

6233-*A*
RECORDATION NO. ~~_____~~ Filed & Recorded

JUL 13 1971 12 12 PM

INTERSTATE COMMERCE COMMISSION
COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT

RECEIVED
JUL 13 12 08 PM '71
I. C. C.
FEE OPERATION BR.

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 25, 1971, by and between WAVERLY LEASING CORPORATION, a Pennsylvania corporation (hereinafter called the Company), and THE WESTERN SAVING FUND SOCIETY OF PHILADELPHIA (hereinafter called the Assignee);

WHEREAS, the Company and ILLINOIS TERMINAL RAILROAD COMPANY have entered into a Lease of Railroad Equipment dated as of June 25, 1971, (hereinafter called the Lease); and

WHEREAS, SOUTHERN IRON & EQUIPMENT COMPANY (hereinafter called the Seller) has entered into a Conditional Sale Agreement dated as of June 25, 1971, (hereinafter called the Conditional Sale Agreement) with the Company, providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex B thereto as are delivered to and accepted by the Company thereunder; and

WHEREAS, the Seller has assigned its interest in the Conditional Sale Agreement to the Assignee, pursuant to an Agreement and Assignment dated as of June 25, 1971; and

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

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

1. As security for the payment and performance of its obligations under the Conditional Sale Agreement, the Company hereby assigns, transfers and sets over unto the Assignee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rents, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all

waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Assignee in its own name, or in the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Company agrees to cause all the Payments to be made by the Lessee directly to the Assignee. The Assignee will apply the Payments to amounts due and owing under the Conditional Sale Agreement.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Agreement shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successor and assigns, against and only against the Company or persons other than the Assignee.

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

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company, to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Assignee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including without limitation the obligation to pay the rents in the manner and at the time and place specified therein; to hold all Payments received by the Company which are assigned and set over to the Assignee by this Assignment in trust for the Assignee and to turn them over to

the Assignee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense, to appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and to pay all costs and expenses of the Assignee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Assignee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Assignee, but without obligation to do so and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Assignee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees at the expense of the company.

(d) To pay immediately upon demand, all sums expended by the Assignee under the authority hereof, together with interest thereon at the rate of ten (10%) percent per annum.

4. The Company does hereby constitute the Assignee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Assignee may seem to be necessary or advisable in the premises.

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

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized; and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease (except assignments made expressly subject hereto, solely of its beneficial interest in the Units) and the Assignee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances; (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreement set forth to be complied with by it; (d) to the knowledge of the Company it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement on or prior to the date hereof; and (e) the Lease and the Conditional Sale Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Lease and the Conditional Sale Agreement) or any event which with notice and/or lapse of time would constitute such an Event of Default.

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

7. The Company covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Lease for any

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

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Assignee may from time to time reasonably request in order to confirm or further assure the Assignment made hereby and the provisions hereof.

9. The Assignee may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee thereunder. In the event of any such assignment, any such subassignment or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Assignee, enter into any agreement amending, modifying or terminating the Lease; and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the Laws of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

12. The Company shall cause copies of all notices received in connection with the Lease to be delivered promptly to the Assignee at its head office at Broad and Chestnut Streets, Philadelphia, Pennsylvania 19107; or at such other address as the Assignee shall designate.

13. The Company will promptly cause this Assignment to be filed and

recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above-written.

WAVERLY LEASING CORPORATION

By Charles Merrick
President

SEAL

Attest: Sally Jones
Assistant Secretary

Accepted:

THE WESTERN SAVING FUND SOCIETY OF PHILADELPHIA

By James Wood
Vice-President

SEAL

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF MONTGOMERY :

On this 30th day of June, 1971, before me personally appeared D. Charles Meriwether, to me personally known, who, being by me duly sworn, says that he is President of Waverly Leasing Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sam L. Berger
Notary Public

My commission expires: May 25, 1974

(Notarial Seal)

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a Delaware corporation, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease, hereby (a) acknowledges receipt of a copy of said Collateral Assignment of Lease (hereinafter called the Assignment); and (b) consents to all the terms and conditions of said Assignment.

As an inducement to The Western Saving Fund Society of Philadelphia (hereinafter called the Assignee) to invest in the Conditional Sale Indebtedness, as that term is defined in a Conditional Sale Agreement dated as of June 25, 1971, between Southern Iron & Equipment Company and Waverly Leasing Corporation (hereinafter called the Lessor) pursuant to which the Lessor is financing its purchase of the units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that:

(a) it will pay all rentals including, without limitation, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the Assignee, the assignee named in said Assignment, at Broad and Chestnut Streets, Philadelphia, Pennsylvania 19107 (or at such other address as may be furnished in writing to the undersigned by the Assignee) and, if the undersigned fails for any reason whatsoever to pay to the Assignee any Payments, it will pay to the Assignee on the respective dates or times set forth in the Lease amounts equal to the Payments which the undersigned shall not theretofore have paid to the Assignee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(b) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Assignee were named therein as the Lessor;

(c) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor

or otherwise, and the payment thereof to the Assignee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Assignee against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Assignee not arising out of the transactions contemplated by the Conditional Sale Agreement, the Agreement and Assignment dated as of June 25, 1971, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or pari passu with the right of the Assignee to apply such Payments or sums equivalent thereto, as provided in said Assignment;

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

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

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

Dated: As of June 25, 1971

ILLINOIS TERMINAL RAILROAD COMPANY

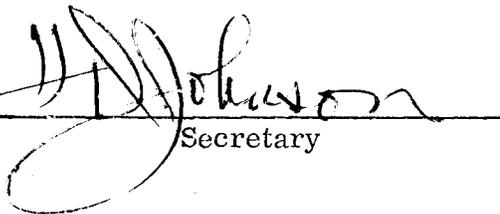
By



~~Vice~~ President

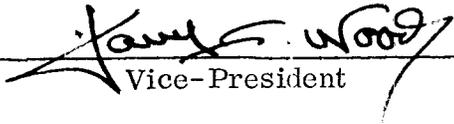
SEAL

Attest:


Secretary

The foregoing Consent and Agreement is hereby accepted as of the 25th day of June, 1971.

THE WESTERN SAVING FUND SOCIETY
OF PHILADELPHIA

By  Vice-President