

7441 - a

RECORDATION NO. \_\_\_\_\_ FILED \_\_\_\_\_

MAR 22 1974 -4 00 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 11, 1974

among

PULLMAN INCORPORATED  
(Pullman-Standard division)

FIRST NATIONAL BANK OF LOUISVILLE

and

DELAWARE AND HUDSON RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT dated as of March 11, 1974 among PULLMAN INCORPORATED (Pullman-Standard division) (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 27 hereof), FIRST NATIONAL BANK OF LOUISVILLE, a national banking association (hereinafter sometimes called the Company), and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter sometimes called the Guarantor).

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Schedule A hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to Delaware and Hudson Railway Company, as lessee (hereinafter, in such capacity, sometimes called the Lessee) in substantially the form annexed hereto as Schedule B (hereinafter called the Lease), and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement, except as otherwise stated herein, 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. Construction and Sale. Pursuant to this Agreement, the Manufacturer will construct the Equipment at the plant set forth in Schedule A hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new 100-Ton Hopper Car constructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all United States Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. Delivery. The Manufacturer will deliver the various units of the Equipment to the Company at the point specified in, and in accordance with, the delivery schedule set forth in Schedule A hereto; provided, however, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Guarantor represents and warrants that: (i) the Equipment will upon delivery to the Company be "rolling stock, of a domestic railroad corporation subject to part I of the Interstate Commerce Act" within the meaning of Section 48(a)(2)(B)(ii) of the Internal Revenue Code of 1954 as in effect on the date of the execution and delivery of this Agreement (ii) the Equipment will upon delivery to the Company qualify as "new section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954 as in effect on March 11, 1974; and (iii) at the time of the delivery of the Equipment to the Company, the Equipment will not have been used by any person and no investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before April 30, 1974 (unless such date is extended by the Company and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment") as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be

entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Company for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer and the Company, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to United States Department of Transportation requirements and specifications and are marked in accordance with the provisions of Article 9 hereof; provided, however, the Manufacturer shall not thereby be relieved of the provision of warranty, as set forth in Schedule A her

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. Purchase Price and Payment. The base price per unit of the Equipment is set forth in Schedule A hereto. The base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on the Closing Date (as hereinafter defined) the Purchase Price of all the units of the Equipment would, but for the provisions of this sentence, exceed \$1,150,521.60, the Manufacturer (and any assignee of the Manufacturer), the Company and the Guarantor will, unless the Company shall have consented in writing to an increase in the base price of the units of the Equipment, enter into an agreement excluding from this Agreement such unit or units of Equipment specified by the Company, as will, after giving effect to such exclusion, reduce the Purchase Price to not mo

than \$1,150,521.60, and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Manufacturer for cash on the Closing Date.

Settlement for all the units of the Equipment shall be held on such date as shall be mutually agreed upon by the Guarantor, the Company and the Manufacturer (such date being hereinafter called the Closing Date). The Guarantor shall give telephonic or telegraphic notice (confirmed in writing) to the Vendor and the Company of the Closing Date and the Purchase Price of the units of the Equipment to be settled for not less than ten business days prior to the Closing Date designated therein. The term "business day" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

The Company 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 an amount equal to 46.5% of the Purchase Price of the units of the Equipment;

(b) In 60 consecutive quarterly installments, as hereinafter provided, an amount equal to the Purchase Price of the units of the Equipment, less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first installment of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness) shall be payable on May 1, 1974, and subsequent installments shall be payable on the same day of every third month thereafter for the next fifty-nine (59) quarters, so that a total of sixty (60) quarterly installments shall have been paid, 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 9 $\frac{1}{4}$ % per annum and such interest shall be payable, to the extent accrued, on each Payment Date commencing May 1, 1974. The principal amount of

Conditional Sale Indebtedness payable on each of the 60 quarterly Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of the 60 quarterly Payment Dates will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after the Closing Date a schedule 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 Company will pay interest at the rate of  $9\frac{1}{4}\%$  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.

ARTICLE 4. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further

transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens, security interest and other encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will execute in the same manner 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 Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company 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 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 instruments or to file such certificates within a reasonable time after written demand of the Company.

ARTICLE 5. Casualty Occurrences. In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or, in the opinion of Guarantor, irreparably damaged from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within 30 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding quarterly interest payment date, the Company shall pay to the Vendor a sum equal to the Casualty Value of such unit suffering a Casualty Occurrence as of the date of such payment and shall file 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 the pro rata prepayment of each installment of the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such installment) and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company 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 Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of title to and property in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company 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 (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 3 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 all the Equipment subject hereto on the respective dates of such payments.

ARTICLE 6. 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 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company and the due and punctual payment of any and all sums payable by the Company under this Agreement (except for the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed the Guarantor agrees punctually to pay or perform the same, irrespective of any enforcement against the Company 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 guarant

or any other circumstances which might limit the recourse of the Vendor to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, notice of dishonor, 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 shall be subrogated to all rights of the Vendor against the Company and with respect to the Equipment to the extent of the amount so paid, but the rights of the Guarantor against the Company and with respect to the Equipment pursuant to such subrogation shall be subordinate in all respects to the rights of the Vendor and shall be enforceable only after, and subject to, full payment to the Vendor of all amounts payable hereunder whether or not then due.

ARTICLE 7. Maintenance and Repairs. The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair. The Company agrees that during the period that any portion of the Conditional Sale Indebtedness in respect of any Group remains outstanding and unpaid, the Company will not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and that during such period any use of any unit of the Equipment outside the United States of America will be limited to temporary use in the Dominion of Canada and Mexico in the ordinary interchange of traffic.

ARTICLE 8. Article 8 has been deleted.

ARTICLE 9. Identification Marks. The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "GIRARD TRUST BANK, PHILADELPHIA, PA., VENDOR'S ASSIGNEE," 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 title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be submitted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any units comprising the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company or the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interest of the Company and the Guarantor therein.

ARTICLE 10. Taxes. All payments to be made by the Company 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 or federal taxes (other than net income, gross receipts, excess profits and similar taxes (except gross receipts taxes in the nature of or in lieu of sales taxes)) license fees, charges, fines or penalties of any kind (hereinafter called "impositions") hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment 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 ever

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 unit of the Equipment; provided, however, that the Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of invoices therefor.

ARTICLE 11. Compliance with Laws and Rules. During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the United States Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; provided, however, that the Company 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 Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 12. Possession and Use. The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; provided, however, and the Lessee hereby so acknowledges, that if and only if the Lessee shall be in default under the Lease or in respect of any of its obligations, as Guarantor, contained in Article 6 hereof or in any other provision of this Agreement, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the

remedies of, the Vendor under this Agreement. The Company hereby agrees that it will not exercise any of the remedies provided in the case of any Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which railroad equipment of the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, trackage or other operating rights and the Equipment may be used upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Agreement. In the event that the Lease (Schedule B herein) is terminated as provided for herein, the Company may lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement.

ARTICLE 13. Prohibition Against Liens. The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns, which, if unpaid, might become a lien, charge or security interest upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Indemnities. The Company agrees to indemnify, protect and hold harmless 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 counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor; provided, however, that this indemnity shall not benefit the Manufacturer in respect of such events occurring after the assignment by the Manufacturer of its interests in this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the 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.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 15. Patent Indemnities. Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other similar right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Guarantor, and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other similar right. The Manufacturer agrees to and hereby does, to the extent legally possible without

impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any design or articles or materials purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Manufacturer further agrees to execute and deliver to the Guarantor all and every such further assurance as may reasonably be requested by the Guarantor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Guarantor of any claim known to the Manufacturer from which liability may be charged against the Guarantor hereunder and the Guarantor will give notice to the Manufacturer of any claim known to it from which liability may be charged against the Manufacturer hereunder.

ARTICLE 16. Assignments. The Company will not assign or transfer its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer can be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder, but subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights against the Guarantor).

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 Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by its assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Schedule A hereto, or relieve the Company or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in Annex A hereto 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 Company 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 Vendor's right, title and interest in and to the Equipment, 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 Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Company 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 Company 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 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 Manufacturer with respect to the Equipment or the 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 Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

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 Company will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment, so as to indicate the title of such assignee to the Equipment

with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on railroad equipment covered by conditional sale agreements. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successors agent or trustee in case the first assignee is an agent or trustee) shall be borne by the Manufacturer and shall be included in the base price. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) shall be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Company and the Guarantor will, in connection with the settlement for any Group of the Equipment, deliver to the assignee of the Equipment, at the time of delivery by the Company of notice fixing the Closing Date with respect to such Group, 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 as may reasonably be requested, except for any opinion of counsel for the assignee.

The Guarantor hereby guarantees to the Manufacturer that all payments provided to be made to the Manufacturer pursuant to the instrument making any assignment of this Equipment promptly will be made to the Manufacturer; provided, however, that if the Company shall fail on the Closing Date to make its payment required by subparagraph (a) of the third paragraph of Article 3 hereof, the Equipment shall be excluded from this Agreement and Guarantor will, not later than 90 days after the Closing Date, purchase the Equipment for cash at a price equal to the Purchase Price of the Equipment together with interest thereon from the Closing Date to the date of payment by the Guarantor, at the prime rate of interest of leading New York City banks in effect at the Closing Date.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for ten days after the Vendor shall have notified the Company of such failure; or

(b) The Company 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 covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceedings shall be commenced by or against the Company or the Guarantor for any relief 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 readjustment of the indebtedness payable hereunder), 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 Company 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 Company or the Guarantor or for the property of the Company or the Guarantor 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 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 Company 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;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company 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 referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Company 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 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 Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 9½% per annum and the Vendor shall thereupon be entitled to recover judgment from the Guarantor (but not from the Company) for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Guarantor wherever situated.

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

ARTICLE 18. Remedies. At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 12 hereof) take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Company or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove

the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Guarantor or wherever 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 Company or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall reasonably be designated by the Vendor 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 of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this 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 Company and/or the Guarantor requiring specific performance hereof; provided, however, that if the Guarantor is in possession of the Equipment the Vendor shall be entitled to such a decree only against the Guarantor. . . The Company 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 18 provided) may at its election and upon such notice as 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 Company and the Guarantor by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. 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 rights of the Company in the Equipment will thereupon terminate and all payments made by the Company or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Company, 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 to 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 Company; and provided, further, that if the Company or any other person notified under the terms of this paragraph shall 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.

The Vendor with or without the retaking of possession thereof at its election and upon reasonable notice to the Company, the Guarantor and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Guarantor) claiming by, through or under the Company, 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 or prior to the making of a contract for such sale, the Company should tender full payment of the entire 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, holding and preparing the Equipment for disposition and arrangement 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 Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times 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; provided, however, that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Company 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 without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), 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 from the Company 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, except where time limits are expressly herein provided, 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.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, second to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and third to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Guarantor shall pay the amount of such deficiency to the Vendor upon demand, and, if the Guarantor shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Guarantor. 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 Company or the Guarantor, as the case may be.

The Guarantor 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 any 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 attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

Notwithstanding any other provision of this Agreement and notwithstanding the Vendor's rights against any other party, the Vendor shall have no recourse against the Company in respect of any obligation for money due under this Agreement, except the obligation referred to in subparagraph (a) of the third paragraph of Article 3 hereof. The foregoing sentence shall not impair 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.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company 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 the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. Extension not a Waiver. Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. Recording. Prior to the delivery and acceptance of any unit of the Equipment, the Company and the Guarantor will cause this Agreement, any assignments hereof by the Company and any supplements hereto and thereto, and prior to the settlement for such unit, the Company and the Guarantor will cause any assignment hereof by the Manufacturer and any supplement thereto, in each case at the expense of the Company, to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company and the Guarantor 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 Vendor for the purpose of proper protection, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of the Agreement and any assignment hereof. The Company and the Guarantor will promptly furnish to the Vendor evidences of such filing, registering depositing or recording and an opinion or opinions of counsel for the Guarantor with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 22. Payment of Expenses. The Company will pay or cause to be paid pursuant to section 16 of the Lease all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer and the Company) incident to the preparation and printing of this Agreement, the Lease and the first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 22, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 23. Notice. Any notice hereunder to any party 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) the Company: First National Tower, Louisville, Kentucky 40201; Attention: Mr. William Stites, Vice President;

(b) the Guarantor: 40 Beaver Street, Albany, New York 12207;

(c) the Manufacturer: 200 South Michigan Avenue, Chicago, Illinois 60604;

(d) any assignee of the Vendor, or of the Company: such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, and to the Guarantor, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in Kentucky.

ARTICLE 24. Satisfaction of Undertakings. The obligations of the Company under Articles 7, 8, 9, 10, 11, 13, 14 and 21 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in sections 4, 7, 8, 11, 16 and 19 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles whether or not the Lease is in effect. The Company shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 17.

ARTICLE 25. Effect and Modification of Agreement. This Agreement and the Schedules annexed hereto exclusively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Pennsylvania; 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, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 27. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto 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 or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. Immunities. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Vendor, or any principal (disclosed or undisclosed) of the Company if the Company is acting in an agency or nominee capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or principals being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 29. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of March 11, 1974 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.

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

(CORPORATE SEAL)

PULLMAN INCORPORATED  
(Pullman-Standard division)

By

Title

Attest:

William O. O'Leary  
ASSISTANT SECRETARY

[Signature]  
VICE PRESIDENT

(CORPORATE SEAL)

FIRST NATIONAL BANK OF LOUISVILLE

Attest: *[Signature]*  
SECRETARY-TO THE BOARD

By *[Signature]*  
Title *[Signature]*

(CORPORATE SEAL)

DELAWARE AND HUDSON RAILWAY COMPANI

Attest: *R. T. Murray*  
SECRETARY

By *[Signature]*  
Title Vice President

STATE OF ~~KENTUCKY~~

COUNTY OF *Delaware*

SS

On this *21<sup>st</sup>* day of *March*, 1974, before me personally appeared *William F. Stites* to me personally known, who being by me duly sworn, says that he is a *Vice President & Director of* ~~of~~ FIRST NATIONAL BANK OF LOUISVILLE, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

(NOTARIAL SEAL)

*Catherine Ferrante*  
NOTARY PUBLIC

My Commission expires:

**CATHERINE FERRANTE**  
Notary Public, Haverford Twp., Delaware Co.  
My Commission Expires August 22, 1977

STATE OF NEW YORK

COUNTY OF ALBANY

SS

On this *20<sup>th</sup>* day of *March*, 1974, before me personally appeared *T.W. Egan* to me personally known, who being by me duly sworn, says that he is a *Vice President* of DELAWARE AND HUDSON RAILWAY COMPANY, that one of the seals affixed to the foregoing 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.

(NOTARIAL SEAL)

GEORGE H. KLEINBERGER  
Notary Public - State of New York  
Qualified in Albany County  
Reg. No. 01-2144350  
Commission Expires March 30, 1975

*George H. Kleinberger*  
NOTARY PUBLIC

My Commission expires: *Mar. 30, 1975*

STATE OF ILLINOIS

SS

COUNTY OF *Cook*

On this *22<sup>nd</sup>* day of *March*, 1974, before me personally appeared *R.E. Robinson* to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

(NOTARIAL SEAL)

*Carmel F. Boyd*  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: *Feb. 24, 19*

SCHEDULE "A" TO CONDITIONAL SALE AGREEMENT  
DATED AS OF MARCH 11, 1974

Item 1 Pullman Incorporated (Pullman-Standard division) ("Manufacture

Item 2 200 South Michigan Avenue, Chicago, Illinois 60604

Item 3 Equipment Description and Numbers:

Sixty (60) 100-Ton Triple Center Discharge Covered Hopper  
Cars, 4,750 cubic foot capacity, numbered DH 12301-12360

Item 4 Manufacturer's Specifications:

No. 9737 dated October 4, 1972, last revised February 19, 1

Item 5 Manufacturer's Plant:

Butler, Pennsylvania )

Item 6 Delivery:

March-April, 1974

Item 7 Base Price Per Unit of Equipment:

\$19,175.36

TOTAL PRICE: \$1,150,521.60

Item 8 Manufacturer's Warranty:

The Manufacturer warrants to First National Bank of Louisvi  
("Company") and Delaware and Hudson Railway Company,  
("Guarantor") that the Equipment described in Item 3 of  
this Schedule "A" will be built in accordance with the  
specifications described in Item 4 of this Schedule "A"  
and warrants that the Equipment will be free from defects  
in material or design (except as to articles, materials or  
designs incorporated therein which were specified or  
supplied by the Guarantor and not manufactured or designed  
by the Manufacturer) and workmanship under normal use and

service, the Manufacturer's obligation under this warranty being limited to repairing or replacing at its factory any part or parts of any unit of the Equipment which shall be returned to the Manufacturer with transportation charges prepaid, within one year after the delivery of such unit to the Company in accordance with the provisions of the Conditional Sale Agreement to which this Schedule "A" is attached, and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE MANUFACTURER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR ITS OTHER OBLIGATIONS OR LIABILITIES UNDER ARTICLES 1, 2 AND 3 OF THE CONDITIONAL SALE AGREEMENT, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. It is further understood and agreed that in no event shall the Manufacturer be liable for indirect or consequential damages of any kind.

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Conditional Sale Agreement to which this Schedule "A" is attached nor any examination nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Company and/or the Guarantor of any of its rights under this warranty.

SCHEDULE B

LEASE OF RAILROAD EQUIPMENT

by and between

FIRST NATIONAL BANK OF LOUISVILLE

and

DELAWARE AND HUDSON RAILWAY COMPANY

Dated as of March 11, 1974

LEASE OF RAILROAD EQUIPMENT, dated as of March 11, 1974, between FIRST NATIONAL BANK OF LOUISVILLE, a national banking association (hereinafter called the Lessor) and DELAWARE AND HUDSON RAILWAY COMPANY, a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of March 11, 1974, hereinafter called the Conditional Sale Agreement), with PULLMAN INCORPORATED (Pullman Standard division) (hereinafter called the Manufacturer), wherein the Manufacturer agrees to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturer has assigned or will assign its interest in the Conditional Sale Agreement to GIRARD TRUST BANK (hereinafter called the Vendor); and

WHEREAS, the Lessee desired to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to April 30, 1974 (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, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

Section 1. Delivery and Acceptance of Units. The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which and on the date or dates on which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance (hereinafter called the Certificate of Acceptance), 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. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

Section 2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease an initial payment on May 1, 1974, in an amount equal to .025694% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date of acceptance of delivery of each Unit to and including April 30, 1974; and thereafter on May 1, 1974, 2.6988% of the Purchase Price with a like 2.6988% of the Purchase Price payable on the same day of every third month thereafter for the next succeeding fifty-nine (59) quarters, so that a total of sixty (60) quarterly rental payments shall have been paid.

Lessor irrevocably agrees that all payments provided for in this Lease to be made to the Lessor shall be paid to the account of the Lessor, care of Girard Trust Bank, One Girard Plaza, Philadelphia, Pennsylvania 19101, attention of Harry T. Enssler, Vice President (or to any assignee of said Bank under an assignment made pursuant to Section 6 of an Agreement and Assignment between the Manufacturer and said Bank dated as of March 11, 1974, under which the Conditional Sale Agreement is being or will be assigned to said Bank), and shall be applied by such Bank to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder, and any balance shall be paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of 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 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 or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, 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.

Section 3. 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 Sections 6 and 9 hereof, shall terminate ninety (90) days after the date on which the final quarterannual payment of rent in respect thereof is payable.

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 any of its obligations under the Conditional Sale Agreement are subject to the rights of the Vendor under the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement and the Lessee shall not promptly fulfill its obligations under Article 6 of the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein. If such Declaration of Default is due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty under this Lease, may terminate this Lease.

Section 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A attached hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"GIRARD TRUST BANK, PHILADELPHIA, PA., VENDOR'S ASSIGNEE  
FIRST NATIONAL BANK OF LOUISVILLE, LOUISVILLE, KY., LESSOR"

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or 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 identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause 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.

Section 5. 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 or federal taxes (other than any federal income tax payable by the Lessor in consequence of the receipt of payments provided 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), assessments or license fees (and any charges, fines or penalties in connection therewith) (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 Conditional Sale Agreement, 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. The 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 or upon the Lessor solely by reason of its ownership thereof and will keep at all times 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 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 property or rights of the Lessor hereunder or under the Conditional Sale Agreement. 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 invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this Section 5, 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 to the Manufacturer and the Vendor pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units or will notify the Lessor and the Vendor of such requirement and will 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 impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

Section 6. Payment for Casualty Occurrences. In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of 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 within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date 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, complete destruction or condemnation of such Unit) the Lessor shall be entitled to recover possession of such Unit. Following the giving of written notice of a Casualty Occurrence the Lessee shall cooperate fully with the Lessor in seeking bids for the purchase of any such Unit of which Lessee shall be entitled to retain the proceeds of such sale up to an amount equal to the Casualty Value previously paid by the Lessee hereunder. Any excess of such proceeds over the Casualty Value previously paid by the Lessee shall be retained by the Lessor.

Following payment of the Casualty Value, Lessee shall be entitled to the proceeds of any insurance covering the Unit(s) suffering a Casualty Loss up to an amount not in excess of the Casualty Value previously paid, but in no event shall the aggregate of amounts refunded to Lessee exceed the Casualty Value.

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

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	104.00	31	63.31
2	103.09	32	61.98
3	102.17	33	60.63
4	101.24	34	59.26
5	100.29	35	57.88
6	99.34	36	56.47
7	98.38	37	55.04
8	97.40	38	53.59
9	96.42	39	52.11
10	95.42	40	50.62
11	94.41	41	49.10
12	93.40	42	47.55
13	92.38	43	45.98
14	91.34	44	44.39
15	90.29	45	42.77
16	89.22	46	41.13
17	88.13	47	39.46
18	87.02	48	37.76
19	85.89	49	36.03
20	84.73	50	34.28
21	83.55	51	32.49
22	82.34	52	30.68
23	81.11	53	28.84
24	79.86	54	26.96
25	78.58	55	25.05
26	77.27	56	23.11
27	75.93	57	21.14
28	74.56	58	19.13
29	73.16	59	17.08
30	71.72	60	15.00

Except as hereinabove in this Section 6 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.

Section 7. Section 7 has been deleted.

SECTION 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and 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, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 15 of the Conditional Sale Agreement and Annex A thereof. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery 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 with all laws of the jurisdictions in which the Units may be operated, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the United States Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; 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 hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit,

or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall be in addition to and not a limitation of the obligations of Lessee under the Conditional Sale Agreement and shall survive payment of all other 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 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.

Section 9. 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 the payment of any part of the rental provided in Section 2 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 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 Conditional Sale Agreement 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 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 readjustment of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), 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), and all the obligations of the Lessee under this Lease and under the Conditional Sale 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 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 be hereafter 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 Conditional Sale Agreement 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 terminate 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 i

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 rentals 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 use of the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded quarterannually from the respective date 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 including, without limitation, (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 or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

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 their 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.

Section 10. Return of Units Upon Default. If this Lease shall terminate pursuant to Section 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering 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 it or any of its subsidiaries 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; 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.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 10, 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 at the time in possession of such Unit.

Section 11. 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 and obligations of the Lessor hereunder (including but not limited to the rights under Sections 8, 9 and 15 hereof) shall inure to the benefit and become obligations of the Lessor's assigns (and to any corporation, trustee or other person for which the Lessor is acting as nominee). Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of Girard Trust Bank (or to any assignee of said Bank made pursuant to Section 6 of the Agreement and Assignment between the Manufacturer, and said Bank, dated as of March 11, 1974, under which the Conditional Sale Agreement is being assigned to said Bank) with instructions to apply all such rentals and other payments forthwith to the satisfaction of the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, 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. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any 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) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. 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 next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is

customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement.

Nothing in this Section 11 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 corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the railroad property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America and that during such term any use of any Unit outside the United States of America will be limited to temporary use in the Dominion of Canada and Mexico in the ordinary interchange of traffic.

Section 12. 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 original term of this Lease or any extended term hereof, as the case may be, elect (1) to purchase all but not fewer than all the Units then covered by this Lease at the end of the original term or any extended term hereof for a purchase price equal to the "Fair Market Value" thereof as of the end of such term or (2) to extend the term of this Lease for two additional periods of five years each in respect of all, but not fewer than all, of the Units then covered by this Lease at the end of the original term hereof at a rental equal to the "Fair Rental Value" thereof as of the end of such term payable in twenty equal quarterly payments for each such renewal period.

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 or (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. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and in such determination costs of removal from the location of current use shall not be a deduction from such rental.

If on or before four months prior to the expiration of the original or any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Rental Value of the Units, such values 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.

Section 13. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units (other than any Unit that has been lost, stolen, completely destroyed or condemned) to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate 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 the Units 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 any 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 the 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 such notice.

Section 14. Opinion of Counsel for Lessee. On the Closing Date (as that term is defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor 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 and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal and valid agreement binding upon the Lessee and enforceable against the Lessee in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units;

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

E. the entering into and performance of 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 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.

Section 15. 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 an owner of property, including (without limitation) an allowance for depreciation and the "investment credit" provided by Section 38 of the Internal Revenue Code of 1954, as amended (or any successor section thereto). Nothing contained herein shall be construed as an election by the Lessor to treat the Lessee as having acquired the Units for purposes of the investment credit provided by Section 38 of the Internal Revenue Code of 1954, as amended (or any successor section thereto). The Lessor represents and warrants that it will timely claim the investment credit or will pay the tax claimed and timely request a refund of the tax paid attributable to the investment credit. 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, any portion of the full 7% investment credit provided for in Section 38 (or any successor section thereto) of the Internal Revenue Code of 1954, as amended, with respect to any Unit for any reason caused by Lessee's action or inaction (including casualty loss) the Lessee shall pay the Lessor, as supplemental rent, upon written demand made by the Lessor at any time after such investment credit could have been claimed if it were allowable or, if claimed and then disallowed, could have been claimed if it were allowable or, if claimed and then disallowed, at any time after payment of the tax attributable thereto, the following: (i) 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 or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in

respect of the payment of any other such taxes), shall be equal to the amount of such investment credit for such reason lost or not had or with respect to which the right to claim has been lost or which has been disallowed, plus (ii) the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss or disallowance of such investment credit, plus (iii) in the event the Lessor shall pay the tax claimed and then seek a refund and the final determination of such claim shall be adverse to the Lessor, interest on the amount of the tax paid attributable to the investment credit disallowed by such claim, computed at the rate of 8½% 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 Section 15.

Section 16. Recording; Expenses. Prior to the delivery and acceptance of any of the Units, the Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20a of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such filing, registering, depositing or recording and of such publication of notice of such deposit.

The Lessee will pay to the Lessor an amount equal to all the payments which the Lessor is required to make under Article 22 of the Conditional Sale Agreement.

Section 17. 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 9½% per annum of the overdue rentals for the period of time during which they are overdue.

Section 18. 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:

if the Lessor, First National Tower, Louisville, Kentucky  
40201, Attention: Mr. William Stites, Vice President;

if to the Lessee, 40 Beaver Street, Albany, New  
York 12207;

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

Section 19. Section 19 has been deleted.

Section 20. Severability; Effect and Modification of Lease. Any  
provision of this Lease which is prohibited or unenforceable in any juris-  
diction shall be ineffective to the extent of such prohibition or unenforceability  
without invalidating the remaining provisions hereof, and any such prohibition  
or unenforceability in any jurisdiction shall not invalidate or render unenforce-  
able 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 as of the Lessors and  
the Lessee.

Section 21. Execution. This Lease may be executed in several counter-  
parts, each of which so executed shall be deemed to be an original, and in each  
case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of March 11, 1974, 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.

Section 22. Law Governing. This Lease shall be construed in accordance with the laws of the State of Pennsylvania.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, as of the date first above written.

FIRST NATIONAL BANK OF LOUISVILLE

(CORPORATE SEAL)

By \_\_\_\_\_

Attest: \_\_\_\_\_  
Assistant Secretary

Title \_\_\_\_\_

DELAWARE AND HUDSON RAILWAY COMPANY

(CORPORATE SEAL)

By \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary

Title Vice President

STATE OF KENTUCKY

SS

COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 1974, before me personally appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of FIRST NATIONAL BANK OF LOUISVILLE, 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.

(NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires:

STATE OF NEW YORK

SS

COUNTY OF ALBANY

On this \_\_\_\_\_ day of \_\_\_\_\_, 1974, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of DELAWARE AND HUDSON RAILWAY 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.

(NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: