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13946

February 22, 1996

FEB 23 2 22 PM '96

REGISTERED MAIL

Louis E. Gitomer
Direct Dial: (202)466-6532

13946 -A, B, C

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Washington, DC 20423

Dear Secretary Williams:

I have enclosed the original and one certified copy of four documents, all described below, to be recorded pursuant to 49 U.S.C. §11301.

1. The first document is an **Equipment Lease Agreement**, a primary document, dated as of February 20, 1996. Please assign this document the next available recordation number.

The names and addresses of the parties to the Equipment Lease Agreement are:

Lessor:

MDFC Equipment Leasing Corporation
4060 Lakewood Blvd.
Long Beach, CA 90808-1700

Lessee:

Tube City, Inc.
12 Monongahela Ave.
Glassport, PA 15045

A description of the equipment covered by the document consists of 50 100-ton, 4100 cubic foot "High Side" coal gondola cars numbered TCTX 100, 102, 104, 106, 108, 110, 112, 114, 116, 118, 120, 122, 124, 126, 128, 130, 132, 134, 136, 138, 140, 142, 144, 146, 148, 150, 152, 154, 156, 158, 160, 162, 164, 166, 168, 170, 172, 174, 176, 178, 180, 182, 184, 186, 188, 190, 192, 194, 196, and 198.

Counterparts of J.P. Williams

MDFC Equipment Leasing Corporation

Equipment Lease Agreement

Equipment Lease No. 33-42-3

THIS EQUIPMENT LEASE AGREEMENT ("Lease") is dated as of the 20 day of February, 1996, and is by and between *MDFC Equipment Leasing Corporation*, a Delaware corporation ("Lessor") and Tube City, Inc., a DELAWARE corporation ("Lessee").

Witnesseth:

1. *Lease.* Lessor hereby agrees, subject to satisfaction of the conditions hereinafter set forth, to lease to Lessee and Lessee hereby agrees to lease from Lessor each item of equipment (individually called an "Item of Equipment" and collectively the "Equipment") described in each Individual Equipment Record ("IER") executed and delivered by Lessor and Lessee pursuant to the terms of this Lease. Each IER is hereby incorporated herein by this reference. This Lease shall be noncancellable by Lessee for the term ("Term") hereof.

2. *Term.* The Term of this Lease shall commence, with respect to an Item of Equipment, on the acceptance date ("Acceptance Date") for such Item of Equipment as set forth in the IER applicable to such Item of Equipment, and, subject to the terms hereof, shall continue for the base term ("Base Term") set forth in such IER as measured from the base term commencement date ("Base Term Commencement Date") set forth in such IER. The word "Term" as used herein shall mean the period beginning on the Acceptance Date and ending on the expiration of the Base Term plus any extensions of the Base Term pursuant to the terms of this Lease.

3. *Rent; Overdue Rate.* Lessee shall pay Lessor rent for an Item of Equipment throughout the Term as set forth in the IER applicable to such Item of Equipment, without deduction or offset, in the amounts and at the times set forth in such IER. In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rent or otherwise, the Lessee shall pay Lessor, as additional rent, to the extent permitted by applicable law, interest on such unpaid sum from its due date to the date of payment at a rate equal to 125% of the Prime Rate or the maximum contract rate permitted by applicable law, whichever is lower (the "Overdue Rate"). Acceptance of interest on overdue payments by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount or prevent Lessor from exercising any of the other rights and remedies granted hereunder. Rent and all other amounts payable to Lessor hereunder shall be payable at the office of Lessor at 4060 Lakewood Blvd, 6th Floor, Long Beach, California 90808-1700, Attention: Controller (or at such other place as Lessor may from time to time designate in writing); except that payments of more than \$10,000 shall be made by federal funds wire transfer for the account of the Lessor to a bank to be designated by Lessor, together with notice so as to provide Lessor with the use of the funds on or before 11 a.m., P.S.T., on the due date.

4. *Taxes Against Lessor or Equipment.* Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license and registration fees and sale, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon (collectively, "taxes, fees or other charges") imposed against Lessor, Lessee or the Equipment or any part thereof by any foreign, Federal, state, or local government or taxing authority, during the Term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, (i) any taxes imposed by the Federal government on, based on, or measured by, the net income of Lessor and (ii) any income or franchise taxes imposed by any taxing authority other than the Federal government on, based on, or measured by, the net income of Lessor which in the aggregate do not exceed the amount of any such taxes which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which Lessor has its principal place of business assuming no allocation or apportionment to any other taxing authority). In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either prepare and file such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and Lessee will prepare such report or return for filing by Lessor in such manner as shall be satisfactory to Lessor. If claim is made against Lessor for any taxes, fees or other charges referred to in this Section, Lessor shall promptly notify Lessee. If reasonably requested by Lessee in writing, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request with respect to such asserted liability, provided that Lessee furnishes an opinion of independent counsel, which opinion and counsel shall both be satisfactory to Lessor, to the effect that such action is prudent, reasonable and proper, and if reasonably so requested by Lessee, any payment by Lessor of such tax, fee or other charge shall be made under protest, if protest is necessary and proper. Notwithstanding the above, Lessor shall have the sole control over the contest of such asserted liability. In addition, Lessor shall have the right to pay such asserted liability at any time in its sole discretion in which case Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request to recover such payment and shall, if requested, permit Lessee in Lessor's name to file a claim or prosecute an action to recover such payment. All of the obligations of Lessee under this Section with respect to any taxes, fees, or other charges imposed or accrued before the expiration or other termination of this Lease shall continue

if any, sent by Lessee to its stockholders, and of all regular and periodic reports filed by Lessee with the principal securities exchange on which the common stock of Lessee is listed, if any, or with the Securities and Exchange Commission, including but not limited to 10K and 10Q reports. Further, Lessee agrees to furnish Lessor from time to time such other information as Lessor may reasonably request.

11. *Warranties.* LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR HAS NOT MADE AND DOES NOT MAKE, BY VIRTUE OF HAVING LEASED THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT OF THIS LEASE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE, CONDITION, COMPLIANCE WITH SPECIFICATIONS OR REGULATIONS, QUALITY, VALUE, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. THE EQUIPMENT IS LEASED HEREUNDER BY LESSOR 'AS-IS'.

Lessor hereby represents to Lessee that Lessor has the full right and authority to enter into this Lease on the terms herein stated, and that, conditioned upon Lessee performing all of the terms, covenants and conditions hereof, Lessor, its successors and assigns, will not disturb Lessee's quiet possession and use of the Equipment during the Term of this Lease.

So long as no Event of Default (as hereafter defined) has occurred and is continuing, Lessor hereby authorizes Lessee during the Term of this Lease to assert for Lessor's account all of its right, title and interest in, under and to any warranty in respect of the Equipment issued by the manufacturer thereof, and agrees to execute and deliver such further instruments as may be reasonably necessary to enable Lessee to enforce such warranty. All claims or actions on any warranty shall be made or prosecuted by Lessee, at its sole cost and expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery under such a warranty shall be applied first to restore the Equipment, and second, to pay the reasonable out-of-pocket expenses Lessee incurs in enforcing such warranty claim. Any balance remaining shall be paid to Lessor. Lessor further authorizes Lessee to obtain whatever service to the Equipment the manufacturer customarily renders, provided that no such service shall be at the cost or expense of Lessor.

12. *Insurance.* Throughout the Term of this Lease, Lessee at its own expense shall maintain with respect to each Item of Equipment, as provided in the IER relating thereto, (a) all risk physical loss insurance on such Item of Equipment for an amount at least equal to the greater of the Stipulated Loss Value set out in the IER for such Item of Equipment from time to time, or the then Aggregate Fair Market Sales Value with respect to such Item of Equipment and (b) public liability and property damage insurance with respect to such Item of Equipment as set forth in the IER. Said insurance shall be primary insurance up to and including the stated policy limits and not excess over other coverage. Such insurance shall (i) with respect to liability insurance, name Lessor as an additional insured, (ii) with respect to all risk physical loss insurance, name Lessor as loss payee and additional insured, and (iii) be with companies satisfactory to Lessor. There shall be no right of contribution with respect to any insurance maintained by Lessor. All insurance required hereunder shall provide that coverage may not be altered or cancelled by the insurer without thirty (30) days' prior written notice to Lessor. Losses shall be adjusted only with and paid to, Lessor and its assignee, if any. Such insurance shall not be invalidated, as against Lessor, by any action or inaction of Lessee or any other person and shall insure Lessor regardless of any breach or violation by Lessee or any other person of any warranties, declarations or conditions contained in the policies evidencing such insurance. All such insurance required hereunder shall be satisfactory to Lessor and shall contain such other endorsements as may be requested by Lessor. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damages or return premium under any insurance policy issued on the Equipment. Lessee's obligations to keep the Equipment insured as provided herein shall continue until the Equipment is returned to Lessor pursuant to the provisions hereof.

Lessee shall furnish Lessor with insurance certificates evidencing such insurance prior to the Acceptance Date of the applicable IER.

For purposes of this Lease the term "Stipulated Loss Value" for an Item of Equipment as of any date of computation shall be the product of (x) the cost paid by Lessor for such Item of Equipment as set forth in the IER applicable to such Item of Equipment and (y) that Stipulated Loss Value percentage set forth in such IER opposite the applicable rental payment with respect to such Item of Equipment. The applicable rental payment shall be that rental payment which includes the rental of the date of computation.

13. *Risk, Event of Loss and Condemnation.*

(a) *Risk:* Commencing on the Acceptance Date and continuing until the expiration of the Term of this Lease and the return by Lessee of the Equipment to Lessor pursuant to the provisions hereof, Lessee assumes the entire risk of any Event of Loss (as defined below) and no such Event of Loss shall relieve Lessee of any of its obligations hereunder.

(b) *Definition - Event of Loss:* For purposes of this Section an Event of Loss with respect to an Item of Equipment shall mean any of the following events: (i) the actual or constructive total loss of such Item of Equipment; (ii) such Item of Equipment shall become lost, stolen,

In the event Lessee fails to complete any necessary repairs or replacements or return any Item of Equipment as provided in this Section or otherwise fails to comply with any provision of this Section, Lessor may, at its option and in addition to any other remedy or remedies afforded Lessor herein or by law, charge Lessee, and Lessee agrees to pay, interim rent equal to the daily rent equivalent of the rental installments set forth in the applicable IER for each day until (i) such repairs and replacements are completed, (ii) such Item of Equipment is returned to Lessor, and (iii) Lessee takes such other action as is necessary to comply with the provisions of this Section.

Notwithstanding the foregoing, if Lessor and Lessee have agreed to specific return conditions for an Item of Equipment (which shall be included either as an addendum to this Lease, or within the Special Conditions section of the IER applicable to such Item of Equipment), then such return conditions shall be controlling to the extent that the conditions are inconsistent with those contained in this Section.

16. *Default, Remedies and Damages.*

(a) *Defaults:* For purposes of this Lease, the following events shall each constitute an "Event of Default":

(1) Lessee shall fail to make any payment to Lessor or to third parties when due under this Lease and such failure to pay shall continue for a period of ten (10) or more days after the due date thereof; or

(2) There shall occur any termination of, material alteration in the scope of the coverage of, or reduction in the maximum amounts payable under any insurance required to be maintained by Lessee pursuant to this Lease; or

(3) Any representation or warranty made by Lessee herein or by Lessee or any guarantor of Lessee's obligations to Lessor hereunder ("Guarantor") in any document or certificate furnished Lessor in connection herewith shall prove to be incorrect at any time in any material respect; or

(4) Lessee or Guarantor shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed hereunder or under any guaranty and such failure shall continue unremedied for a period of thirty (30) days; or

(5) Any obligation of Lessee or any Guarantor for the payment of borrowed money, for the deferred purchase price of property or for the payment of rent or hire under any lease shall not be paid when due, whether by acceleration or otherwise; or

(6) There shall (i) be entered a decree or order for relief by a court having jurisdiction in respect of Lessee or any Guarantor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal, state or foreign bankruptcy, insolvency or other similar law, or the appointing of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or any Guarantor for all or substantially all of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order remains unstayed and in effect for a period of sixty (60) consecutive days, or (ii) be commenced by Lessee or any Guarantor a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for Lessee or any Guarantor or for all or substantially all of its property or the making by it of any assignment for the benefit of creditors, or (iii) be any seizure or attachment of a material portion of the assets of Lessee or of any Guarantor which is not vacated or bonded within sixty (60) days; or (iv) be a death of any Lessee or any Guarantor; or

(7) There shall be entered any judgment, against Lessee or any Guarantor for the payment of money, which is final and not discharged or bonded within thirty (30) days.

(b) *Remedies:* Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may declare this Lease in default and Lessor may do one or more of the following with respect to the Equipment or any Item of Equipment as Lessor in its sole discretion shall elect, to the extent permitted and subject to compliance with any mandatory requirements of applicable law:

(1) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease including, without limitation, payment of all rents and other sums due, and to recover damages for the breach thereof;

(2) Sue for the rentals due hereunder as they accrue without notice and at Lessee's cost and expense;

(3) Sell, relet, use, hold or otherwise dispose of the Item(s) of Equipment;

AGREES THAT LESSOR MAY CHARGE LESSEE A REASONABLE DOCUMENTATION AND ADMINISTRATION FEE. CONSENT TO ANY OF THE FOREGOING ACTS SHALL NOT BE DEEMED TO BE CONSENT TO ANY SUBSEQUENT SIMILAR ACT.

18. *Assignment by Lessor.* Lessor may assign, pledge or in any other way transfer this Lease and the Equipment in whole or in part, or any interest therein, without notice to Lessee, and Lessee shall execute such consents thereto as may be required by Lessor. Should this Lease or any interest therein be assigned or should the rentals hereunder be assigned, no breach or default by Lessor of this Lease or any other agreement between Lessee and Lessor shall excuse performance by Lessee of any provision hereof, and no assignee shall be obligated to perform any covenant, condition or obligation required to be performed by Lessor hereunder. The right of such assignee shall be free of all defenses, setoffs and counterclaims which Lessee might now or hereafter be entitled to assert against Lessor. In the event any assignee agrees to assume the obligations of Lessor, Lessee shall look solely to such assignee, and Lessor shall be released from all further liability hereunder.

19. *Personal Property.* The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon, and Lessee shall do all acts and enter into all agreements necessary to ensure that the Equipment remains personal property.

Lessee shall keep the Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in the real estate on which it is located and any purchaser of or present or future creditor obtaining a lien on such real estate, and shall obtain and deliver to Lessor on the Acceptance Date a waiver of any such liens or claims as to the Equipment in recordable form satisfactory to Lessor.

20. *Liens.* Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, security interest, right or claim of any kind ("Lien") on, or with respect to, any Item of Equipment, title thereto or any interest therein.

Lessee will promptly notify Lessor in writing of the existence of any Lien and will promptly, at Lessee's expense, cause any such Lien to be duly discharged, dismissed and removed or fully bonded as soon as possible, but in any event within thirty (30) days after the existence of the same shall have first become known to Lessee or sooner if necessary to prevent the loss of possession of any Item of Equipment.

21. *Prohibition Against Setoff, Counterclaim, Etc.* Lessee's obligation to pay all amounts due hereunder shall be absolute and unconditional and shall not be affected by any circumstance whatever, including, without limitation (i) any setoff, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, or breach of warranty with respect to the Equipment, or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or Lessor.

22. *Representations, Warranties and Covenants of Lessee.* Lessee represents, warrants and covenants: (i) that if Lessee is a corporation or partnership, it is duly organized and existing in good standing under the laws of the state in which it is organized with the necessary power and qualifications to perform this Lease, (ii) that this Lease has been duly authorized by all necessary action on the part of Lessee and will not contravene or breach any legal, organizational or contractual regulation binding upon Lessee, (iii) that this Lease constitutes valid, binding and enforceable obligations of Lessee and is enforceable in accordance with its terms, (iv) that as of the date of each IER there are no suits or proceedings pending or threatened against Lessee which may have a material adverse effect on Lessee's financial condition or business, and (v) that as of the date of each IER no material adverse change in Lessee's financial condition as represented in its most recent financial statements submitted to Lessor has occurred.

23. *Attorneys' Fees.* Lessee shall pay all costs and reasonable attorneys' fees incurred by Lessor in collecting or attempting to collect any sums owed under this Lease or in enforcing any of Lessor's rights or remedies under this Lease including without limitation obtaining possession of the Equipment or seeking relief from stay or other remedies in bankruptcy court.

24. *Notices.* All notices required under the terms and provisions hereof shall be in writing and addressed (i) if to Lessee:

TUBE CITY INC
12 MONONGAHELA AVE
GLASSPORT PA 15045
Attention: John Lipinski JR

or at such other address as Lessee shall from time to time designate in writing to Lessor, or (ii) if to Lessor:

MDFC Equipment Leasing Corporation

MDFC Equipment Leasing Corporation

Equipment Lease Agreement

Equipment Lease No. 3342-3

THIS EQUIPMENT LEASE AGREEMENT ("Lease") is dated as of the 20 day of February, 1996, and is by and between **MDFC Equipment Leasing Corporation**, a Delaware corporation ("Lessor") and Tube City, Inc., a DELAWARE corporation ("Lessee").

W i t n e s s e t h :

1. *Lease.* Lessor hereby agrees, subject to satisfaction of the conditions hereinafter set forth, to lease to Lessee and Lessee hereby agrees to lease from Lessor each item of equipment (individually called an "Item of Equipment" and collectively the "Equipment") described in each Individual Equipment Record ("IER") executed and delivered by Lessor and Lessee pursuant to the terms of this Lease. Each IER is hereby incorporated herein by this reference. This Lease shall be noncancellable by Lessee for the term ("Term") hereof.

2. *Term.* The Term of this Lease shall commence, with respect to an Item of Equipment, on the acceptance date ("Acceptance Date") for such Item of Equipment as set forth in the IER applicable to such Item of Equipment, and, subject to the terms hereof, shall continue for the base term ("Base Term") set forth in such IER as measured from the base term commencement date ("Base Term Commencement Date") set forth in such IER. The word "Term" as used herein shall mean the period beginning on the Acceptance Date and ending on the expiration of the Base Term plus any extensions of the Base Term pursuant to the terms of this Lease.

3. *Rent; Overdue Rate.* Lessee shall pay Lessor rent for an Item of Equipment throughout the Term as set forth in the IER applicable to such Item of Equipment, without deduction or offset, in the amounts and at the times set forth in such IER. In the event Lessee shall be in default in the payment of any sum of money to be paid under this Lease, whether rent or otherwise, the Lessee shall pay Lessor, as additional rent, to the extent permitted by applicable law, interest on such unpaid sum from its due date to the date of payment at a rate equal to 125% of the Prime Rate or the maximum contract rate permitted by applicable law, whichever is lower (the "Overdue Rate"). Acceptance of interest on overdue payments by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount or prevent Lessor from exercising any of the other rights and remedies granted hereunder. Rent and all other amounts payable to Lessor hereunder shall be payable at the office of Lessor at 4060 Lakewood Blvd, 6th Floor, Long Beach, California 90808-1700, Attention: Controller (or at such other place as Lessor may from time to time designate in writing); except that payments of more than \$10,000 shall be made by federal funds wire transfer for the account of the Lessor to a bank to be designated by Lessor, together with notice so as to provide Lessor with the use of the funds on or before 11 a.m., P.S.T., on the due date.

4. *Taxes Against Lessor or Equipment.* Lessee agrees to pay and to indemnify and hold Lessor harmless from, all license and registration fees and sale, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature whatsoever together with any penalties, fines or interest thereon (collectively, "taxes, fees or other charges") imposed against Lessor, Lessee or the Equipment or any part thereof by any foreign, Federal, state, or local government or taxing authority, during the Term or in connection with the termination of this Lease, upon or with respect to the Equipment or any part thereof or upon the purchase, ownership, delivery, leasing, possession, use, operation, return or other disposition thereof, or upon the rentals, receipts or earnings arising therefrom, or upon or with respect to this Lease (excluding, however, (i) any taxes imposed by the Federal government on, based on, or measured by, the net income of Lessor and (ii) any income or franchise taxes imposed by any taxing authority other than the Federal government on, based on, or measured by, the net income of Lessor which in the aggregate do not exceed the amount of any such taxes which would be payable to the taxing authorities of the jurisdictions, other than the United States of America, in which Lessor has its principal place of business assuming no allocation or apportionment to any other taxing authority). In case any report or return is required to be made with respect to any obligation of Lessee under this Section or arising out of this Section, Lessee will either prepare and file such report or return in such manner as will show the ownership of the Equipment in Lessor and send a copy of such report or return to Lessor or will notify Lessor of such requirement and Lessee will prepare such report or return for filing by Lessor in such manner as shall be satisfactory to Lessor. If claim is made against Lessor for any taxes, fees or other charges referred to in this Section, Lessor shall promptly notify Lessee. If reasonably requested by Lessee in writing, Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request with respect to such asserted liability, provided that Lessee furnishes an opinion of independent counsel, which opinion and counsel shall both be satisfactory to Lessor, to the effect that such action is prudent, reasonable and proper, and if reasonably so requested by Lessee, any payment by Lessor of such tax, fee or other charge shall be made under protest, if protest is necessary and proper. Notwithstanding the above, Lessor shall have the sole control over the contest of such asserted liability. In addition, Lessor shall have the right to pay such asserted liability at any time in its sole discretion in which case Lessor shall, at Lessee's expense, take such action as Lessee may reasonably request to recover such payment and shall, if requested, permit Lessee in Lessor's name to file a claim or prosecute an action to recover such payment. All of the obligations of Lessee under this Section with respect to any taxes, fees, or other charges imposed or accrued before the expiration or other termination of this Lease shall continue

in full force and effect notwithstanding such expiration or other termination and are expressly made for the benefit of, and shall be enforceable by, Lessor and its successors and assigns.

5. *Lessor's Right to pay or Perform for Lessee.* Should Lessee fail to make any payment or do any act as herein provided, then Lessor shall have the right, but not the obligation, without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any Lien (as defined in Section 20 hereof) not permitted hereunder which in Lessor's judgment appears to affect the Equipment or Lessor's rights with respect thereto, and in exercising any such rights, incur any liability and expend whatever amounts in its discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be immediately due and payable by Lessee and shall bear interest at the Overdue Rate from the date so incurred or expended by Lessor to the date Lessor is reimbursed therefor by Lessee.

6. *Use and Ownership.* Lessee shall use, operate, maintain and store the Equipment in a careful and proper manner and shall comply with all laws, ordinances, rules, regulations and insurance requirements in any way relating to the possession, use, operation or maintenance of the Equipment. Lessee shall use the Equipment only in the manner contemplated by the manufacturer thereof. Lessee agrees to pay all costs incurred in connection with the use and operation of each Item of Equipment, during the Term thereof, including but not limited to, repairs, maintenance, storage and servicing.

Lessee acknowledges and agrees that it does not have and will not acquire legal title to the Equipment, it being expressly understood that this Lease is an agreement of lease only. The Equipment is and shall at all times remain the sole and exclusive property of Lessor. The only interest Lessee shall have in the Equipment is that of a lessee hereunder. Lessee shall affix to each Item of Equipment and keep and maintain, plainly and distinctly, permanently and conspicuously upon each such Item of Equipment the following words:

"Owned by MDFC Equipment Leasing Corporation
Owner-Lessor"

Lessee shall keep the Equipment free from any markings or labeling which might be interpreted as a claim of ownership thereof by Lessee or any party other than Lessor or its assigns. Lessee shall not remove an Item of Equipment from the location set forth in the IER applicable to such Item of Equipment or transfer possession of the Equipment in any manner without Lessor's prior written consent. Upon demand by Lessor, Lessee promptly shall give Lessor written notice of the exact location of the Equipment.

7. *Alterations.* Lessee shall not make any alterations, additions or improvements to the Equipment without the prior written consent of Lessor. All such alterations, additions or improvements so consented to by Lessor shall automatically become the property of Lessor and shall be free of all Liens and Lessee shall provide a bill of sale to Lessor for all such alterations, additions or improvements.

8. *Maintenance and Repair.* Lessee, at its sole cost and expense, shall keep the Equipment in good operating order, repair, condition and appearance and shall furnish any and all parts, mechanisms or devices required to keep the Equipment in good mechanical and working order. In performing maintenance and repair, Lessee shall comply with all the manufacturer's specifications and recommendations.

9. *Delivery and Acceptance.* Prior to execution of each IER Lessee shall have made at its expense all necessary inspections and tests of the Item or Items of Equipment referred to therein, to determine whether each such Item of Equipment conforms to Lessee's specifications. Upon execution of each IER by Lessee, the Item or Items of Equipment described therein shall be deemed to conform to Lessee's specifications, shall be deemed to be in good condition and without defects and shall be deemed to be an Item of Equipment subject to the terms of this Lease. Lessee acknowledges that it has selected the Equipment supplier and directed Lessor to purchase the Equipment from the supplier. Lessee further acknowledges that it has been informed by Lessor that it may have certain rights under the contract evidencing Lessor's purchase of the Equipment and Lessor advises Lessee that it may contact the supplier for a full description of any such rights.

10. *Inspection and Lessee Reports.* Lessor shall at all times during normal business hours have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment, its condition, use, and operation to ensure compliance by Lessee with its obligations hereunder, provided, however, that Lessor shall have no duty to inspect and shall not incur any liability or obligation by reason of not making any such inspection.

Lessee shall immediately notify Lessor of any accident connected with the Equipment, including in such report the time, place and nature of the accident, the damage caused to property, the names and addresses of persons injured and of witnesses, and such other information as may be relevant to such accident.

Lessee shall, as soon as practicable after the close of each quarter and fiscal year of Lessee during the Term, furnish to Lessor copies of Lessee's financial reports prepared by it as of the close of the period ended, including Lessee's balance sheet and profit and loss statement, with said fiscal year reports certified to by a recognized firm of independent certified public accountants. If Lessee is a corporation, Lessee also agrees to furnish Lessor during the Term, promptly upon their availability, copies of all financial statements, reports, notices and proxy statements.

if any, sent by Lessee to its stockholders, and of all regular and periodic reports filed by Lessee with the principal securities exchange on which the common stock of Lessee is listed, if any, or with the Securities and Exchange Commission, including but not limited to 10K and 10Q reports. Further, Lessee agrees to furnish Lessor from time to time such other information as Lessor may reasonably request.

11. Warranties. LESSOR IS NOT A MANUFACTURER OF THE EQUIPMENT OR A DEALER IN SIMILAR EQUIPMENT AND HAS NOT INSPECTED THE EQUIPMENT PRIOR TO DELIVERY TO AND ACCEPTANCE BY LESSEE. LESSOR HAS NOT MADE AND DOES NOT MAKE, BY VIRTUE OF HAVING LEASED THE EQUIPMENT UNDER THIS LEASE OR BY VIRTUE OF ANY NEGOTIATIONS IN RESPECT OF THIS LEASE, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE, CONDITION, COMPLIANCE WITH SPECIFICATIONS OR REGULATIONS, QUALITY, VALUE, DURABILITY, SUITABILITY, MERCHANTABILITY OR FITNESS FOR USE OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. THE EQUIPMENT IS LEASED HEREUNDER BY LESSOR "AS-IS".

Lessor hereby represents to Lessee that Lessor has the full right and authority to enter into this Lease on the terms herein stated, and that, conditioned upon Lessee performing all of the terms, covenants and conditions hereof, Lessor, its successors and assigns, will not disturb Lessee's quiet possession and use of the Equipment during the Term of this Lease.

So long as no Event of Default (as hereafter defined) has occurred and is continuing, Lessor hereby authorizes Lessee during the Term of this Lease to assert for Lessor's account all of its right, title and interest in, under and to any warranty in respect of the Equipment issued by the manufacturer thereof, and agrees to execute and deliver such further instruments as may be reasonably necessary to enable Lessee to enforce such warranty. All claims or actions on any warranty shall be made or prosecuted by Lessee, at its sole cost and expense, and Lessor shall have no obligation whatsoever to make any claim on such warranty. Any recovery under such a warranty shall be applied first to restore the Equipment, and second, to pay the reasonable out-of-pocket expenses Lessee incurs in enforcing such warranty claim. Any balance remaining shall be paid to Lessor. Lessor further authorizes Lessee to obtain whatever service to the Equipment the manufacturer customarily renders, provided that no such service shall be at the cost or expense of Lessor.

12. Insurance. Throughout the Term of this Lease, Lessee at its own expense shall maintain with respect to each Item of Equipment, as provided in the IER relating thereto, (a) all risk physical loss insurance on such Item of Equipment for an amount at least equal to the greater of the Stipulated Loss Value set out in the IER for such Item of Equipment from time to time, or the then Aggregate Fair Market Sales Value with respect to such Item of Equipment and (b) public liability and property damage insurance with respect to such Item of Equipment as set forth in the IER. Said insurance shall be primary insurance up to and including the stated policy limits and not excess over other coverage. Such insurance shall (i) with respect to liability insurance, name Lessor as an additional insured, (ii) with respect to all risk physical loss insurance, name Lessor as loss payee and additional insured, and (iii) be with companies satisfactory to Lessor. There shall be no right of contribution with respect to any insurance maintained by Lessor. All insurance required hereunder shall provide that coverage may not be altered or cancelled by the insurer without thirty (30) days' prior written notice to Lessor. Losses shall be adjusted only with and paid to, Lessor and its assignee, if any. Such insurance shall not be invalidated, as against Lessor, by any action or inaction of Lessee or any other person and shall insure Lessor regardless of any breach or violation by Lessee or any other person of any warranties, declarations or conditions contained in the policies evidencing such insurance. All such insurance required hereunder shall be satisfactory to Lessor and shall contain such other endorsements as may be requested by Lessor. Lessee hereby appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of and execute and endorse all documents, checks or drafts for loss or damages or return premium under any insurance policy issued on the Equipment. Lessee's obligations to keep the Equipment insured as provided herein shall continue until the Equipment is returned to Lessor pursuant to the provisions hereof.

Lessee shall furnish Lessor with insurance certificates evidencing such insurance prior to the Acceptance Date of the applicable IER.

For purposes of this Lease the term "Stipulated Loss Value" for an Item of Equipment as of any date of computation shall be the product of (x) the cost paid by Lessor for such Item of Equipment as set forth in the IER applicable to such Item of Equipment and (y) that Stipulated Loss Value percentage set forth in such IER opposite the applicable rental payment with respect to such Item of Equipment. The applicable rental payment shall be that rental payment which includes the rental of the date of computation.

13. Risk, Event of Loss and Condemnation.

(a) *Risk:* Commencing on the Acceptance Date and continuing until the expiration of the Term of this Lease and the return by Lessee of the Equipment to Lessor pursuant to the provisions hereof, Lessee assumes the entire risk of any Event of Loss (as defined below) and no such Event of Loss shall relieve Lessee of any of its obligations hereunder.

(b) *Definition - Event of Loss:* For purposes of this Section an Event of Loss with respect to an Item of Equipment shall mean any of the following events: (i) the actual or constructive total loss of such Item of Equipment; (ii) such Item of Equipment shall become lost, stolen.

destroyed, damaged beyond repair or permanently rendered unfit for its intended use for any reason whatsoever; (iii) the condemnation, confiscation or seizure of, or requisition of title to or use of, such Item of Equipment; or (iv) the termination, for any reason whatsoever, of this Lease by operation of law.

(c) *Deprivation Constituting an Event of Loss:* Upon the occurrence of an Event of Loss, Lessee shall promptly give notice thereof to Lessor and shall pay or cause to be paid to Lessor, on the earlier of the next rental payment date or thirty (30) days after the date of loss, in immediately available funds: (i) accrued rentals on a daily basis, if any, with respect to such Item of Equipment to the payment date. (ii) the greater of the Stipulated Loss Value for such Item of Equipment computed as of such payment date or the then Aggregate Fair Market Sales Value with respect to such Item of Equipment, (iii) interest on the unpaid balance of the amount set forth in (i) and (ii) above at the Overdue Rate from the date such payment is due to the date of receipt, (iv) any taxes which may be due, and (v) all other unpaid amounts due hereunder. At such time as Lessor has received the sum of (i), (ii), (iii), (iv) and (v) above, the obligation of Lessee to pay rent hereunder with respect to such Item of Equipment shall terminate and Lessor will transfer to Lessee, without recourse or warranty, "AS IS, WHERE IS", all of Lessor's right, title and interest, if any, in and to the Item of Equipment with respect to which such Event of Loss occurred.

(d) *Deprivation Not Constituting an Event of Loss:* In the event of damage to any Item of Equipment not constituting an Event of Loss, Lessee shall promptly notify Lessor in writing of such damage and shall remain obligated to make all payments of rent and other amounts due with respect to such Item of Equipment which may become due hereunder in the same manner as if such damage had not occurred. Lessee shall repair and restore such Item of Equipment with new and unused components to the condition it was in immediately prior to the occurrence of such damage (assuming such Item of Equipment was maintained in accordance with the terms of this Lease). So long as no Event of Default shall have occurred and be continuing, all payments from insurance proceeds or otherwise with respect to any such damage shall be used to reimburse Lessee for its out-of-pocket expenses upon receipt by Lessor of satisfactory evidence that Lessee has repaired such Item of Equipment. Should an Event of Default have occurred and be continuing, all such payments shall be paid over to and retained by Lessor.

(e) *Application of Payments:* Upon the occurrence of any Event of Loss, Lessor shall be entitled to and shall receive the entire award, judgment, settlement, insurance proceeds or payments and all installments thereof to the extent of Lessee's obligations under 13(c) hereof. Lessee hereby assigns to Lessor any right or interest Lessee may have or may hereafter acquire in any such award or payment.

14. *Indemnity; Exemption of Lessor from Liability.* Lessee agrees to defend at its own cost and to indemnify and hold harmless Lessor, its successors and assigns, and their respective agents and employees, from and against any and all losses, claims, patent infringements, costs, expenses (including attorneys' fees), damages and liabilities (including those for strict liability in tort), however caused, resulting directly or indirectly in any manner from the issuance of Lessor's purchase order, assignment of Lessee's purchase order or agreement to purchase, Lessee's failure, delay or refusal to accept delivery, the ownership, purchase, lease, maintenance, possession, return or disposition of the Equipment, or directly or indirectly from or pertaining to the use, condition, design (including without limitation latent or other defects whether or not discoverable) or operation of the Equipment or the performance of this Lease (including without limitation such losses, claims, costs, expenses, damages and liabilities arising from the death or injury to agents or employees of Lessee or Lessor or any third person, or damage to the property of Lessee or Lessor, their agents or employees, or any third person) except for such damages, losses, expenses or liabilities arising out of the gross negligence or willful misconduct of Lessor, its agents or employees. This indemnification shall survive the expiration, cancellation or other termination of this Lease and is for the benefit of and enforceable by Lessor and its successors and assigns.

Lessee hereby agrees that Lessor shall not be liable for injury to Lessee's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Lessee, or for injury to the person of Lessee, resulting from this Lease or caused in any way by an Item of Equipment.

15. *Return of Equipment.* Upon the expiration or earlier termination of the Term of this Lease with respect to an Item of Equipment, Lessee shall return such Item of Equipment to Lessor, free of all advertising or insignia placed thereon by Lessee, free and clear of all mortgages, liens, security interests, charges, encumbrances and claims, and in the same operating order, repair, condition and appearance as when received, and shall pay for any repairs and refurbishing necessary to restore such Item of Equipment to its original condition, ordinary wear and tear excepted. Lessee shall return such Item of Equipment to Lessor and shall load and ship same, freight and insurance prepaid, to a destination directed by Lessor.

In addition, Lessee shall permit Lessor to store any such Item of Equipment for a period not to exceed ninety (90) days after the expiration of the Term. The storage of the Equipment will be at the expense and risk, to the extent of the Stipulated Loss Value of the Equipment, of Lessee until such Item of Equipment shall have been delivered to Lessor. Notwithstanding anything to the contrary contained herein, commencing on the expiration of the Lease Term and throughout Lessor's ninety (90) day storage period Lessee shall provide Lessor, or any person designated by it, access to such Equipment and will allow Lessor to display the Equipment to any authorized representative or representatives of prospective purchasers or lessees of such Equipment or Lessor's agent, and will permit said representative or representatives or agent to examine the books and records of Lessee relating to such Equipment. The delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of the Lease, and upon application to any court of equity having jurisdiction Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Equipment.

In the event Lessee fails to complete any necessary repairs or replacements or return any Item of Equipment as provided in this Section or otherwise fails to comply with any provision of this Section, Lessor may, at its option and in addition to any other remedy or remedies afforded Lessor herein or by law, charge Lessee, and Lessee agrees to pay, interim rent equal to the daily rent equivalent of the rental installments set forth in the applicable IER for each day until (i) such repairs and replacements are completed, (ii) such Item of Equipment is returned to Lessor, and (iii) Lessee takes such other action as is necessary to comply with the provisions of this Section.

Notwithstanding the foregoing, if Lessor and Lessee have agreed to specific return conditions for an Item of Equipment (which shall be included either as an addendum to this Lease, or within the Special Conditions section of the IER applicable to such Item of Equipment), then such return conditions shall be controlling to the extent that the conditions are inconsistent with those contained in this Section.

16. *Default, Remedies and Damages.*

(a) *Defaults:* For purposes of this Lease, the following events shall each constitute an "Event of Default":

(1) Lessee shall fail to make any payment to Lessor or to third parties when due under this Lease and such failure to pay shall continue for a period of ten (10) or more days after the due date thereof; or

(2) There shall occur any termination of, material alteration in the scope of the coverage of, or reduction in the maximum amounts payable under any insurance required to be maintained by Lessee pursuant to this Lease; or

(3) Any representation or warranty made by Lessee herein or by Lessee or any guarantor of Lessee's obligations to Lessor hereunder ("Guarantor") in any document or certificate furnished Lessor in connection herewith shall prove to be incorrect at any time in any material respect; or

(4) Lessee or Guarantor shall fail to perform or observe any other covenant, condition, or agreement to be performed or observed hereunder or under any guaranty and such failure shall continue unremedied for a period of thirty (30) days; or

(5) Any obligation of Lessee or any Guarantor for the payment of borrowed money, for the deferred purchase price of property or for the payment of rent or hire under any lease shall not be paid when due, whether by acceleration or otherwise; or

(6) There shall (i) be entered a decree or order for relief by a court having jurisdiction in respect of Lessee or any Guarantor in an involuntary case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal, state or foreign bankruptcy, insolvency or other similar law, or the appointing of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Lessee or any Guarantor for all or substantially all of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order remains unstayed and in effect for a period of sixty (60) consecutive days, or (ii) be commenced by Lessee or any Guarantor a voluntary case under the federal bankruptcy laws, as now constituted or hereafter amended, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the consent by it to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) for Lessee or any Guarantor or for all or substantially all of its property or the making by it of any assignment for the benefit of creditors, or (iii) be any seizure or attachment of a material portion of the assets of Lessee or of any Guarantor which is not vacated or bonded within sixty (60) days; or (iv) be a death of any Lessee or any Guarantor; or

(7) There shall be entered any judgment, against Lessee or any Guarantor for the payment of money, which is final and not discharged or bonded within thirty (30) days.

(b) *Remedies:* Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor, at its option, may declare this Lease in default and Lessor may do one or more of the following with respect to the Equipment or any Item of Equipment as Lessor in its sole discretion shall elect, to the extent permitted and subject to compliance with any mandatory requirements of applicable law:

(1) Proceed by appropriate court action or actions either at law or in equity, to enforce performance by Lessee of the applicable covenants of this Lease including, without limitation, payment of all rents and other sums due, and to recover damages for the breach thereof;

(2) Sue for the rentals due hereunder as they accrue without notice and at Lessee's cost and expense;

(3) Sell, relet, use, hold or otherwise dispose of the Item(s) of Equipment;

(4) With or without notice, declare all rent and other charges for the unexpired portion of the Term of this Lease. Discounted at the Discount Rate, immediately due and payable; and

(5) Repossess with or without terminating the Lease.

(c) *Damages*: Lessor and Lessee agree that the measure of damages is impossible to determine in the absence of prior agreement. Therefore, the parties agree that as damages for the loss of a bargain and not as a penalty Lessor shall be entitled to:

(i) *Sale*: Where a sale with respect an Item of Equipment has occurred, the net proceeds of sale plus the excess, if any, of the Stipulated Loss Value with respect to such Item of Equipment at the time of sale over the Net Proceeds of Sale with respect to such Item of Equipment. Where a sale or re-lease has not yet occurred, the excess of the then Stipulated Loss Value with respect to such Item of Equipment at the time of determination (such time to be specified by the Lessor) over the then Aggregate Fair Market Sales Value with respect to such Item of Equipment.

(ii) *Re-lease*: Where a re-lease with respect to an Item of Equipment has occurred, the aggregate rentals therefrom (net of all costs of re-leasing) plus the shortfall, if any, of the aggregate rentals due under the re-lease with respect to such Item of Equipment Discounted at the Discount Rate from the greater of (a) the Stipulated Loss Value at the date of the re-lease, or (b) the aggregate remaining unpaid lease rentals with respect to such Item of Equipment due hereunder Discounted at the Discount Rate.

(iii) In addition to either (i) or (ii) above, Lessor shall be entitled to: (a) the unpaid rent and other sums due hereunder until the date of sale, re-lease or determination by Lessor of damages, (b) interest on all amounts due, including without limitation rent and damages, from the date of such sale, re-lease or determination until payment at the Overdue Rate, and (c) all consequential or incidental damages incurred by Lessor on account of Lessee's default hereunder.

For purposes of this Lease the following definitions apply:

(1) *Discounted*: Reduction to present value as of the date of sale, re-lease or determination of damages, whichever is applicable, at the Discount Rate and at a frequency equal to the frequency of rental payments under this Lease.

(2) *Aggregate Fair Market Sales Value*: The fair market sales value of an Item of Equipment, net of estimated sale costs, as determined by a recognized independent appraiser selected by Lessor.

(3) *Net Proceeds of Sale*: The consideration received by Lessor upon sale of an Item of Equipment less all expenses associated directly or indirectly with such sale including but not limited to refurbishing, repair, advertising, freight and financing costs.

(4) *Discount Rate*: A rate equal to six percent (6%) per annum.

(5) *Prime Rate*: A rate of interest equal to the prime rate quoted from time to time by The Chase Manhattan Bank (National Association).

(d) Each and every power and remedy herein specifically given to Lessor shall be in addition to every other power and remedy specifically so given or now or hereafter existing at law or in equity, and each and every power or remedy may be exercised from time to time or simultaneously and so often and in such order as may be deemed expedient by Lessor. All such powers and remedies shall be cumulative to the extent permitted by applicable law, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or any acquiescence therein. In the event that Lessor shall bring any suit or action to enforce any of its rights hereunder, then in such suit or action Lessor may recover reasonable expenses, including attorneys' fees.

Lessee hereby appoints Lessor as Lessee's irrevocable agent and attorney-in-fact to execute all documents deemed necessary to release, terminate and void Lessee's interest in the Equipment and to file said documents for recordation with appropriate agencies provided that an Event of Default has occurred.

17. Assignment By Lessee. LESSEE SHALL NOT TRANSFER, SUBLEASE, ASSIGN, PLEDGE OR HYPOTHECATE THIS LEASE, THE EQUIPMENT OR ANY PART THEREOF OR ANY INTEREST THEREIN, AND ANY SUCH ATTEMPTED TRANSFER, SUBLEASE, ASSIGNMENT, PLEDGE, OR HYPOTHECATION SHALL BE VOID. LESSEE FURTHER COVENANTS AND AGREES THAT, DURING THE TERM HEREOF, LESSEE WILL NOT MERGE INTO OR CONSOLIDATE WITH ANY OTHER CORPORATION OR ENTITY, OR SELL, LEASE OR OTHERWISE DISPOSE OF ALL OR SUBSTANTIALLY ALL OF ITS PROPERTIES WITHOUT THE PRIOR WRITTEN CONSENT OF LESSOR. IN THE EVENT LESSOR ELECTS TO CONSENT TO ANY OF THE FOREGOING ACTS, LESSEE

AGREES THAT LESSOR MAY CHARGE LESSEE A REASONABLE DOCUMENTATION AND ADMINISTRATION FEE. CONSENT TO ANY OF THE FOREGOING ACTS SHALL NOT BE DEEMED TO BE CONSENT TO ANY SUBSEQUENT SIMILAR ACT.

18. *Assignment by Lessor.* Lessor may assign, pledge or in any other way transfer this Lease and the Equipment in whole or in part, or any interest therein, without notice to Lessee, and Lessee shall execute such consents thereto as may be required by Lessor. Should this Lease or any interest therein be assigned or should the rentals hereunder be assigned, no breach or default by Lessor of this Lease or any other agreement between Lessee and Lessor shall excuse performance by Lessee of any provision hereof, and no assignee shall be obligated to perform any covenant, condition or obligation required to be performed by Lessor hereunder. The right of such assignee shall be free of all defenses, setoffs and counterclaims which Lessee might now or hereafter be entitled to assert against Lessor. In the event any assignee agrees to assume the obligations of Lessor, Lessee shall look solely to such assignee, and Lessor shall be released from all further liability hereunder.

19. *Personal Property.* The Equipment shall remain personal property regardless of whether it becomes affixed or attached to real property or permanently rests upon any real property or any improvement thereon, and Lessee shall do all acts and enter into all agreements necessary to ensure that the Equipment remains personal property.

Lessee shall keep the Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in the real estate on which it is located and any purchaser of or present or future creditor obtaining a lien on such real estate, and shall obtain and deliver to Lessor on the Acceptance Date a waiver of any such liens or claims as to the Equipment in recordable form satisfactory to Lessor.

20. *Liens.* Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, security interest, right or claim of any kind ("Lien") on, or with respect to, any Item of Equipment, title thereto or any interest therein.

Lessee will promptly notify Lessor in writing of the existence of any Lien and will promptly, at Lessee's expense, cause any such Lien to be duly discharged, dismissed and removed or fully bonded as soon as possible, but in any event within thirty (30) days after the existence of the same shall have first become known to Lessee or sooner if necessary to prevent the loss of possession of any Item of Equipment.

21. *Prohibition Against Setoff, Counterclaim, Etc.* Lessee's obligation to pay all amounts due hereunder shall be absolute and unconditional and shall not be affected by any circumstance whatever, including, without limitation (i) any setoff, counterclaim, defense, or other right which Lessee may have against Lessor, (ii) any defect in the title, condition, design, operation, or fitness for use of, or any damage to or loss or destruction of, or breach of warranty with respect to the Equipment, or any interruption or cessation in the use or possession thereof by Lessee for any reason whatsoever, or (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessee or Lessor.

22. *Representations, Warranties and Covenants of Lessee.* Lessee represents, warrants and covenants: (i) that if Lessee is a corporation or partnership, it is duly organized and existing in good standing under the laws of the state in which it is organized with the necessary power and qualifications to perform this Lease, (ii) that this Lease has been duly authorized by all necessary action on the part of Lessee and will not contravene or breach any legal, organizational or contractual regulation binding upon Lessee, (iii) that this Lease constitutes valid, binding and enforceable obligations of Lessee and is enforceable in accordance with its terms, (iv) that as of the date of each IER there are no suits or proceedings pending or threatened against Lessee which may have a material adverse effect on Lessee's financial condition or business, and (v) that as of the date of each IER no material adverse change in Lessee's financial condition as represented in its most recent financial statements submitted to Lessor has occurred.

23. *Attorneys' Fees.* Lessee shall pay all costs and reasonable attorneys' fees incurred by Lessor in collecting or attempting to collect any sums owed under this Lease or in enforcing any of Lessor's rights or remedies under this Lease including without limitation obtaining possession of the Equipment or seeking relief from stay or other remedies in bankruptcy court.

24. *Notices.* All notices required under the terms and provisions hereof shall be in writing and addressed (i) if to Lessee:

TUBE CITY INC
12 MONONGAHELA AVE
GLASSPORT PA 15045
Attention: JOHN LIPINSKI JR

or at such other address as Lessee shall from time to time designate in writing to Lessor, or (ii) if to Lessor:

MDFC Equipment Leasing Corporation

4060 Lakewood, Blvd., 6th Floor
Long Beach, California 90808-1700

Attention: Senior Vice President
Commercial Equipment Leasing

or at such other address as Lessor shall from time to time designate in writing to Lessee.

25. *Conditions Precedent.* As conditions precedent to Lessor's duties under this Lease, Lessee shall furnish to Lessor on or before the Acceptance Date for each IER under this Lease the following, all of which shall be satisfactory to Lessor: (a) an opinion of counsel for Lessee with respect to those representations set forth in Section 22(i) through (iv) inclusive hereof and with respect to such other matters as Lessor may require, (b) if Lessee is a corporation or partnership, board of directors resolutions or partnership authorizations, as the case may be, authorizing this Lease and Lessee's performance hereunder, (c) certificates of insurance, (d) real property waivers, if applicable, and (e) such other documents and evidence of authority for Lessee as Lessor may require.

26. *Miscellaneous.* **THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, EFFECT AND PERFORMANCE.** Venue for all actions under this Lease shall be in the State of California, Counties of Los Angeles or Orange. Lessee and Lessor agree to the jurisdiction of the federal and state courts sitting in such counties. Lessee and Lessor further agree that any summons in an action related to this Lease may be served by mailing it certified mail to the address provided in Section 24 hereof.

No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy by Lessor; nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default thereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default; nor shall consent by Lessor to any act of Lessee be deemed to be consent to any subsequent similar act.

Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

To the extent permitted by applicable law, Lessee hereby waives any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. Any action by Lessee against Lessor for any default by Lessor under this Lease shall be barred unless commenced within one (1) year after any such default occurs.

This Lease shall be binding on and shall inure to the benefit of Lessee, Lessee's permitted successors and assigns, Lessor and Lessor's successors and assigns. If there is more than one Lessee, the obligations of Lessee hereunder are joint and several. Time is of the essence of each and every obligation under this Lease.

27. *Recording, Registration and Filing.* Lessee shall, at its expense, accomplish all searches, recordings, registrations, and filings of this Lease, required by law or requested by Lessor to protect Lessor's title and interests in the Equipment, and shall furnish Lessor with evidence satisfactory to Lessor of each search, recording, registration and filing.

28. *Tax Indemnity.*

(a) Lessee hereby represents and warrants to Lessor (such term for the purpose of this Section 28 meaning Lessor and the corporations with which Lessor consolidates its United States Federal income tax returns) that:

(1) the Term of this Lease for each Item of Equipment (including extensions thereof) does not exceed 80% of the useful life of such Item of Equipment;

(2) A reasonable estimate of the fair market value of each Item of Equipment to Lessor, at the end of the Term of this Lease, without including in such value any increase or decrease for inflation or deflation during the Term of this Lease and after subtracting any costs of delivery of possession to Lessor, will not be less than 20% of Lessor's cost for such Item of Equipment, as set forth in the IER ("Equipment Cost");

(3) all of the Equipment has a Class Life as set forth in the IER and is depreciable to the full extent of Equipment Cost pursuant to Section 168 of the Internal Revenue Code of 1986, as amended from time to time, and any Regulations that are or may be promulgated thereunder ("Code"), under the method and over the recovery period set forth in the IER;

(4) the Equipment Cost does not exceed the fair market value of the Equipment and, if the Lessor purchased the Equipment from the Lessee, the Lessee's adjusted basis in the Equipment immediately prior to such acquisition;

(5) each Item of Equipment will be placed in service on the Acceptance Date; and

(6) this Lease is a true lease for all purposes, including but not limited to Federal, state and local tax purposes;

(b) Lessee covenants to Lessor and agrees that:

(1) it will characterize the relationship herein established as a lease and will treat it as such for all purposes;

(2) Lessor shall have the sole right to utilize and to claim the accelerated cost recovery deductions equal to 100% of Equipment Cost provided by Section 168 of the Code and computed under the method and over the recovery period set forth in the IER ("ACRS Deductions") and depreciation deductions equal to 100% of Equipment Cost based on those allowable for property with a Class Life as set forth in the IER using the most accelerated method available under applicable state or local law or Federal alternative minimum tax law ("Depreciation Deductions") on the Equipment in the computation of Federal, state, and local tax returns and reports for each year during the Term of this Lease:

(3) it shall not utilize or claim or attempt to utilize or claim the ACRS Deductions or Depreciation Deductions for any purposes whatsoever;

(4) each Item of Equipment will be used only in the continental United States as part of the normal business operations of the Lessee;

(5) during the Term, Lessor will not have to recognize any item of income with respect to this Lease, except amounts received by Lessor which are characterized as rent or additional rent by this Lease ("Other Income"); and

(6) it will neither take any action, nor fail to take any action (including without limitation actions or failures to act otherwise permitted hereunder), which will have the result of causing Lessor to recognize Other Income or to lose or to recapture all or any part of the ACRS Deductions or Depreciation Deductions attributable to the Equipment, or its ownership thereof.

In the event any of Lessee's representations, warranties or covenants set forth in this Section 28 prove incorrect for any reason whatsoever at any time, and Lessor recognizes Other Income or loses all or any part of the benefit of the ACRS Deductions or Depreciation Deductions attributable to the Equipment or is required to recapture all or any part of the ACRS Deductions or Depreciation Deductions attributable to the Equipment ("Loss"), Lessee shall indemnify and shall pay to Lessor, with respect to each Loss, a sum, which, after deduction of all taxes required to be paid by Lessor in respect of the receipt of such sum under the laws of any Federal, state or local government or taxing authority in the United States (or which would have been required to be paid by Lessor upon such receipt had Lessor had sufficient gross income within the meaning of Section 61 of the Code, or the applicable state or local law, to actually pay such tax) shall be equal to (a) the amount of additional Federal, state, or local income taxes required to be paid with respect to such Loss (or which would have been required to be paid by Lessor for such Loss had Lessor had sufficient gross income within the meaning of Section 61 of the Code, or the applicable state or local law, to actually pay such tax or derive the benefit of such deduction), plus (b) the amount of any penalties, interest, and other additions to tax (including, but not limited to, any additions to tax because of underpayment of estimated tax) which may be payable by Lessor in connection with the Loss. The amount of payment will be reduced by any savings in Federal income taxes to be realized by Lessor in the future as a result of the Loss discounted to present value using the Discount Rate.

The liability of Lessee to make any indemnity payments hereunder shall become fixed at the time Lessor makes payment of the tax attributable to the Loss, or if Lessor is not required to make payment of tax with respect to the Loss, the date on which Lessor files its tax return for the taxable year in which such Loss occurs, and shall be due and payable within 15 days after receipt by Lessee of written notice from Lessor as to the fixing of such liability. Lessee shall pay interest on any indemnity payment not made when due at the Overdue Rate.

(c) Notwithstanding the above, if an amendment to the Code enacted after the Acceptance Date changes the highest federal income tax rate generally applicable to corporations and such change adversely affects Lessor's Net Economic Return with respect to any Item of Equipment ("Adverse Tax Rate Change"), then Lessee agrees that its rental obligations, as set forth in Section 3 of the Lease and the applicable IER, will be adjusted in order to maintain Lessor's Net Economic Return.

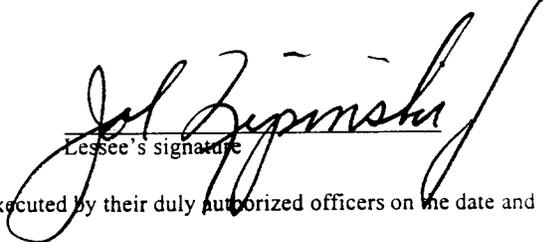
Lessor shall notify Lessee in writing of any such rental adjustment. All payments of rental falling due subsequent to the date of such notice (and any other payments required pursuant to the preceding paragraph) shall be made at the adjusted rental amount as determined in the preceding paragraph and shall be considered to be "rent" as specified in the Lease and the applicable IER. The Stipulated Loss Values in the

applicable IER for such Item of Equipment shall be amended as of the effective date of the Adverse Tax Rate Change to reflect the Adverse Tax Rate Change.

For purposes hereof, Net Economic Return shall mean the rate at which net after-tax cash generated by this transaction, after deducting all direct and allocated costs, will discount back to Lessor's internally-leveraged equity investment.

The indemnification provided herein shall survive the expiration or other termination of the Lease.

29. *Written Amendments to Lease.* No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease, together with each IER and any exhibits, amendments, riders, addenda or other documents or instruments executed by Lessee and/or Lessor in connection herewith, constitute the entire agreement between Lessor and Lessee with respect to the lease of the Equipment and shall supersede all prior or contemporaneous discussions, negotiations and agreements, whether written or oral, between Lessor and Lessee with respect to the lease of the Equipment. By executing this provision below, Lessee agrees to be bound by the terms of this Lease and, if it is applicable to this transaction, that the provision concerning a separately signed document pursuant to California Commercial Code Section 10-208 (UCC Section 2A-208) has been complied with. This Lease and any and all modifications and other agreements between Lessor and Lessee are only effective upon execution by Lessor.


Lessee's signature

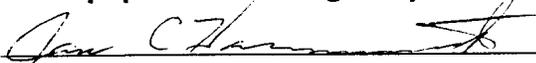
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers on the date and year first written above.

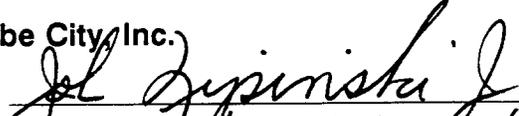
LESSOR:

LESSEE:

MDFC Equipment Leasing Corporation

Tube City, Inc.

By: 

By: 

Printed Name: James C. Hammersmith

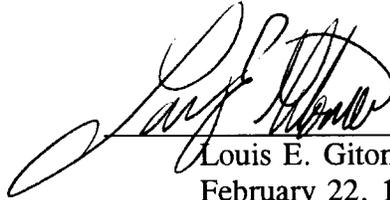
Printed Name: John Lipinski Jr

Title: Director - Operations

Title: SR VP, Sec + CFO

CERTIFICATION

I, LOUIS E. GITOMER, have compared this copy to the original Equipment Lease Agreement dated as of February 20, 1996, and found the copy to be complete and identical in all respects to the original document. I declare under penalty of perjury that the foregoing is true and correct.



Louis E. Gitomer
February 22, 1996

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Los Angeles
On 2-20-96 before me, Anicia McCluney, Notary
DATE NAME, TITLE OF OFFICER - E.G., JANE DOE, NOTARY PUBLIC

personally appeared James C. Hammersmith
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

OPTIONAL SECTION

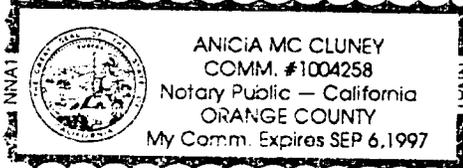
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- INDIVIDUAL
- CORPORATE OFFICER(S)
SV Operations
TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)



WITNESS my hand and official seal.

Anicia Mc Cluney
SIGNATURE OF NOTARY

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:
TITLE OR TYPE OF DOCUMENT _____
NUMBER OF PAGES _____ DATE OF DOCUMENT _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

