OF 1% PER MONTH FROM DATE OF DELINQUENCY WHICH IS AN ANNUAL RATE OF 12%

#### TERMS OF SALE

1. Title only passes to the customer upon receipt of the invoice and payment in full.  
 2. The goods are sold "as is" without warranty of any kind, express or implied.  
 3. All claims for loss or damage must be filed with the carrier within 90 days of the date of shipment.  
 4. We hereby certify that the goods described herein conform to the requirements of Sections 11 and 12 of the Fair Packaging and Labeling Act, Public Law 90-424, October 3, 1967, and to the requirements of Section 14 of that Act.

## EXHIBIT "A"

Page 3 of 3

<u>Car Number</u>	<u>Serial No.</u>	<u>Rack No.</u>	<u>Destination</u>
TTSX 962688	73623-24	CR 1793	Moraine, Ohio
" 963749	73625-26	" 1794	" "
" 962671	73627-28	" 1795	" "
" 964235	73629-30	" 1796	" "
" 964233	73631-32	" 1797	" "
" 962699	73633-34	" 1798	" "
" 961430	73635-36	" 1799	" "
" 964242	73637-38	" 1800	" "
" 963880	73639-40	" 1801	" "
" 962371	73641-42	" 1802	" "
" 964422	73643-44	" 1803	" "
" 962370	73645-46	" 1804	" "
" 962348	73647-48	" 1805	" "
" 962665	73649-50	" 1806	" "
" 964154	73651-52	" 1807	" "
" 961429	73653-54	" 1808	" "
" 962186	73655-56	" 1809	" "
" 961454	73657-58	" 1810	" "
" 964212	73659-60	" 1811	" "
" 964405	73661-62	" 1812	" "
" 964246	73663-64	" 1813	" "
" 962653	73665-66	" 1814	" "
" 964403	73667-68	" 1815	" "
" 964160	73669-70	" 1816	" "
" 963775	73671-72	" 1817	" "
" 962374	73673-74	" 1818	" "
" 962690	73675-76	" 1819	" "

<u>Car Number</u>	<u>Serial No.</u>	<u>Rack No.</u>	<u>Destination</u>
TTSX 961406	73505-06	CR 1734	Moraine, Ohio
" 964445	73525-26	" 1744	" "
" 964234	73527-28	" 1745	" "
" 961411	73529-30	" 1746	" "
" 961389	73531-32	" 1747	" "
" 961412	73533-34	" 1748	" "
" 963673	73535-36	" 1749	" "
" 962625	73537-38	" 1750	" "
" 963806	73539-40	" 1751	" "
" 963748	73541-42	" 1752	" "
" 962634	73543-44	" 1753	" "
" 962678	73545-46	" 1754	" "
" 963668	73547-48	" 1755	" "
" 961369	73549-50	" 1756	" "
" 962358	73551-52	" 1757	" "
" 963881	73553-54	" 1758	" "
" 963850	73555-56	" 1759	" "
" 964425	73557-58	" 1760	" "
" 964237	73559-60	" 1761	" "
" 962372	73561-62	" 1762	" "
" 964161	73563-64	" 1763	" "
" 961404	73565-66	" 1764	" "
" 961367	73567-68	" 1765	" "
" 963841	73569-70	" 1766	" "
" 963856	73571-72	" 1767	" "
" 963840	73573-74	" 1768	" "
" 961456	73575-76	" 1769	" "
" 962661	73577-78	" 1770	" "
" 961393	73579-80	" 1771	" "
" 961442	73581-82	" 1772	" "
" 962669	73583-84	" 1773	" "
" 964435	73585-86	" 1774	" "
" 963753	73587-88	" 1775	" "
" 964219	73589-90	" 1776	" "
" 962691	73591-92	" 1777	" "
" 963772	73593-94	" 1778	" "
" 962682	73595-96	" 1779	" "
" 964209	73597-98	" 1780	" "
" 962352	73599-600	" 1781	" "
" 962333	73601-02	" 1782	" "
" 964447	73603-04	" 1783	" "
" 964046	73605-05	" 1784	" "
" 964159	73607-08	" 1785	" "
" 964157	73609-10	" 1786	" "
" 964243	73611-12	" 1787	" "
" 962658	73613-14	" 1788	" "
" 964401	73615-16	" 1789	" "
" 962344	73617-18	" 1790	" "
" 964414	73619-20	" 1791	" "
" 964240	73621-22	" 1792	" "

as Lessor in its sole discretion may deem necessary or advisable from time to time in order to preserve and protect such security interest.

Section 4. Interest. Unless an Event of Default has occurred and is continuing or exists, Lessor shall promptly deposit or cause to be deposited in Lessee's Mellon Bank checking account any interest payments received with respect to the Collateral.

Section 5. Remedies on Default. If any one or more of the Events of Default shall occur and be continuing or exist, Lessor may proceed to exercise one or more of the rights and remedies accorded a secured party by the Code and otherwise by law or by the terms of this Agreement, all of which rights and remedies shall be cumulative. After the occurrence of such an Event of Default, Lessor shall apply the proceeds of the sale or other disposition of the Collateral, following the receipt thereof, to compensate Lessor in accordance with Section 14.1 of the Lease and then pay the balance, if any, as required by law.

"Event of Default" as used herein shall mean (i) any Event of Default as defined in the Lease, or (ii) the happening of any condition, event, act or omission which, with the giving of notice or lapse of time or both would constitute an Event of Default under the Lease.

Section 6. Termination of Security Agreement. If no Event of Default shall have occurred and be continuing, this Agreement shall terminate on November 13, 1987 and Lessor shall promptly deliver the Collateral to Lessee.

Section 7. Agency. Lessor may, at its option, cause its duties and obligations hereunder to be performed on its behalf by one or more other persons or entities as Lessor's duly authorized agent or agents.

Section 8. Severability. If any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.

Section 9. Waiver. No failure or delay on the part of Lessor in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No such failure or delay by Lessor shall constitute a waiver of its rights hereunder.

Section 10. Notices. All notices, statements, requests and demands given to or made upon any party hereto shall be in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class, postage prepaid, or when sent by telex or prepaid telegraph, addressed to the party required to receive the same, if to Lessor at 3629 Mellon Bank Building, Pittsburgh, Pennsylvania 15219, and if to Lessee at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104.

Section 11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

Section 12. Assignment. This Agreement shall be binding upon and shall inure solely to the benefit of the Lessor and Lessee and their respective successors and assigns; provided, however, that Lessee may not assign its rights and obligations hereunder without the written consent of Lessor.

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

MELLON INTERNATIONAL LEASING COMPANY,  
Lessor

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

ATTEST:

CONSOLIDATED RAIL CORPORATION,  
Lessee

\_\_\_\_\_

[CORPORATE SEAL]

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