

RECORDATION NO. 6587 - A Filed & Recorded

MAY 15 1972 - 2 10 PM

INTERSTATE COMMERCE COMMISSION

---

---

**LEASE OF RAILROAD EQUIPMENT**

**Dated as of April 15, 1972**

**between**

**RICHARDSON DILWORTH and  
ANDREW L. LEWIS, JR.,  
Trustees of the Property of Reading Company**

**and**

**UNILEASE NO. 8, INC.**

---

---

**LEASE OF RAILROAD EQUIPMENT** dated as of April 15, 1972, between RICHARDSON DILWORTH and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company (hereinafter called the Debtor) (such Trustees together with their successors and assigns being hereinafter called the Trustees or collectively called the Lessee), and UNILEASE No. 8, INC., a Delaware corporation (hereinafter called the Lessor).

WHEREAS, on the 23rd day of November, 1971, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings), and the Trustees were duly qualified as trustees of the property of the Debtor on January 24, 1972;

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of April 15, 1972 (hereinafter called the Security Document), with RYDAL EQUIPMENT Co. (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 interest in the Security Document to CENTRAL PENN NATIONAL BANK, as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor) pursuant to an Agreement and Assignment (hereinafter called the Assignment) dated as of April 15, 1972 between the Builder and the Vendor, a copy of which has been delivered to the Lessor and the Lessee); 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 June 30, 1972 (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 any reference to the "Security Documents" in the plural shall be deemed to mean the Security Document in the singular.

§ 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 one payment on the date such Unit is settled for under the Security Document (hereinafter called the Closing Date) in an amount equal to 5.3294% of the Purchase Price (as defined in the Security Document) of such Unit and 30 consecutive semi-annual payments, payable on January 1 and July 1 in each year commencing with July 1, 1972. The first such semiannual payment shall be in an amount equal to

0.0227437% of the Purchase Price of each Unit subject to this Lease for each day from and including the Closing Date to July 1, 1972. The next 29 semiannual payments shall each be in an amount equal to 5.3294% of the Purchase Price of each such Unit.

All payments provided for in this lease shall be made for the account of the Lessor, in care of the Vendor, at 5 Penn Center Plaza, Philadelphia, Pennsylvania 19103, in immediately available Philadelphia funds.

On or before the date upon which payments to the Vendor under the Security Document are due and owing, the Vendor is hereby authorized to apply funds received hereunder to satisfy the obligations of the Lessor under the Security Document due and payable at the time (or within 15 days thereafter) 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 promptly paid to the Lessor.

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 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, or the Builder or the Vendor or otherwise, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; 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 or 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 hereof. 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.

The obligations to make rental and other payments under this Lease will constitute expenses of administration of the Lessee, and will rank equally and ratably in priority of payment with all other expenses of administration of the Lessee, except that they shall rank equally and ratably with any trustees' certificates heretofore or hereafter issued by the Lessee only so long as the trustees shall not have defaulted with respect to any such trustees' certificates and thereafter will rank equally and ratably in priority of payment as administration expenses with all other equipment obligations assumed or incurred by the trustees.

§ 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 six months after 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. The Lessor hereby designates the markings provided for in Section 5 of the Assignment as appropriate markings.

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

§ 7. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor a sum equal to the semiannual rental payment with respect to such unit plus 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, 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 semiannual 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 (such numbers commencing with the payment due on July 1, 1972).

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1 .....	110.00%	16 .....	102.95%
2 .....	112.00	17 .....	100.58
3 .....	112.00	18 .....	97.97
4 .....	111.00	19 .....	94.47
5 .....	110.00	20 .....	90.70
6 .....	110.54	21 .....	86.01
7 .....	108.55	22 .....	81.03
8 .....	111.08	23 .....	75.07
9 .....	112.82	24 .....	68.85
10 .....	114.39	25 .....	61.63
11 .....	110.48	26 .....	54.04
12 .....	111.07	27 .....	46.07
13 .....	110.83	28 .....	37.70
14 .....	110.39	29 .....	28.91
15 .....	104.45	30 and thereafter .	19.69

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 hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the Settlement) to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for and for the benefit of the Lessor, and, to the extent such Settlement does not exceed the payments due to the Lessor in respect of a Casualty Occurrence of such Unit or Units for which the Settlement is made, to pay such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent re-

and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

§ 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 term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond July 1, 1997, at a rental payable in 10 semiannual payments, each in an amount equal to the "Fair Market Rental"; such semi-annual payments to be made on January 1 and July 1 in each year of the applicable extended term or (b) 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.

Fair Market Value or Fair Market Rental 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 or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease 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 the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, 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.

In the event the Lessee elects to purchase the Equipment, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the 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.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof, except that the term Lessee as used therein shall include the Debtor as well as the Lessee.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Document), the Trustees will deliver to the Lessor a counterpart of the written opinion of counsel for the Trustees, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor,

to the effect set forth in Section 6(g) of the Assignment and to the further effect that:

A. the Lease has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Lease has 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 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 Lessor in and to the Units; and

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Trustees.

§ 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 or subsequently (hereinafter called the Code), to an owner of property, including (without limitation) any investment tax credit with respect to the Units.

Lessee agrees that neither it nor the Debtor will at any time take any action or file any returns or other documents inconsistent with the foregoing. 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 benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

If (other than for the reasons set forth in the fourth paragraph of this § 17) the Lessor shall lose, or shall not have or shall lose the right to claim, or if (other than for such reasons) there shall be disallowed with respect to the Lessor, all or any portion of the tax credits or amortization or depreciation deductions based on a depreciable life of not more than 12 years with respect to any Unit and based on the original use of such Unit having commenced with the Lessor, the rental rate set forth in § 3 and the Casualty Values set forth in § 7 of this Lease applicable to such Unit shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return (after all income taxes at the Assumed Rates, including any penalties thereon) in respect of such Unit under this Lease to equal the net return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if the Lessor had been entitled to utilization of all or such portion of such credits or amortization or depreciation deductions which were not claimed or were disallowed 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 of all or any portion of such credits or amortization or depreciation deductions. "Lessor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Lessor in determining the acceptability to it of the rental rate set forth in § 3 hereof.

The rental rate and Casualty Values shall not be increased as hereinabove provided in this § 17 to the extent that the Lessor shall have lost, or shall not have, or shall

have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such credits or amortization or depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Document without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the same in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the same; or

(v) the failure of the Lessor to have sufficient income or income tax to benefit from such credits or depreciation.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such credits or amortization or depreciation deductions 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 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, the Lessee shall advance to the Lessor, without interest, sufficient funds to make such payment. 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, and there shall be made all necessary retroactive adjustments in the rentals and Casualty Values theretofore paid in order to carry out the intent of this § 17, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

§ 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, to the extent legally enforceable, an amount equal to 11% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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 387 Park Avenue South, New York, New York 10016; and

(b) if to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer.

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

and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

§ 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 term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond July 1, 1997, at a rental payable in 10 semiannual payments, each in an amount equal to the "Fair Market Rental"; such semi-annual payments to be made on January 1 and July 1 in each year of the applicable extended term or (b) 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.

Fair Market Value or Fair Market Rental 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 or lessee, as the case may be (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease 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 the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, 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.

In the event the Lessee elects to purchase the Equipment, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the 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.

§ 14. *Return of Units upon Expiration of Term.* § 14 of the Model Lease Provisions is herein incorporated as § 14 hereof, except that the term Lessee as used therein shall include the Debtor as well as the Lessee.

§ 15. *Opinion of Counsel.* On each Closing Date (as defined in the Security Document), the Trustees will deliver to the Lessor a counterpart of the written opinion of counsel for the Trustees, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor,

to the effect set forth in Section 6(g) of the Assignment and to the further effect that:

A. the Lease has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Lease has 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 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 Lessor in and to the Units; and

C. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Trustees.

§ 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 or subsequently (hereinafter called the Code), to an owner of property, including (without limitation) any investment tax credit with respect to the Units.

Lessee agrees that neither it nor the Debtor will at any time take any action or file any returns or other documents inconsistent with the foregoing. 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 benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Units.

If (other than for the reasons set forth in the fourth paragraph of this § 17) the Lessor shall lose, or shall not have or shall lose the right to claim, or if (other than for such reasons) there shall be disallowed with respect to the Lessor, all or any portion of the tax credits or amortization or depreciation deductions based on a depreciable life of not more than 12 years with respect to any Unit and based on the original use of such Unit having commenced with the Lessor, the rental rate set forth in § 3 and the Casualty Values set forth in § 7 of this Lease applicable to such Unit shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return (after all income taxes at the Assumed Rates, including any penalties thereon) in respect of such Unit under this Lease to equal the net return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if the Lessor had been entitled to utilization of all or such portion of such credits or amortization or depreciation deductions which were not claimed or were disallowed 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 of all or any portion of such credits or amortization or depreciation deductions. "Lessor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Lessor in determining the acceptability to it of the rental rate set forth in § 3 hereof.

The rental rate and Casualty Values shall not be increased as hereinabove provided in this § 17 to the extent that the Lessor shall have lost, or shall not have, or shall

have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such credits or amortization or depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 7 hereof;

(ii) a voluntary transfer by the Lessor of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Security Document without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the same in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the same; or

(v) the failure of the Lessor to have sufficient income or income tax to benefit from such credits or depreciation.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such credits or amortization or depreciation deductions 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 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, the Lessee shall advance to the Lessor, without interest, sufficient funds to make such payment. 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, and there shall be made all necessary retroactive adjustments in the rentals and Casualty Values theretofore paid in order to carry out the intent of this § 17, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

§ 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, to the extent legally enforceable, an amount equal to 11% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 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 387 Park Avenue South, New York, New York 10016; and

(b) if to the Lessee, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer.

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 of the Lessee or its duly authorized representative.

§ 21. *Other Obligations.* Lessee agrees that, during the term of this Lease, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Lease, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this Lease are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Trustees to issue and sell trustees' certificates for any proper purpose.

§ 22. *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 April 15, 1972, 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.

§ 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York, *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.

UNILEASE No. 8, INC.,

by *Samuel M. Hoover*  
Vice President

[CORPORATE SEAL]

Attest:

*W. W. Sullivan*  
Assistant Secretary

*Richardson Dilworth*  
Richardson Dilworth

Witness:

*Richard M. Williams*  
*Andrew L. Lewis, Jr.*  
Andrew L. Lewis, Jr.

Witness:

*Richard M. Williams*

*As Trustees of the Property  
of Reading Company and  
not individually.*

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

On this 1<sup>st</sup> day of May, 1972, before me personally appeared *G. FRANK N. BOYER* to me personally known, who, being by me duly sworn, says that he is a Vice President of UNILEASE No. 8, INC., 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.

*Theresa M. Indiviglia*  
.....  
Notary Public

[NOTARIAL SEAL]

Theresa M. INDIVIGLIA  
NOTARY PUBLIC, State of New York  
No. 31-7034692

Qualified in New York County  
Commission Expires March 30, 1974

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF PHILADELPHIA } ss.:

On this 5<sup>th</sup> day of May, 1972, before me personally appeared RICHARDSON DILWORTH and ANDREW L. LEWIS, JR., Trustees of the Property of Reading Company, signers and sealers of the foregoing instrument, and they acknowledged the same to be their free act and deed, as such Trustees, before me.

*Richard M. Williams*  
.....  
Notary Public

[NOTARIAL SEAL]

Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires January 17, 1974

**SCHEDULE A**

Type	Builder's Specifications	Builder's Plant	Quantity	Debtor's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Delivery
100 ton gondola cars with roller bearings	Dated as of August 10, 1971	Reading, Pennsylvania	90	38700 to 38789	\$18,825	\$1,694,250	Prior to June 30, 1972, at Builder's Plant
100 ton gondola cars with roller bearings, 4 bulkheads, and 3-piece covers	Dated as of August 10, 1971	Reading, Pennsylvania	10	38790 to 38799	26,625	266,250	Prior to June 30, 1972, at Builder's Plant
Total .....						<u>\$1,960,500</u>	