(m)

Emons Industries, Inc.

RECORDATION NO. 16733 FILED 1425

January 18, 1990

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INTERSTATE COMMERCE COMMISSION

Ms. Noretta R. McGee
Secretary
INTERSTATE COMMERCE COMMISSION
12th and Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. McGee:

JAN 19 12 59 PM '90
INTERSTATE COMMERCE COMMISSION
RECORDATION UNIT

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303 (A) are three originals of Lease Agreement dated December 20, 1989.

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

Lessor: MDFC Equipment Leasing Corporation
340 Golden Shore
Long Beach 90802

Lessee: Consolidated Rail Corporation
1334 Six Penn Center Plaza
Philadelphia, PA 19103

A description of the railroad equipment covered by the enclosed document is set forth in Exhibit "A" attached hereto and made a part hereof.

Also enclosed is a check in the amount of $15.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Please return one stamped original and one copy of the enclosed documents not needed for your files to: David P. Rogers, Manager - Leasing Administration, Emons Marketing Services, Inc. 96 South George Street - Suite 520, York, PA 17401. Thank you for your assistance in this matter.

Sincerely,

David P. Rogers

David P. Rogers
Manager, Leasing Administration
(717) 771-1722

:mth

Enclosures

David P. Rogers

Counterpart

16733
RECORDATION NO. _____ FILED 1425
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INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

By and Between

MDFC EQUIPMENT LEASING CORPORATION

and

CONSOLIDATED RAIL CORPORATION

Dated as of:

December 20, 1989

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THIS RAILROAD EQUIPMENT LEASE (the "Lease") is entered into as of this 20th day of December, 1989, by and between **MDFC EQUIPMENT LEASING CORPORATION**, a Delaware corporation (hereinafter referred to as "Lessor") and **CONSOLIDATED RAIL CORPORATION**, a Pennsylvania corporation (hereinafter referred to as "Lessee").

WHEREAS, Lessee desires to lease from Lessor and Lessor desires to lease to Lessee all of the items of equipment specified in Exhibit A attached hereto (hereinafter collectively referred to as the "Units" and singularly referred to as "Unit") on the terms and conditions stated herein.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth herein, the parties hereby agree as follows:

1. Lease of Units. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the Units, to have and to hold the same unto Lessee for the period commencing on the later of (the "Commencement Date"): (i) May 18, 1990, or (ii) the date upon which Lessee takes possession of the Units, or any Unit: and ending on the last day of April, 2008 (the "Termination Date"). The period of time commencing on the Commencement Date and ending on the Termination Date shall sometimes hereinafter be referred to as the "Term."

2. Base Rental. Lessee agrees to pay to Lessor, at Lessor's offices located at 340 Golden Shore, Long Beach, CA 90802, or to such other persons or at such other places as the Lessor may direct from time to time by written notice to Lessee, in coin or currency which at the time of payment is legal tender for payment of public and private debts in the United States of America, the amount of rent specified in Exhibit B attached hereto (the "Base Rental") during the Term of this Lease. The Base Rental provided for herein and then in effect, shall be due and payable in arrears on the first day of June, 1990 and on the first day of each calendar month thereafter during the Term of this Lease, with the Final Rental Payment due on May 1, 2008 without demand or setoff. The Lessee shall also pay, as additional rent, all such other sums of money as shall become due and payable by Lessee to Lessor under this Lease (the Base Rental and any additional rent due hereunder are sometimes hereinafter referred to as "Gross Rental"). If the Commencement Date is not the first day of the month, a pro-rated monthly installment shall be paid at the then current rate for the fractional month during which the Commencement Date occurs. All past due installments of Gross Rental shall bear interest from date due until paid at the greater of (a) fourteen percent (14%) per annum or (b) the annual rate of five percent (5%) plus the prime rate announced from time to time by the Chemical Bank of New York during the period of

delinquency, but in no event greater than the maximum rate permitted by applicable law.

This Lease is a net lease and except as expressly provided herein the Lessee shall not be entitled to an abatement of rent or additional rent, or setoff against or recoupment or reduction of rent or additional rent, including, but not limited to, abatements, setoffs, reductions or recoupments due or alleged to be due by reason of any past, present or future claims or counterclaims of the Lessee against the Lessor under this Lease. Except as expressly provided herein the Lessee's obligations hereunder, including its obligations to pay all rentals, additional rentals and other amounts hereunder, shall be absolute and unconditional under any and all circumstances, and, except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or any bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, it being the intention of the parties hereto that the rents and other amounts payable by the 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 Lease. So long as no Event of Default exists hereunder, if Lessor or anyone lawfully claiming under or through Lessor shall interfere with Lessee's possession and use of any Unit, Lessee's obligation to pay rent with respect to such Unit hereunder shall abate for so long as such interference continues and nothing in this Section 2 shall be deemed to constitute a waiver of any claim or right of action which Lessee may have against Lessor as a result of this Lease or otherwise.

3. <u>Delivery and Acceptance of Units</u>. Lessor, at its expense, will cause each Unit to be tendered to the Lessee at such point or points as are set forth on Exhibit C attached hereto. Immediately upon such tender, and in any event within ten (10) days of such tender, Lessee will cause its authorized inspectors or representatives to inspect the Units, and if such Units are found to be satisfactory to Lessee and in good operating order and repair, to accept delivery of such Units (or so many of such Units as are acceptable to Lessee) and to execute and deliver to the Lessor a certificate in the form of Exhibit D hereto signed by a responsible officer of the Lessee acknowledging the delivery of the Units by Lessor, the conformance of such Units to the requirements of the Interchange Rules of the Association of

American Railroads and the acceptance of the Units by Lessee' whereupon such Units shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all of the terms and conditions of this Lease, and such Lessee's certificate shall be absolutely binding upon Lessee. If any Unit is deemed by Lessee to be unacceptable or not to be in good operating order and repair, Lessee shall so notify Lessor in a writing that specifies the nature of the defect in the Unit, and Lessor at its option may either (i) repair such Unit, and immediately upon completion of such repairs the Unit shall be subject to all of the terms and conditions of this Lease; (ii) substitute a piece of equipment that is substantially similar to the defective Unit provided, however, that such Unit must be reasonably acceptable to Lessee, in which case such substituted equipment shall be a "Unit" and shall immediately be subject to the terms and provisions of this Lease; or (iii) delete the defective Unit, in which case the Unit so deleted shall not be subject to the terms and provisions of this Lease. If Lessee has not rejected any Unit within ten (10) days of the date such Unit was tendered by Lessor, or if Lessee uses any Unit prior to delivering a Lessee's certificate of acceptance with respect thereto, ten (10) days after such tender or on the date such Unit is used by Lessee, as the case may be, such Unit or Units shall be conclusively deemed to be accepted by Lessee and to conform in all respects with the standards of condition and repair set forth in this Lease.

4. Maintenance and Repairs. Lessee, at its sole expense, shall (i) keep and maintain the Units leased hereunder free of all AAR Rule 95(b) damage and in conformance with, the Interchange Rules of the Association of American Railroads, the FRA Railroad Freight Car Safety Standards, and the Safety Appliance and Power Brake Laws, as the same may be amended from time to time, and (ii) free from any and all liens and claims other than liens imposed upon the Lessor which liens shall be the responsibility of Lessor.

Any and all additions to Unit (other than those which are readily removable without damage to the Unit), and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, without cost or expense to the Lessor, there shall immediately be vested in the Lessor the same interest in such accessions as the interest of the Lessor in such Unit. The Lessee may make alterations or modifications in any Unit so long as it does not affect the value of such Unit adversely.

5. Disclaimer of Warranties. LESSOR, NOT BEING THE MANUFACTURER OF THE UNITS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, INCLUDING, BUT NOT LIMITED

TO: THE FITNESS FOR USE, DESIGN OR CONDITION OF THE UNITS; THE QUALITY OR CAPACITY OF THE UNITS; THE WORKMANSHIP IN THE UNITS; THAT THE UNITS WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO. IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE. LESSOR IS NOT RESPONSIBLE OR LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGE TO OR LOSSES RESULTING FROM THE INSTALLATION, OPERATION OR USE OF THE UNITS OR ANY UNIT. Lessor hereby acknowledges that any manufacturers and/or sellers warranties are for the benefit of both Lessor and Lessee. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between Lessor and Lessee, that each Unit described in any Lessee's certificate sent pursuant to Section 3 above and confirming such acceptance, or that each such Unit deemed accepted by Lessee pursuant to Section 3, is in all of the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against Lessor based on all or any one of the foregoing matters.

6. Use of the Units. Lessee agrees to use the Units primarily in the United States and to comply in all respects with all laws of the jurisdictions in which operations involving a Unit subject to this Lease may extend, with the Interchange Rules and the Codes of Car Hire and Car Service Rules of the Association of American Railroads, if applicable, and with all rules and regulation of the Interstate Commerce Commission, the Department of Transportation, and any other legislative, executive, administrative, judicial or governmental body exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the ownership, possession, operations or use of such Unit; and Lessee shall and does hereby indemnify and hold harmless Lessor from and against any and all liability and damages that may arise from any violation of this Section 6, or of any such laws, rules or regulations by Lessee, its agents, employees, or any other person. In the event that such laws, rules or regulations require any alteration, change, modification or enhancement of any nature whatsoever to the Units or any Unit, Lessee shall make such alterations, changes, modifications and enhancements at its own expense and use, maintain and operate such Units in full compliance with such laws, rules and regulations so long as such Units are subject to this Lease; provided, however, that Lessee may, in good faith, contest the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the sole opinion of Lessor, adversely affect the rights of Lessor in the Units and hereunder, provided, however, that Lessee shall not be required to make any changes, modification or enhancement required solely by reason of the age of the Unit.

7. Filings. Lessee agrees to prepare and deliver to Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a

copy to, Lessor) any and all railroad related reports required to be filed by Lessor as well as any and all non-railroad related reports which Lessor has advised Lessee, in writing are required to be filed by Lessor or requested by Lessor to be filed, with any federal, state or other regulatory authority by reason of the ownership by Lessor of the Units, the security title of Lessor to the Units or the leasing of the Units to Lessee; provided, however, that Lessor shall be responsible for filing this Lease with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

Lessee will cause each Unit to be kept numbered with its identifying number as set forth in Exhibit A hereto and all other markings and stenciling required by the Interchange Rules and the Codes of Car Hire and Car Service Rules of the Association of American Railroads, as the same may be amended from time to time, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words: "Subject to a Financing Agreement on file with the ICC." or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the title of Lessor to the Units and the rights of Lessor under this Lease. Lessee will not place any of the Units in operation or exercise any control or dominion over the same until such words have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. Lessee will not change, or permit to be changed, the number on any Unit, except in accordance with a statement of new numbers to be submitted therefor which previously shall have been filed with Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Each Unit may be lettered in an appropriate manner for convenience of identification of the interests of Lessee therein. Except as above provided, Lessee will not allow the name of any person, association or corporation to be placed on any of the Units as a designation which might be interpreted as a claim of ownership thereof.

8. **Taxes and Other Assessments.** Lessee shall be responsible for, and shall indemnify and hold Lessor harmless from, all taxes (including, without limitation, sales, use, excise, import, domestication, personal property, ad valorem, withholding, stamp, documentary and other taxes or imposed in lieu of such taxes, and excluding only any federal income taxes of Lessor or any state, local or foreign taxes imposed upon or measured by net income of Lessor or imposed in lieu of such taxes), license fees, assessments, charges, duties, fines and penalties, currently or hereafter levied or imposed by any state, local, federal or foreign authority (all such expenses, taxes, license fees, assessments,

charges, fines, penalties, being hereinafter called "Assessments") upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery made pursuant to this Lease which are in addition to any taxes already imposed upon Lessor solely as a result of its ownership of the Units and will keep at all times all and every part of the Units free and clear of all Assessments (other than assessments which are not the responsibility of Lessee pursuant to this Section 8) which might in any way affect the title of Lessor to any Unit or result in a lien upon any Unit. In the event that during the continuance of this Lease any reports with respect to Assessments involving the Units are required to be made, Lessee will either make such reports in such manner as to show the manner that shall be satisfactory to Lessor. Lessee shall, whenever requested by Lessor, submit to Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to Lessor of Lessee's performance of its duties under this Section 8. Lessee shall also furnish promptly on request all data as Lessor shall reasonably require to permit Lessor's compliance with the requirements of taxing jurisdictions.

To the extent that Lessee is prohibited by law from performing in its own name the duties required by this Section 8, and only to such extent, Lessor hereby authorizes Lessee to act in Lessor's name and on its behalf; provided, however, that Lessee shall indemnify and hold Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by Lessee pursuant to this authorization, other than those resulting from the gross negligence or willful misconduct of Lessor.

In the event that, during the continuance of this Lease, the Lessee shall become liable for the payment or reimbursement of any Assessments pursuant to this Section 8, such liability shall continue, notwithstanding the termination of this Lease, until such impositions are paid or reimbursed by Lessee.

9. <u>Indemnification</u>. Except as otherwise provided in this Lease, Lessee assumes liability for, and hereby agrees to indemnify, protect and keep harmless Lessor, it employees, agents, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, demands, penalties, actions, costs and expenses, including reasonable attorney's fees, of whatsoever kind and nature, arising out of any breach of this Lease by Lessee, or arising out of the possession, use, condition, operation, ownership, selection, delivery, leasing or return of the Units or any Unit, regardless of where, how and by whom operated other than those arising from the gross negligence or willful misconduct of Lessor. The indemnities and assumptions of liabilities and obligations herein provided for shall continue

in full force and effect notwithstanding the expiration or other termination of this Lease. Lessee is an independent contractor and nothing contained in this Lease shall authorize Lessee or any other person to operate any of the Units so as to incur or impose any liability or obligation for or on behalf of Lessor.

Lessor shall not be liable for any loss of or damage to any commodities loaded or shipped in the Units. Lessee agrees to assume responsibility for, to indemnify Lessor against, and to hold Lessor harmless from, any claim in respect of such loss or damage and to assume responsibility for any damage caused to any Unit by such commodities.

10. Lessor's Performance of Lessee's Obligations. If Lessee shall fail to duly and promptly perform any of its obligations under this Lease with respect to the Units, Lessor shall have the option, but not the obligation, to perform any act or make any payment which Lessor deems necessary for the maintenance and preservation of the Units and Lessor's title thereto, including payments for satisfaction of liens, repairs, Assessments, levies and insurance and all sums so paid or incurred by Lessor, and any reasonable legal and accounting fees incurred by Lessor in connection therewith shall be additional rent under this Lease payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of the Lessee, and Lessee shall continue to be liable for any such performance or payment by Lessor notwithstanding the expiration or earlier termination of this Lease.

11. Insurance. Lessee agrees to include the Units in its regular program of insurance but nothing in this Lease shall be deemed to require Lessee to change its insurance program or to take out separate insurance on the Units. Lessee will promptly notify Lessor of any material change in its insurance program.

12. Risk of Loss. Except as may result from a Casualty Occurrence (as defined below) occurring as a result of actions of the Lessor, Lessee assumes all risk of loss, damage, theft, condemnation or destruction of the Units. Except as provided in this Section 12, no such loss, damage, theft, condemnation or destruction of the Units, or any Unit, in whole or in part, shall impair the obligations of Lessee under this Lease, all of which shall continue in full force and effect. Whenever any Unit shall be or become worn out, lost, stolen, destroyed or damaged, from ordinary use, neglect, abuse, fire, the elements or any other cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the Term of this Lease, Lessee shall, promptly after it shall have been determined that such Unit has suffered a Casualty Occurrence, but in any event within thirty (30) days

after such Casualty Occurrence or within such shorter times as may be required by any applicable rules or regulations of the Association of American Railroads, notify Lessor in writing of such Casualty Occurrence. In the event any of the Units suffer a Casualty Occurrence Lessee shall pay to Lessor an amount equal to the accrued rental for such Units to the date of payment plus the appropriate amount set forth on the Stipulated Loss Table less the amount of the recovery, if any, from or through Lessee actually received by Lessor from Lessee's insurance or otherwise for such Casualty Occurrence, in which case such Units shall thereafter be deleted from this Lease. The balance of any recovery received by Lessor from insurance or otherwise for such Casualty Occurrence shall belong solely to Lessor.

13. Annual Report. On or before March 1 of each year during the Term of this Lease, Lessee will furnish to Lessor, Lessee's certificate, as of the preceding December 31, (i) showing the amount, description and numbers of Units then leased hereunder and the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve (12) months (or since the Commencement Date in the case of the first such Lessee's certificate), and such other information regarding the condition and state of repair of the Units as Lessor may reasonably request, (ii) stating that, in the case of all Units repaired or repainted during the period covered thereby, the markings required by Section 7 hereof have been preserved or replaced, and (iii) containing all other information in the possession of Lessee that is required to be filed by Lessor with any division of the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation, or, any other federal, state, administrative, legislative, judicial or governmental body having jurisdiction in the matter. Lessor shall have the right, but not the obligation, by its authorized representative upon proper notice to Lessee, and in such a manner as not to disrupt or interfere with the safe operation of Lessee's business to inspect the Units and the records of Lessee with respect thereto.

14. Lessee Default. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions (hereinafter referred to as "Events of Default") during the term of this Lease:

(a) If Lessee fails to pay any sum required to be paid hereunder on or before the due date and such failure continues for a period of two (2) business days after Lessee has been notified by Lessor that it has not received payment;

(b) If Lessee fails at any time to procure or maintain any insurance coverage required by this Lease;

(c) If Lessee fails to observe or perform any of the covenants, conditions and agreements on the part of Lessee to be observed or performed and contained herein (other than the payment of any sums required to be paid hereunder and other than the obligation to procure and maintain any insurance coverage required by this Lease) or any schedule or any supplement or rider hereto, and such default shall continue for thirty (30) days after receipt by Lessee of written notice of such default;

(d) If Lessee consents to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assignment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy law (now or hereafter in effect) or any answer admitting the material allegations of a petition filed against Lessee in any such proceedings, or Lessee shall by voluntary petition, answer or consent seek relief under the provisions of any now existing or future bankruptcy or other similar law providing for the reorganization or winding up of a business, of providing for an agreement, composition, extension or adjustment with its creditors;

(e) If an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent to Lessee, a receiver, trustee or liquidator of Lessee or of any substantial part of its property, or sequestering any substantial part of the property of Lessee, or granting any other relief in respect of Lessee under the federal bankruptcy laws, and any other such order, judgment or decree of appointment or sequestration shall remain in force undismissed, unstayed or unvacated for a period of sixty (60) days after the date of entry thereof;

(f) If a petition against Lessee in a proceeding under the federal bankruptcy laws or other similar insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within sixty (60) days thereafter, or if, under the provisions of any law providing for reorganization or winding up of corporations which may apply to Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or unterminated for a period of sixty (60) days;

(g) If Lessee shall make or permit any unauthorized assignment or transfer of this Lease, the Units or any interest therein; or

(h) If any material representation or warranty of Lessee contained in this Lease shall prove to be materially untrue or incorrect and the interests of Lessor are adversely affected thereby.

15. Lessor's Remedies. (a) Upon the occurrence of any one or more of the Events of Default specified in Section 14 above, and at any time thereafter (unless such Event of Default shall have been waived in writing by Lessor), Lessor may without any further notice exercise any one or more of the following remedies:

(i) Declare all unpaid Gross Rental under this Lease to be immediately due and payable;

(ii) Terminate this Lease as to any or all Units without relieving Lessee of any of its obligations hereunder;

(iii) Cause Lessee, at its sole expense, to promptly return the Units to Lessor in accordance with the terms and provisions of Section 17 hereof;

(iv) Use, hold, sell, lease or otherwise dispose of the Units or any Unit on the premises of Lessee or any other location without affecting the obligations of Lessee as provided in this Lease; provided, however, that Lessor shall not store any Units on Lessee's premises beyond the Lease expiration date plus the additional time specified in Section 17(c).

(v) Sell or lease the Units or any Unit at public auction or by private sale or lease at such time or times and upon such terms as Lessor may determine, free and clear of any rights of Lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by Lessor to Lessee not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Lessee;

(vi) Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(vii) Exercise any other right accruing to Lessor under any applicable law or in equity.

(b) If any Unit is sold, leased or otherwise disposed of pursuant to this Section 15, Lessee shall be liable to Lessor for and Lessor may recover from Lessee, as damages for the breach of this Lease, and not as a penalty, the amount by which the proceeds of such lease, sale, or other disposition is less than the sum of: (i) All due, unpaid and accrued Gross Rentals for such Unit as of the date of the Event of Default; (ii) The actual value

of such Unit as of the date of default by Lessee as determined by an independent appraiser to be appointed by Lessor; (iii) An amount equal to accrued Assessments and other amounts payable hereunder by Lessee with respect to such Unit; and (iv) All costs, expenses, losses and damages incurred or sustained by Lessor by reason of such default including, without limitation, attorneys' fees and appraisal fees. If on the date of termination or repossession pursuant to this Section 15, any Unit is damaged, lost, stolen or destroyed, or subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, Lessee shall remain liable for the damages set forth in this Section 15(b), less the amount of the recovery, if any, actually received by Lessor from Lessee's insurance or otherwise from or through Lessee in connection therewith.

(c) No right to remedy conferred on or reserved to Lessor by this Lease shall be exclusive of any other right or remedy herein or by law provided. All rights and remedies of Lessor conferred on Lessor by this Lease or by law shall be cumulative and in addition to every other right and remedy available to Lessor. No failure on the part of Lessor to exercise and no delay in exercising any right or remedy hereunder shall operate as a waiver thereof unless specifically waived by Lessor in writing; nor shall any single or partial exercise by the Lessor of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

(d) In the event that Lessor shall bring any action, proceeding, or suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such action, proceeding or suit Lessor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment. In the event that Lessor has incurred any expenses and attorney's fees in the enforcement of any of its rights hereunder without having brought any action, proceeding or suit to so enforce any such right, then Lessor may recover from Lessee any reasonable expenses and attorney's fees so incurred.

(e) Promptly after Lessee has notice of any event that has occurred and is continuing which would constitute an Event of Default but for the requirement that notice be given or a time elapsed or both, Lessee shall give written notice thereof to Lessor.

16. <u>Lease Renewal and Purchase Option</u>. Upon expiration of this Lease, provided that no Event of Default has occurred and is continuing, Lessee, at its sole option, may either purchase all but not less than all of the Units of Equipment for $3,000 (plus any applicable sales tax) per Unit or return the Units to Lessor in accordance with the provisions of Section 17 hereunder.

17. Return of Units. At the expiration of this Lease, or at the direction of Lessor pursuant to Section 15 of this Lease, Lessee shall forthwith deliver possession of the Units to the Lessor. It is expressly agreed that Lessee's return obligation upon Lease expiration shall be only to return the Units in "as is" condition. For the purpose of delivering possession of the Units to the Lessor as above required, Lessee shall at its own cost, expense and risk:

(a) Place the Units upon such storage tracks of Lessee as Lessee may reasonably designate;

(b) Promptly upon request by Lessor, remove any markings on the Units which indicate Lessee has any interest in the Units and if requested by Lessor, at Lessee's cost, remark the Units in accordance with Lessor's instructions;

(c) Permit Lessor to store such Units on such tracks at the risk of Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, provided, however, that Lessor shall not be entitled to store such Units on such tracks for more than ninety (90) days after the termination of this Lease; and

(d) Transport the Units to any place on the lines of any railroad operated by Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by Lessor, provided, however, that Lessee shall not be required to transport any Unit more than once pursuant to this Paragraph (d).

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the matter, 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 Units. During any storage period, Lessee will, upon proper notice, permit, at Lessor's cost and expense, Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of the Units or any Unit, to inspect the same. Provided that such inspection is conducted in accordance with normal industry practice and at such times, and in such a manner that it does not interfere with the safe operation of Lessee's business. Lessor agrees to indemnify, protect and keep harmless Lessee, its employees, agents, successors and assigns from and against any and all liabilities, obligations, losses, damages, injuries, claims, actions, costs and expenses (including reasonable attorney's fees) for personal injuries or property damage arising out of Lessor's inspection of the Units pursuant to Section 13 or

this Section 17 other than those resulting from the gross negligence or willful misconduct of Lessee.

18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be in writing and shall be deemed given when sent by United States Certified or Registered Mail, Return Receipt Requested, postage prepaid, addressed as follows:

TO LESSOR: MDFC Equipment Leasing Corporation
340 Golden Shore
Long Beach, CA 90802
Attention: President

TO LESSEE: Consolidated Rail Corporation
1334 Six Penn Center Plaza
Philadelphia, PA 19103
Attention: Thomas J. Hieber
Assistant Treasurer Finance
& Investor Relations

or at such other place as the parties hereto may from time to time designate by notice, each to the other. If the term "Lessee" as used in this Lease refers to more than one person or entity, any notice, consent, approval, request, bill, demand or statement given as aforesaid to any one of such persons or entities shall be deemed to have been duly given to Lessee.

19. Invalid Provisions. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, 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.

20. Miscellaneous Provisions. (a) This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Lessor and Lessee.

(b) This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument.

(c) THIS LEASE SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, 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 setting 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 18 hereof.

(d) Lessee may not, by operation of law or otherwise, assign, transfer pledge, hypothecate or otherwise dispose of this Lease or any interest herein, or sublet any of the Units for more than six (6) months, without Lessor's prior written consent provided, however, that no consent shall be required for an assignment or sublease to an affiliate of Lessee but further provided that no such assignment or sublease shall relieve Lessee of its obligations under this Lease. This Lease may be assigned by Lessor only upon the prior written consent of the Lessee which shall not be unreasonably withheld.

(e) Any cancellation, termination or assignment of this Lease by Lessor or Lessee pursuant to the terms and provisions hereof, or any schedule, supplement, rider or amendment hereto, or any termination of the Term by lapse of time, shall not release Lessor or Lessee from any then outstanding obligations and/or duties to Lessor or Lessee hereunder.

(f) Time is of the essence of this Lease.

(g) To the extent there exists any conflict between the terms and provisions of this Lease and the terms and provisions of the Interchange Rules or the Codes of Car Hire and Car Service Rules of the Association of American Railroads, this Lease shall control.

(h) Lessee hereby authorizes Lessor, and agrees that Lessor shall be entitled, to access UMLER and receive all information thereon with respect to the Units, or the use and operation thereof, together with all other such information as may be available from the Association of American Railroads, and Lessee agrees to execute such instruments or consents as may be necessary or required in order to carry out the intent of this paragraph (h).

(i) Lessee agrees, as a condition precedent to Lessor's obligations under this Lease, to provide Lessor with certificates evidencing Lessee's insurance program in effect as of December 20, 1989.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the day and year first above written.

LESSOR:

MDFC EQUIPMENT LEASING CORPORATION

By: Daniel O. Anderson

Name: DANIEL O. ANDERSON

Title: SR V.P.

LESSEE:

CONSOLIDATED RAIL CORPORATION

By: Thomas J. McGraw

Name: THOMAS J. MCGRAW

Title: DIRECTOR-FINANCING

MDFC2.JFF

STATE OF California)
) ss.
COUNTY OF Los Angeles)

The foregoing instrument was acknowledged before me this 19th day of December, 1989, by Daniel O Anderson, the Sr Vice President of McDonnell Douglas, a Delaware corporation, on behalf of the corporation.

Susan L Novak
Notary Public

OFFICIAL SEAL
SUSAN L. NOVAK
Notary Public-California
LOS ANGELES COUNTY
My Comm Exp. Oct. 2, 1992

COMMONWEALTH OF PENNSYLVANIA)
) ss.
COUNTY OF PHILADELPHIA)

The foregoing instrument was acknowledged before me this 18th day of December, 1989, by Thomas J. Mc Graw, the Director - Financing of **Consolidated Rail Corporation**, a Pennsylvania corporation, on behalf of the corporation.

Marianne C. Baker
Notary Public

NOTARIAL SEAL
MARIANNE C BAKER, Notary Public
PHILADELPHIA, PHILADELPHIA COUNTY
My Commission Expires Aug 6, 1990

EXHIBIT A

DESCRIPTION OF UNITS

70	52'6" -- 100 TON GONDOLAS	CR584860-584929

EXHIBIT C

POINTS OF TENDER

[To be inserted]

EXHIBIT D

Certificate of Acceptance

To: MDFC Equipment Leasing Corporation

I, the duly authorized representative for Consolidated Rail Corporation, do hereby certify that I inspected and accepted delivery thereunder of the following Units of Equipment under Railroad Equipment Lease dated as of December 20, 1989 by and between MDFC Equipment Leasing Corporation and Consolidated Rail Corporation ("Lease"):

TYPE OF EQUIPMENT: 52' 6" 100 ton gondolas

DATE ACCEPTED:

NUMBER OF UNITS:

Numbered:

I do further certify that the foregoing Units are in good operating order and repair, and conform to the requirements of the Interchange Rules of the Association of American Railroads.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each such Unit in letters not less than one inch in height as follows:

"Subject to a Financing Agreement on file with the ICC"."

_____
Authorized Representative
of Lessee