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INTERSTATE COMMERCE COMMISSION

COLLATERAL ASSIGNMENT OF LEASE  
AND AGREEMENT

and

LESSEE'S CONSENT AND AGREEMENT

Dated as of March 15, 1972

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COLLATERAL ASSIGNMENT OF LEASE  
AND AGREEMENT

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of March 15, 1972 (hereinafter called "this Assignment"), by and between INDUSTRIAL LEASING CORPORATION, a Rhode Island corporation (hereinafter called the "Company") and THE STATE TEACHERS RETIREMENT BOARD OF OHIO (hereinafter called the "Investor").

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of March 15, 1972 (hereinafter called the "Conditional Sale Agreement"), with BERWICK FORGE AND FABRICATING, A DIVISION OF WHITTAKER CORPORATION (hereinafter called the "Manufacturer") providing for sale to the Company of such units of railroad equipment (hereinafter called the "Units") described in Annex A to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Manufacturer has assigned its interests in the Conditional Sale Agreement to the Investor, pursuant to an Agreement and Assignment dated as of March 15, 1972; and

WHEREAS the Company and DETROIT, TOLEDO and IRONTON RAILROAD COMPANY (hereinafter called the "Lessee") have entered into a Lease of Railroad Equipment dated as of March 15, 1972 (hereinafter called the "Lease"), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agreement and

as an inducement to the Investor to invest in the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreement), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Investor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Investor, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, payments with respect to the guarantee of the Conditional Sale Agreement by the Lessee or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever

which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Investor in its own name, or the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

As agent for the Investor, the Company agrees to accept all Payments to be made by the Lessee and to hold and disburse the Payments in accordance with the instructions of the Investor, and in the absence of any such instructions, first to the Investor to satisfy the obligations of the Company under the terms of the Conditional Sale Agreement (subject to the limitations and provisions of Articles 3 and 15 thereof) and, second, to the extent the Payments are in excess of the amounts required to satisfy such obligations of the Company, the balance of such Payments may be retained by the Company.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify the liability of the Company under, the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only

against, the Company or persons other than the Investor.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Investor, the Company will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Company's sole cost and expense, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the

Company to make or do, then the Investor, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Investor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Investor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers, the Investor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Company will reimburse the Investor for such costs, expenses and fees with interest at 6% per annum.

4. The Company does hereby constitute the Investor the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or

or other instruments or orders in connection therewith and to file any claims or take any actions or institute any proceedings which to the Investor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Conditional Sale Agreement, this Assignment and all rights herein assigned to the Investor shall terminate, and all estate, right, title and interest of the Investor in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms, (b) the Company has not executed any other assignment of the Lease and the Investor's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or prior to the date hereof and (e) the Lease and the Conditional Sale Agreement are in full force and effect

and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Lease shall occur and be continuing, the Investor may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Investor deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. The Company covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor, as assignee of the Company's right, title and interest under the Lease for any installment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify

and keep the Investor harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Investor or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Investor in order to confirm or further assure, the interests of the Investor hereunder.

9. The Investor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

10. This Assignment shall be governed by the laws

of the State of Rhode Island, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada (1970-RSC).

11. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Investor at its office at 275 East Broad Street, Columbus, Ohio 43215: Attention: Steve Mitchell and shall cause all payments hereunder to be made to the Investor, c/o Treasurer of State, P. O. Box 1170, Columbus, Ohio 43216 or at such other addresses as the Investor shall designate.

12. The Company will promptly cause this Assignment to be filed and recorded in accordance with Section 24 of the Lease.

13. Anything herein or in the Lease or in the Conditional Sale Agreement contained to the contrary notwithstanding:

(a) The Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in Section 14 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreement which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional

Sale Agreement be deemed to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee; and

(b) The Investor for itself and its successors and assigns, hereby agrees with the Company and its successors and assigns, that the Investor will not, so long as no Event of Default under the Lease or an event of default under the Conditional Sale Agreement has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Investor by this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

INDUSTRIAL LEASING CORPORATION

[Corporate Seal]

Attest:

Edward W. Duff  
SECRETARY

By

Richard H. Duff  
President

[Corporate Seal]

THE STATE TEACHERS RETIREMENT BOARD OF OHIO

By James L. Sublett

JAMES L. SUBLETT, Secretary

Attest:

\_\_\_\_\_

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

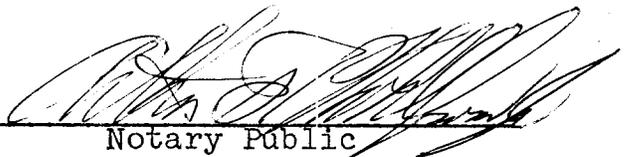
On this 15<sup>th</sup> day of March, 1972, before me personally appeared John W. Willet, to me personally known, who, being by me duly sworn, says that he is President of INDUSTRIAL LEASING CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James P. Kelly  
Notary Public

STATE OF Ohio  
COUNTY OF Franklin

On this 10<sup>th</sup> day of March, 1972, before me personally appeared James L. Sublett, to me personally known, who, being by me duly sworn, says that he is Secretary of THE STATE TEACHERS RETIREMENT BOARD OF OHIO,

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

ARTHUR F. WOHLFROM Jr.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 24, 1976

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, DETROIT, TOLEDO and IRONTON RAILROAD COMPANY, a Delaware corporation (hereinafter called the "Lessee"), the lessee named in the Lease (hereinafter called the "Lease") referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of March 15, 1972 (hereinafter called the "Assignment"), hereby (a) acknowledges receipt of a copy of the Assignment of Lease and Agreement and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the Investor, referred to in the Assignment to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreement referred to in the Assignment, pursuant to which INDUSTRIAL LEASING CORPORATION (hereinafter called the "Lessor") is financing its purchase of the units of railroad equipment (hereinafter called the "Units"), which Units the Lessor is leasing to the Lessee pursuant to the Lease, and for other good and valuable consideration, the Lessee agrees that:

(1) It will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units leased thereunder, to the Lessor, as agent

for the Investor, or, as in the Lease provided, or in accordance with such other instructions as may be furnished to the Lessee by the Investor in writing, and if the Lessee fails for any reason whatsoever to make such Payments, it will pay as aforesaid on the respective dates or times set forth in the Lease, amounts equal to the Payments which it shall not heretofore have paid; it being hereby agreed that the obligation of the Lessee to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) The Investor shall be entitled to the benefits of and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Investor were named therein as the Lessor;

(3) The Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Investor against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or pari passu with the right of

the Investor to apply such payments or sums equivalent thereto, as provided in the Assignment;

(4) The Investor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) The Lease shall not, without the prior written consent of the Investor, be terminated or modified, or any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Investor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Rhode Island and, for all purposes, shall be construed in accordance with the laws of said State.

DETROIT, TOLEDO and IRONTON  
RAILROAD COMPANY

[Corporate Seal]

By Walter J. Tomke  
PRESIDENT

Attest:

A. L. Courtney  
Vice President

The foregoing Consent and Agreement is hereby accepted,  
as of the 15th day of March, 1972.

THE STATE TEACHERS RETIREMENT BOARD  
OF OHIO

By James L. Sublett  
JAMES L. SUBLETT, Secretary

STATE OF New York  
COUNTY OF New York

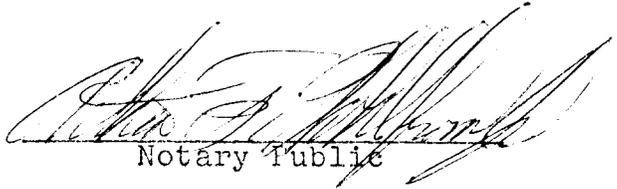
On this 31st day of March, 1972, before me personally  
appeared Charles L. Tarole, to me personally known,  
who, being by me duly sworn, says that he is President  
of DETROIT, TOLEDO and IRONTON RAILROAD COMPANY, that one of  
the seals affixed to the foregoing instrument is the corporate  
seal of said corporation and 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.

Jean P. Ward  
Notary Public  
JEAN P. WARD  
Notary Public, State of New York  
No. 24-415960  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 26, 1973

STATE OF *Ohio* )  
COUNTY OF *Franklin* ) : ss.:

On this *10<sup>th</sup>* day of *April*, 19*72*, before me personally appeared *James L. Smith* to me personally known, who being by me duly sworn, says that he is the *Secretary* of

THE STATE TEACHERS RETIREMENT BOARD OF OHIO, 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

[SEAL]

ARTHUR F. WOHLFROM Jr.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES NOV. 24, 1976

My commission expires \_\_\_\_\_

RECORDATION NO. 6543-D

Filed & Recorded

APR 24 1972 - 10 50 AM

LEASE SUPPLEMENT

INTERSTATE COMMERCE COMMISSION

April 19, 1972

RECEIVED  
APR 24 10 42 AM '72  
I. C. C.  
FEE OPERATION BR.

THIS LEASE SUPPLEMENT is executed and delivered by INDUSTRIAL LEASING CORPORATION (herein called the "Lessor"), and DETROIT, TOLEDO and IRONTON RAILROAD COMPANY (herein called the "Lessee") in accordance with the terms and as a part of that certain Lease of Railroad Equipment dated as of March 15, 1972 (the "Lease"), between the Lessor and the Lessee (the defined terms in the Lease being herein used with the same meaning):

A. DESCRIPTION OF UNITS COVERED BY THIS LEASE SUPPLEMENT (include name of Manufacturer, the Manufacturer's Specifications; and the Lessee's Road Number):

<u>Manufacturer</u>	<u>Type of Car</u>	<u>Manufacturer's Specifications</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
Berwick Forge and Fabricating, a Division of Whittaker Corporation	80 ton 50 ft. box cars	C-71-0901-1	75	DT&I-18800-18874

B. TOTAL COST OF UNITS COVERED BY THIS LEASE SUPPLEMENT. \$1,705,152.00 (\$22,735.36 per Unit) (herein called the "Owner's Cost").

C. TERM. The term of this Lease for each Unit covered by this Lease Supplement shall commence on the date of delivery of such Unit as provided in Section 6 of the Lease and shall terminate 15 years after the date on which such Unit is settled for under the Conditional Sale Agreement (herein called the "Settlement Date").

D. RENT. For each Unit leased under this Lease Supplement, the Lessee hereby agrees to pay rent for the term of the Lease in 30 consecutive semiannual instalments in advance commencing on the Settlement Date, which shall each be in an amount equal to 4.80895% of the Owner's Cost of such Unit; provided, however, that if any of the payment dates referred to above is a Saturday, Sunday or a public holiday under the laws of the State of Rhode Island, the payment shall be payable on the immediately preceding business day.

E. DELIVERY. The Lessee hereby represents, warrants and confirms to the Lessor that the Units covered by this Lease Supplement have been duly delivered to the Lessee at the location referred to in Section 6 of the Lease, that the Lessee has duly inspected said Units and that the Lessee hereby accepts said Units for all purposes of the Lease and for the Lessor under the Conditional Sale Agreement as being in accordance with the Specifications, properly constructed, in good working order, repair and appearance and without defect or inherent vice in condition, design, operation or fitness for use, whether or not discoverable by the Lessee as of the date hereof, and free and clear of all liens, encumbrances and rights of others whatsoever, whether or not resulting from claims against the Lessor not related to the ownership of said Units; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right the Lessee or the Lessor may have with respect

to said Units against the seller or any manufacturer of said Units or any part thereof.

F. STIPULATED LOSS VALUE. Upon the happening of any event referred to in the first sentence of Section 9 of the Lease with respect to any Unit covered by this Lease and upon an election of alternative (1) in Section 9 of the Lease, on the rental payment date next following the giving of notice of such event to the Vendor and the Lessor required by Section 9 of the Lease (or, in the event that such rental payment date shall occur within five days after such notice, on the next succeeding rental payment date), the Lessee shall pay to the Lessor a sum equal to the Stipulated Loss Value of such Unit computed as of such rental payment date. As of each rental payment date the Stipulated Loss Value of any Unit covered by this Lease Supplement shall be the percentage of the Owner's Cost for such Unit set opposite the number of such rental payment below:

<u>Number of</u> <u>Rental Payment</u>	<u>% of</u> <u>Owner's Cost</u>	<u>Number of</u> <u>Rental Payment</u>	<u>% of</u> <u>Owner's Cost</u>
1	101.2000	17	74.5640
2	110.0970	18	71.5129
3	111.6641	19	68.3518
4	112.5594	20	65.0793
5	112.6990	21	61.6996
6	112.0783	22	58.2619
7	107.5140	23	54.7773
8	106.1805	24	51.2463
9	104.3507	25	47.6691
10	102.1605	26	44.0461
11	95.2430	27	39.9156
12	92.8278	28	34.2943
13	90.3056	29	27.4641
14	87.6806	30	19.6973
15	80.3416	THEREAFTER	15.0000
16	77.5064		

Upon payment of the Stipulated Loss Value of such Unit and all rent due under this Lease Supplement up to and including the rental payment date on which such payment of Stipulated Loss Value is due as provided above, no further rental payment shall be due under Section D of this Lease Supplement as to such Unit.

G. IDENTIFICATION. The Lessee hereby further represents and warrants that the Units described above have been duly marked with insignia, plates or other identification showing the Lessor's title thereto in accordance with the terms of Section 21 of the Lease.

APPROVED AND AGREED TO by and between the parties hereto as of the date specified above.

DETROIT, TOLEDO and IRONTON  
RAILROAD COMPANY

By R. G. Courtney  
Title: Vice President  
INDUSTRIAL LEASING CORPORATION

By James M. Robertson  
Title: Vice President

STATE OF RHODE ISLAND )  
COUNTY OF PROVIDENCE ) ss.:

On this 19th day of April , 1972, before me personally appeared James M. Robertson , to me personally known, who being by me duly sworn, says that he is the Vice President of INDUSTRIAL LEASING CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires June 30, 1976 James P. Kelly  
Notary Public

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

On this 19th day of April , 1972, before me personally appeared Robert C. Courtney , to me personally known, who being by me duly sworn, says that he is the Vice President of DETROIT, TOLEDO AND IRONTON RAILROAD 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.

My commission expires March 30, 1973 Jean P. Ward  
JEAN P. WARD  
Notary Public, State of New York  
No. 24-4153960  
Qualified in Kings County  
Certificate filed in New York County  
Commission Expires March 30, 1973