3280

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976, 12:01 a.m., the Financing Agreement described below has been assigned to the Consolidated Rail Corporation by the

Trustees of: Reading Company
1 Plymouth Meeting
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease, dated June 7, 1971, bearing the ICC recordation number 6230.

The payee's name and address is: Ardleigh Leasing Corporation
C/O Central Penn National Bank
5 Penn Center Plaza
Phila., PA 19103
Attn: Thomas McCoy, Trust Officer

This Notice of Assignment has been placed in the file of the ICC recordation number listed above and the entire assignment is contained in the ICC recordation file stamped in the margin of this assignment. A copy hereof will be promptly mailed to the payee listed above for distribution to the beneficial holder(s) of the Financing Agreement described in this Notice of Assignment.

Consolidated Rail Corporation

6730

RECORDATION NO._____Filed & Recorded

JUL 12 1971 -2 35 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of June 7, 1971

among

BETHLEHEM STEEL CORPORATION,

ARDLEIGH LEASING CORPORATION

and

READING COMPANY

CONDITIONAL SALE AGREEMENT dated as of June 7, 1971, among BETHLEHEM STEEL CORPORATION, a Delaware corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 25 hereof), READING COMPANY, a Pennsylvania corporation (hereinafter called the Guarantor or the Lessee) and ARDLEIGH LEASING CORPORATION, a Delaware corporation (hereinafter called the Vendee).

WHEREAS, the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex D (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Incorporation of Model Provisions.* Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Conditional Sale Provisions for Lease Transactions" annexed to this Agreement as Part I of Annex C hereto (hereinafter called the Model CSA Provisions), such provision of the Model CSA Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Agreement.

ARTICLE 2. *Construction and Sale.* Article 2 of the Model CSA Provisions is herein incorporated as Article 2 hereof.

ARTICLE 3. *Inspection and Delivery.* Article 3 of the Model CSA Provisions is herein incorporated as Article 3 hereof.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment is set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on the Closing Date (as hereinafter defined in this Article 4) the aggregate of the Purchase Prices as set forth in the invoice or invoices for the units of equipment (said invoiced prices being hereinafter called the Invoiced Purchase Prices) for which settlement has theretofore been or is then being made under this Agreement would, but for the provisions of this sentence, exceed $960,375 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder), the Guarantor and the Vendee, upon request from the Vendee, will enter into an agreement excluding from this Agreement such unit or units of Equipment, then proposed to be settled for and specified by the Vendee, as will reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than $960,375, and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of settlement therefor, the Equipment shall be gathered into one (1) group of the units of the Equipment (being hereinafter called the Group) unless the Vendee, the Guarantor, Builder and the Vendor shall otherwise agree. The term "Closing Date" with respect to the Group shall mean September 1, 1971 (and that date shall also be the Cut-Off-Date) unless the Vendee, Guarantor, Builder and the Vendor shall otherwise agree.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to the Group (i) an amount equal to 22% of the aggregate Purchase Price of such Group plus such additional sum as the Vendee may agree to pay; and

(b) In 29 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of the Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price of the Group being herein called the Conditional Sale Indebtedness) shall be payable on March 1, 1972, and subsequent instalments shall be payable semiannually thereafter on September 1 and March 1 of each year to and including March 1, 1986 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 10½% per annum and such interest shall be payable, to the extent accrued, on September 1 and March 1 of each year, commencing March 1, 1972. The principal amount of Conditional Sale Indebtedness payable on each of the 29 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of the 29 semiannual Payment Dates shall be substantially equal and such 29 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and Central-Penn National Bank, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such bank being herein called the Assignee or the Vendor as indicated in Article 25 hereof).

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Vendee):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 4 and in Section 6 of the Assignment and the documents required by Section 6 of the Assignment shall have been delivered;

(b) no event of default of the Guarantor specified herein or Event of Default of the Lessee under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease would constitute such an event of default or Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinions of counsel required by § 15 and § 17 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof), it is understood and agreed by the Vendor that the liability of the Vendee

for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 4 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Lessee's or the Guarantor's obligations thereunder and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee or the Guarantor of any of their agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Equipment and to the Vendor's rights under the Lease against the Lessee, the Guarantor and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee under the Lease or for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the fore-

going clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee (it being understood that the Lease contemplates that the amounts described in this clause (ii) will be paid to the Vendor) and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or within six days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six days after, the Payment Date corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. Notwithstanding anything to the contrary contained in Articles 16 and 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 5. *Title to the Equipment.* Article 5 of the Model CSA Provisions is herein incorporated as Article 5 hereof.

ARTICLE 6. *Taxes.* Article 6 of the Model CSA Provisions is hereby incorporated as Article 6 hereof.

ARTICLE 7. *Maintenance and Repair; Casualty Occurrences; Insurance.* The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences, except for any taking or requisition which by its terms does not exceed the then existing term of the Lease, being herein called Casualty Occurrences), the Vendee shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Vendee may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. In the event that the unit is not replaced as permitted under § 7 of the Lease, on the next succeeding Payment Date, after the date on which the Vendee received or should have received the Casualty Value of such unit payable under § 7 of the Lease, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Agent may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Guarantor will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Guarantor on equipment owned by it. Such insurance shall be payable to the Vendor, the Vendee and the Guarantor as their interests may appear.

It is further understood and agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 7. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 7 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Vendee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

In the event that the Guarantor elects to replace any unit suffering a Casualty Occurrence pursuant to § 7 of the Lease, such replacement unit meeting the requirements of that section, the Guarantor and Vendee shall join with the Vendor in an amendment hereto to

include such replacement unit hereunder and a condition to such replacement is the receipt by the Vendor of an opinion of counsel for the Guarantor that such unit is subject hereto, free and clear of all liens and encumbrances from Guarantor or any predecessor in title. Simultaneously, the parties hereto shall release the title to the unit having suffered a Casualty Occurrence to the Guarantor. All replacement units shall be immediately marked as required by Article 10 hereof.

ARTICLE 8. *Obligations of Guarantor.* The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 4 hereof and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 4 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 4 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however,* that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 4 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 4, of sums payable by the Vendee to the Vendor hereunder.

ARTICLE 9. *Reports and Inspections.* On or before November 1 in each year, commencing with the year 1972, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding June 30 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of any replacement units and all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 10 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Guarantor's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 10. *Marking of Equipment.* Article 10 of the Model CSA Provisions is herein incorporated as Article 10 hereof.

ARTICLE 11. *Compliance with Laws and Rules.* Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

ARTICLE 12. *Possession and Use.* Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.

ARTICLE 13. *Prohibition Against Liens.* Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.

ARTICLE 14. *Indemnities and Warranties.* Article 14 of the Model CSA Provisions is herein incorporated as part of Article 14 hereof. The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification contained in Annex A hereto are herein incorporated as part of Article 14 hereof.

ARTICLE 15. *Assignments.* Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof.

ARTICLE 16. *Defaults.* Article 16 of the Model CSA Provisions is herein incorporated as Article 16 hereof.

ARTICLE 17. *Remedies.* Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof.

ARTICLE 18. *Applicable State Laws.* Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.

ARTICLE 19. *Recording.* Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. *Payment of Expenses.* Article 20 of the Model CSA Provisions is herein incorporated as Article 20 hereof.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at 1701 Farmers Bank Building, Wilmington, Delaware 19801, Copy to: Lease Financing Corporation, 1 Wynnewood Rd., Wynnewood, Pennsylvania 19096,

(b) to the Guarantor, at Reading Terminal, Philadelphia, Pennsylvania 19107, Attention: Office of Secretary,

writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 12 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without

the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

If, after applying sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if

the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

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

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overriden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Recording.* The Vendee or the Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the

Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 24. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Selected Jurisdiction; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, record-

claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenants hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 15. *Assignments.* The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Vendee or the Guarantor of their respective obligations to the Builder contained or referred to in Articles 2, 3, 4, 6, 8 and 14 hereof and this Article 15, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on each side of each unit of the

Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on the Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 5 days; or

(b) The Vendee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Guarantor or the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a

court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under the Other Agreement or Agreements, if any, referred to and defined in Article 4 hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 12 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the

lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Guarantor or any other persons notified under the terms of this paragraph object in

interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

Article 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the

Equipment; *provided, however,* that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Vendee shall not be obligated to reimburse the Vendor for any imposition so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 10. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all

the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

If, after applying sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if

the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

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

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overriden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Recording.* The Vendee or the Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the

Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 24. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Selected Jurisdiction; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, record-

claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenants hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 15. *Assignments.* The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Vendee or the Guarantor of their respective obligations to the Builder contained or referred to in Articles 2, 3, 4, 6, 8 and 14 hereof and this Article 15, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on each side of each unit of the

Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on the Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 5 days; or

(b) The Vendee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Guarantor or the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a

court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under the Other Agreement or Agreements, if any, referred to and defined in Article 4 hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 12 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the

lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Guarantor or any other persons notified under the terms of this paragraph object in

writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 12 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without

the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

If, after applying sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if

the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

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

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overriden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Recording.* The Vendee or the Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the

Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 24. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Selected Jurisdiction; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, record-

ing or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

PART II

MODEL LEASE PROVISIONS

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documents. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with § 5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, 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 name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new numbers or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documents shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. This Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,*

that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Security Documents. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Security Documents not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the

Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under the provisions of Article 14 of the Security Documents. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdiction in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such

Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 11. *Returnof Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivery possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

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

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provision of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this

Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however,* that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Documents) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same, *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 7 hereof to make payments equal to the

Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease;

B. the Security Documents and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. the Security Documents (and the assignment thereof to the Vendor) and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Documents or this Lease;

E. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee,

now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however,* that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Documents shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease, the Security Documents and all out of pocket expenses of all counsel for any party thereto or to the Finance Agreement and all fees and expenses of the Agent thereunder.

PART III

MODEL ASSIGNMENT PROVISIONS FOR LEASE TRANSACTIONS

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Guarantor thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Guarantor that such filing and recordation have occurred).

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and

hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Guarantor with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise,

not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 15 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment then being settled for under the Conditional Sale Agreement, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) A certificate of an officer of the Guarantor to the effect that none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Guarantor as to the correctness of the prices of such units;

(e) An opinion of Messrs. Saul, Ewing, Remick & Saul, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, addressed to the Assignee and the Investors stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Guarantor under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and

qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(f) An opinion of counsel for the Vendee or the beneficial owner of the Equipment, dated as of such Closing Date, stating that the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(g) An opinion of counsel for the Guarantor, dated as of such Closing Date and addressed to the Vendee as well as the Assignee, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (e) above so far as relating to the Guarantor and stating that the Guarantor is duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(h) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

(i) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e), (f) and (g), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than Pennsylvania or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Guarantor as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Agent having, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly

authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Guarantor, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

ANNEX D

LEASE OF RAILROAD EQUIPMENT

Dated as of June 7, 1971

between

ARDLEIGH LEASING CORPORATION

and

READING COMPANY

PRESS OF ALLEN, LANE & SCOTT, PHILADELPHIA

LEASE OF RAILROAD EQUIPMENT dated as of June 7, 1971, between ARDLEIGH LEASING CORPORATION, a Delaware corporation (hereinafter called the Lessor) and READING COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of June 7, 1971 (heerinafter called the Security Document), with BETHLEHEM STEEL CORPORATION (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Document to Central-Penn National Bank, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Security Document on or prior to September 1, 1971 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Security Document, subject to all the rights and remedies of the Vendor under the Security Document:

§ 1. *Incorporation of Model Provisions.* Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Document as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease, except that the

term "Security Documents" as used therein shall be deemed to mean the Security Document.

§ 2. *Delivery and Acceptance of Units.* § 2 of the Model Lease Provisions is herein incorporated as § 2 hereof.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on September 1 and March 1 in each year commencing September 1, 1971. The semiannual payments shall be in an amount equal to 5.79562% of the Purchase Price (as such term is defined in the Security Document pursuant to which such Unit is being acquired by the Lessor) of each Unit subject to this Lease.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease in immediately available Philadelphia or Federal funds (including but not limited to the payments required under § 7 hereof) for the account of the Lessor, c/o Central-Penn National Bank 5 Penn Center Plaza, Philadelphia, Pennsylvania 19103, Attention: Thomas McCoy, Trust Officer, or to any successor agent under the Finance Agreement between this bank, Lessor, Lessee, and the Investor named therein (Agent). On or before the date upon which payments to the Vendor under the Security Document are due and owing, the Agent is hereby authorized to apply funds received hereunder in immediately available Philadelphia or Federal funds to make such payment to the Vendor (or to any assignee of the Vendor pursuant to Section 7 of the Agreement and Assignment between the Builder and the Vendor, dated as of June 7, 1971, under which the Security Document is being assigned to the Vendor). Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Security Document accrued at the time such payments are due hereunder and, so long as no event of default under the Security Document shall have occurred and be continuing, any balance shall be paid to the Lessor or as it instructs such Agent.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Document, including the Lessee's rights by subrogation under Article 8 thereof (other than the right under the proviso of the

last paragraph of said Article 8), or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or 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 of loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the 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. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms thereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date six months following the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Security Document in its capacity as Guarantor or otherwise, are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Security Document.

§ 5. *Identification Marks.* § 5 of the Model Lease Provisions is herein incorporated as § 5 hereof.

§ 6. *Taxes.* § 6 of the Model Lease Provisions is herein incorporated as § 6 hereof.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences except for any taking or requisition which by its terms does not exceed the then current term of this Lease, being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within ten days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. Unless the Lessee has elected to replace the Unit suffering a Casualty Occurrence as hereinafter provided, on the rental payment date (subsequent to September 1, 1971)(provided such next succeeding rental payment date is not less than 90 days after such Casualty Occurrence in the case of any rental payment date other than the last such date) next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

Payment No.	Percentage	Payment No.	Percentage
2	106.86%	5	114.11%
3	109.64%	6	115.79%
4	112.06%	7	117.09%

Payment No.	Percentage	Payment No.	Percentage
8	118.01%	20	75.19%
9	118.54%	21	70.44%
10	118.68%	22	65.67%
11	118.43%	23	60.88%
12	113.50%	24	56.05%
13	108.62%	25	51.18%
14	103.77%	26	46.25%
15	98.96%	27	41.26%
16	94.18%	28	36.20%
17	89.42%	29	31.04%
18	84.67%	30 and thereafter	25.78%
19	79.93%		

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it. Such insurance shall include the Vendor and the Lessor as additional named insureds as their interests may appear. Any net insurance proceeds as the result of insurance carried by the Lessee or condemnation proceeds received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 7. If the Lessor shall receive any such net insurance proceeds or condemnation proceeds after the Lessee shall have made payments pursuant to this § 7 without deduction for such net insurance proceeds or any condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

Any Unit having suffered a Casualty Occurrence which, by a written instrument filed with Lessor within a reasonable period prior to the date the casualty payment in respect thereof would otherwise be payable, Lessee elects to replace is hereinafter called the Destroyed Unit and the Unit being substituted therefor is hereinafter called the Replacing Unit. Each Replacing Unit shall be one or more Units constituting hopper cars the fair market value and useful life of which are not less than such for the Destroyed Unit before the Casualty Occurrence. No replacement of a Destroyed Unit shall be made pursuant to this § 7 if such replacement would result in the recognition of any gain to Lessor pursuant to any federal income tax law at the time in effect. Any Replacing Unit after such substitution shall be subject to all the terms and conditions of this Lease as though part of the original Units delivered and accepted hereunder and shall be included in the term Units as used in this Lease. Rentals payable hereunder in respect of any Replacing Unit shall be payable at the times at which and in the amounts in which rentals would otherwise have been payable hereunder in respect of the Destroyed Unit, and the term of this Lease with respect to any Replacing Unit shall expire on the date on which the term with respect to the Destroyed Unit would otherwise, but for such Casualty Occurrence, have expired. The Casualty Value of any Replacing Unit shall be computed on such basis that the amount payable if the Casualty Value of the original Unit or Units initially subject to this Lease which were replaced by such Replacing Unit were being determined on the date payment is required hereunder in respect of a Casualty Occurrence of such Replacing Unit.

Title to each Replacing Unit shall, by instruments satisfactory to Lessor and its counsel, be vested in the Vendor under the Security Document (Lessor after termination of the Security Document) free and clear of all liens and encumbrances except such as shall have been created by Lessor therein. Lessee shall, prior to its exercise of dominion or control over any Replacing Unit, execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such Replacing Unit to come under and be subject to this Lease and to protect the title of the Vendor or Lessor thereto as the case may be. All Replacing Units shall have been originally warranted by the manufacturer thereof in like manner as is customary for equipment of the same type.

Each instrument filed by Lessee with Lessor evidencing Lessee's election to replace a Destroyed Unit shall be accompanied by:

(i) a certificate of a Vice President of Lessee to the effect that the Replacing Unit complies with the definition of such and has been marked as required by the provisions of § 5 hereof and certifying the fair market value and useful life of the Replacing Unit and the Destroyed Unit as aforesaid; and

(ii) an opinion of counsel for Lessee to the effect that title to the Replacing Units is vested in Vendor or Lessor, as the case may be, free and clear of all liens and encumbrances except such as shall have been created by Lessor under the Security Document, that such Replacing Unit has come under and become subject to this Lease and that such replacement has been made in compliance with the requirements therefor set forth in this § 7.

§ 8. *Annual Reports.* On or after November 1 in each year, commencing with the year 1972, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding June 30 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Units, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units replaced or repaired or repainted during the period covered by such statement, such Units are marked as required by § 5 hereof and Article 10 of the Security Document. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* § 9 of the Model Lease Provisions is herein incorporated as § 9 hereof.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Security Document under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Security Document), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Security Document shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Security Document and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty; a sum, with respect to

each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of an 8¾% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on a 70% effective Federal tax rate and the highest effective state and local income tax and/or excess profits tax rates generally applicable to or imposed upon individuals, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting from any such Federal tax 70% of the amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates and depreciation being claimed to the extent possible) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the amortization deduction with respect to the Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended (hereinafter called the Rapid Amortization Deduction) which was lost, could not be claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of any of the following which shall occur after the occurrence of an Event of Default: the termina-

tion of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* § 11 of the Model Lease Provisions is herein incorporated as § 11 hereof.

§ 12. *Assignment; Possession and Use.* § 12 of the Model Lease Provisions is herein incorporated as § 12 hereof with the following amendments: (a) at the end of its first sentence of the second paragraph add, "except, however, for any rights in and to the Lessee's interest in this Lease which may accrue to the Manufacturers Hanover Trust Company (hereinafter called the Mortgagee), as successor to the Central Union Trust Company as mortgagee under a Mortgage and Deed of Trust dated January 2, 1924, between the Lessee and the Mortgagee, as amended and supplemented provided that the lien thereof is subordinate to or does not conflict with the rights of the Lessor"; and (b) add within the next succeeding parenthesis the words "and other than the lien of the said Mortgage and Deed of Trust".

§ 13. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the particular term of this Lease, (i) at the end of the original term, or any extended term, elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of such term of this Lease for a purchase price

equal to the "Fair Market Value" of such Units as of the end of such term or (ii) elect to extend the term of this Lease in respect of all, but not fewer than all, such Units then covered by this Lease for up to two periods of five years each, commencing on the scheduled expiration of the original term of this Lease, provided that no such extended term shall extend beyond September 1, 1996, at a rental payable in semiannual payments, each in an amount equal to the Fair Rental Value, determined as of the end of the preceding term. Fair Rental Value shall mean an arms length determination of the fair rental for the Units determined in accordance with the formula set out below for determining Fair Market Value. Such semiannual payments shall be made on March 1 and September 1 in each year of the applicable extended term. Six months prior to the end of such first period Lessee (not being in default) may elect to extend for such second, period, provided that any prior election has not exhausted the Lessee's rights under this paragraph.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to Lessee, or to the Lessee's

assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

All payments to be made under this section to or for the account of the Lessor shall be made to the Agent under the Finance Agreement.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is amended by adding the following sentence at the end thereof: "Lessor shall deliver possession of the Units in good order and repair, ordinary wear and tear excepted, in compliance with all governmental laws, regulations, requirements and rules, including the rules of the Interstate Commerce Commission and the interchange rules of the Association of American Railroads, except that this provision shall not apply to any Unit which shall have suffered a Casualty Occurrence." § 14 of the Model Lease Provisions, as so amended, is herein incorporated as § 14 hereof.

§ 15. *Opinion of Counsel.* § 15 of the Model Lease Provisions is herein incorporated as § 15 hereof.

§ 16. *Recording; Expenses.* § 16 of the Model Lease Provisions is herein incorporated as § 16 hereof.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including without limitation, an allowance for the Rapid Amortization Deduction (as defined in § 10 of this Lease), with respect to the Units.

Lessee agrees and warrants that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and

execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof, Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Rapid Amortization Deduction with respect to the Units.

The Lessee represents, agrees and and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of Section 184 of the Code and at all times thereafter during the term of this Lease, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of Section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of Section 184 of the Code the Units will not have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of Section 184 of the Code from commencing with the Lessor and no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times during the term of this Lease "a domestic common carrier by railroad" within the meaning of Section 184(d) (1) (A) of the Code, and (iv) during the term of this Lease, each Unit will, within the meaning of Section 184(d) (1) (A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit as a result of any of the following events:

(a) Any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein, in the Security Document, in the related Assignment (as defined in the Security Document), in the Finance Agreement (as defined in the related Assignment), or otherwise made in writing in connection herewith or therewith, shall, or in the opinion of the Internal Revenue Service (hereinafter called the IRS) shall, be fraudulent, untrue,

incorrect, inaccurate or misleading in whole or in part; or the Lessee (or any officer, employee or agent thereof) shall, or in the opinion of the IRS shall, fail to state any material fact in connected with the transactions contemplated hereby or thereby; or the Lessee shall take any action in respect of its income tax returns or otherwise which shall, or in the opinion of the IRS shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof) shall, or in the opinion of the IRS shall, take any other action whatsoever which shall cause the loss or disallowance or recapture of any portion of the full Rapid Amortization Deduction; or

(b) The failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or the Security Documents, the related Assignment or the Finance Agreement; or

(c) Any use of such Unit which prevents such Unit from being "qualified railroad rolling stock" within the meaning of Section 184(d) of the Code, or any regulations promulgated thereunder;

the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction could not be claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates as defined in § 10 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the term of the Lease (taxes being calculated at the Assumed Rates and depreciation being claimed to the extent possible) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates) that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which could not be claimed or was disallowed or was recaptured and the Lessee

shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Saul, Ewing, Remick & Saul or other independent counsel selected by the Lessor and acceptable to the Lessee, a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by said counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 11% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 17 shall survive the expiration or other termination of this Lease.

On or before the Closing Date occurring under the Security Document, the Lessor, as a condition to its obligation to lease the Units to the Lessee hereunder, shall have received counterparts of the written opinion of Messrs. Saul, Ewing, Remick & Saul addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor (or any nominees for which it is acting) will be considered the owner of the Units; and

B. the Lessor (or any nominees for which it is acting) will be entitled to either (i) depreciation deductions with respect to

the Units, computed in accordance with any of the methods listed in Section 167(b) of the Code, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Code), as provided for in Section 184 of the Code, whichever the Lessor elects.

§ 18. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 11% per annum of the overdue rentals for the period of time during which they are overdue.

§ 19. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 1701 Farmers Bank Building, Wilmington, Delaware 19801, Copy to: Lease Financing Corporation, 1 Wynnewood Rd., Wynnewood, Pennsylvania 19096; and

(b) if to the Lessee, at Reading Terminal, Philadelphia, Pennsylvania, 19107, Attention: Office of Secretary,

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 20. *Severability; Effect and Modification of Lease.* 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.

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 the Lessor and the Lessee.

§ 21. *Execution.* 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. Although this Lease is dated as of June 7, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

In Witness Whereof, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

Ardleigh Leasing Corporation

By

President

[corporate seal]

Attest:

Secretary

Reading Company

By

Vice President

[corporate seal]

Attest:

Secretary

STATE OF DELAWARE
COUNTY OF NEW CASTLE } *ss:*

On this day of , 1971, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of ARDLEIGH LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[NOTARIAL SEAL]

My Commission Expires

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } *ss:*

On this day of , 1971, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of READING COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[NOTARIAL SEAL]

My Commission Expires

SCHEDULE A

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
100-ton open top hopper cars with roller bearings.	X-300-60 March 3, 1971 DF-3400-256	Johnstown, Pennsylvania	65	41710-41774	$14,775	$960,375	July-August, 1971, on Builder's Tracks, F.O.B., Johnstown, Pa.

ANNEX E

PLEDGE AGREEMENT

Dated as of June 7, 1971

Central-Penn National Bank
5 Penn Center Plaza
Philadelphia, Pennsylvania 19103

As further security for the obligations of ARDLEIGH LEASING CORPORATION (hereinafter called the Company) under the two (2) Conditional Sale Agreements dated as of June 7, 1971, (hereinafter called the Conditional Sale Agreements) among the Company, Reading Company (the "Railroad") and Bethlehem Steel Corporation referred to in the Finance Agreement dated as of June 7, 1971, among you, the Railroad and the Investor named in Schedule A thereto (hereinafter called the Finance Agreement), being assigned to you pursuant to the Assignments referred to in the Finance Agreement, and as security for the obligation to pay an additional inducement to the Investor calculated at 25% of residuals under the terms of the Finance Agreement, the undersigned herewith deposits with you and pledges to you as security for the prompt payment of each and every obligation and liability of the Company to you (including such latter liability reinducement to the Investor) at any time outstanding under said Conditional Sale Agreements and the Finance Agreement (hereinafter called the Obligations), the following shares of capital stock of the Company owned by the undersigned, and registered in your name, representing all of the authorized, issued and outstanding shares of the capital stock of the Company (hereinafter called the Shares):

ARDLEIGH LEASING CORPORATION, 100 Shares Capital Stock.

Upon the occurrence of any event of default (as that term is defined in the Conditional Sale Agreements), then or at any time thereafter you are hereby authorized and empowered, either before or after the maturity of all or any part of the Obligations, to sell, assign and deliver all or any part of the Shares at public or private sale, as you may elect, either for cash or on credit, and for present or future delivery, without assumption of any credit risk, and without either demand, advertisement or notice of any kind, all of which are hereby waived. At any sale hereunder, you may purchase the whole or any

part of such Shares so sold, free from any right of redemption on the part of the undersigned, all such rights being also hereby waived and released. In the event of any sale hereunder you may, after deducting all costs or expenses of every kind, apply the residue of the proceeds of such sale to the payment or reduction either in whole or in part of the Obligations; returning the surplus, if any, to the undersigned.

It is understood and agreed that you may at any time: (1) extend or change the time of payment and/or the manner, place or terms of payment of all or any of the Obligations; (2) exchange, release and/or surrender all or any of the railroad equipment which is now or may hereafter be held by you as security in connection with the Obligations; (3) sell any railroad equipment subject to the Conditional Sale Agreements and dispose of the proceeds thereof as is authorized therein; (4) settle or compromise with the Company, and/or any other party liable thereon, all or any part of the Obligations, and/or subordinate the payment of all or any part of the same to the payment of any other debts or claims which may be due or owing at any time to you and/or any other party; and (5) waive at any time and from time to time compliance with any of the terms, covenants and conditions in the Finance Agreement or in any Exhibit or Annex thereto (as executed and delivered), all in such manner and upon such terms as you may deem proper, and without notice to or further assent from the undersigned, who hereby agree that the lien, options and other rights hereby given you shall remain unimpaired and unprejudiced by any such action on your part or otherwise.

No delay on your part in exercising any right hereunder, and no notice or demand which may be given to or made upon the undersigned by you with respect to any right hereunder, shall constitute a waiver thereof, or limit or impair your right to take any action or to exercise any right hereunder without notice or demand.

Any and all amounts received by you on account of dividends on the Shares shall be applied to the reduction of the principal amount of the Obligations.

You may assign or transfer this Agreement, or any instrument evidencing all or any part of the Obligations, and you may deliver all or any of the Shares then held as security hereunder to the transferee, who shall thereupon become vested with all the powers and rights in respect thereto given to you hereby, and you shall thereafter

be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all rights and powers hereby given with respect to any and all instruments, rights or property not so transferred.

The undersigned hereby authorizes you to vote the Shares at any meeting of stockholders in such manner as you may, in your sole discretion, believe to be in the best interests of the Investors named in the Finance Agreement; *provided, however,* that until an event of default (as defined in the Conditional Sale Agreements) or any event which with notice or lapse of time or both, would constitute an event of default, shall occur, it is understood that the undersigned shall be entitled to vote the Shares, or to direct you to vote the Shares, in respect of the election of directors and the appointment of auditors.

Upon delivery to you of the Shares you will be furnished with the written opinion of independent counsel for the undersigned acceptable to you and your special counsel addressed to you to the effect that:

(1) the Shares are fully paid and nonassessable and represent all the authorized, issued and outstanding capital stock of the Company;

(2) the issuance of the Shares to the undersigned was duly authorized and the delivery thereof to the undersigned was valid;

(3) the Shares have been validly transferred to you and registered in your name upon the books of the Company and you are validly vested with record title thereto free of all claims, liens, security interests and other encumbrances; and

(4) this Agreement was duly executed by the undersigned and is a valid instrument binding upon the undersigned and enforceable against the undersigned in accordance with its terms (subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally).

The undersigned hereby confirms to you that the Company was incorporated on June 4, 1971, as amended by amendment dated June 24, 1971; has not subsequently amended its charter; and that since its incorporation the Company has engaged in no transactions other than those contemplated in its charter.

This Agreement shall be binding upon the undersigned and their successors and assigns.

This Agreement shall terminate when there shall be no Obligations outstanding and upon such termination the Shares shall be transferred to the undersigned but without warranties.

This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania in all respects.

(SEAL)

BEVERLEY R. WELLFORD

[SEAL]

The foregoing Pledge Agreement is hereby accepted as of June 7, 1970.

CENTRAL-PENN NATIONAL BANK

By

Vice President