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INLAND STATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 15, 1971

between

BETHLEHEM STEEL CORPORATION

and

MISSOURI IMPROVEMENT COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of September 15, 1971

between

BETHLEHEM STEEL CORPORATION

and

**THE BOATMEN'S NATIONAL BANK
OF ST. LOUIS**

**60 100-Ton Quadruple Open Top Hopper Cars
\$800,000 Maximum Committed Amount**

CONDITIONAL SALE AGREEMENT dated as of September 15, 1971, by and between BETHLEHEM STEEL CORPORATION, a Delaware corporation, the corporation named in Item 1 of Schedule A hereto, (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and MISSOURI IMPROVEMENT COMPANY, a Missouri corporation (hereinafter called the Vendee).

WHEREAS the Builder has agreed to construct or cause to be constructed and to sell and deliver to the Vendee, and the Vendee has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment);

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. The Builder will construct the Equipment and will sell and deliver it to the Vendee and the Vendee will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Vendee and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment shall conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Builder will deliver the various units of the Equipment to the Vendee at such point or points within the United States of America as shall be specified by the Vendee, freight charges, if any, prepaid (unless the Vendee shall otherwise specify or direct), in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder'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 and accepted on or before February 1, 1972, 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 the Vendee and the Builder shall execute (a) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder and (b) a separate agreement providing for the purchase of such excluded Equipment by the Vendee, 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 Vendee and the Builder shall determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Vendee. Upon delivery of each unit, the Vendee agrees to cause to be executed and delivered to

vided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Vendee hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Vendee or the Manufacturer's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 22. *Recording.* The Vendee will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Vendee with respect thereto, satisfactory to the Manufacturer.

ARTICLE 23. *Payment of Expenses.* The Vendee will pay all reasonable costs, charges, and expenses, except the counsel fees of the manufacturer, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgement, delivery, filing, registration or recording of this Agreement, of the first

to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, 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 Vendee 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 Vendee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or 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 Manufacturer's rights hereunder and any and all rights of redemption.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein pro-

thereof all sums due to the Manufacturer from the Vendee hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer 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 Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer 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.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Vendee shall fail to pay such deficiency (with interest thereon at the rate of 10% per annum to the extent legally enforceable), the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit

given to the Vendee by telegram or registered mail addressed to the Vendee as provided in Article 24 hereof at any time during a period of 30 days after the entire indebtedness in respect of Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer 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 Manufacturer may determine in compliance with any such requirements of law, provided that the Vendee shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Vendee as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Vendee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account

requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Vendee's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Vendee may be retained by the Manufacturer as compensation for the use of the Equipment by the Vendee; *provided, however*, that, if the Vendee, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment which the Vendee has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Vendee under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Vendee; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Vendee, or of any other party claiming by, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of any railroad or the premises of the Vendee for the delivery of the Equipment to the Manufacturer, the Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad of any railroad or premises of the Vendee until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Vendee. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against Manufacturer 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.

If the Vendee shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election, to the extent not prohibited by any mandatory

shall be made therefor, then, and in every such case, the Manufacturer shall waive any such event of default and its consequences and rescind and annul any such declaration. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 19. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of Purchase Price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Manufacturer, 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 Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Vendee or any lessee or user of the equipment and for such purpose may enter upon the Vendee's premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, with or without process of law.

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

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated.

The Manufacturer may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Vendee in writing to that effect. If at any time after such declaration all sums which shall have become due and payable by the Vendee hereunder (other than indebtedness which shall have become due and payable solely by reason of such declaration) shall be paid by the Vendee (with interest at the rate of 10% to the extent legally enforceable) before any sale or lease of any of the Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Manufacturer, or provision deemed by the Manufacturer to be adequate

(a) The Vendee shall fail to pay in full, when due and payable hereunder, any sum payable by the Vendee as herein provided for indebtedness in respect of the Purchase Price of the Equipment or for interest thereon and such failure shall continue for more than 10 business days; or

(b) The Vendee shall, for more than 30 days after the Manufacturer 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 or performed or to make provision satisfactory to the Manufacturer for such compliance; or

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

of the laws of the jurisdictions in which the Equipment shall be operated relating to such plates or other marking for use on railroad equipment covered by conditional sale agreements. The cost of such plates or other marking with respect to the first assignee of this Agreement shall be borne by the Vendee. The cost of such plates or other marking in connection with any subsequent assignment will be borne by the subsequent transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Vendee will, in connection with each settlement for a Group of Equipment subsequent to such transfer or assignment, deliver to the assignee at least 5 business days prior to the Closing date with respect to such Group, all documents required by the terms of such transfer or assignment to be delivered to such assignee in connection with such settlement in such number of counterparts as may reasonably be requested.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Vendee of such event and if such payment shall not have been previously paid by the assignee, the Vendee will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Vendee at the rate of 10% per annum.

ARTICLE 18. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

unless the Manufacturer shall have been legally liable in respect thereof, or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Vendee hereunder until the Vendee shall have made all of 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 Vendee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto 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.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed by the Vendee, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Vendee so to do, will then execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Vendee at its address specified in Article 24 hereof, and will then execute and deliver at the same place, for record or for filing 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

ARTICLE 5. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or federal taxes (other than income, gross receipts [except gross receipts taxes in the nature of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Vendee assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Vendee will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Vendee or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result in a lien upon any unit of the Equipment; *provided, however,* that the Vendee shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Vendee shall reimburse the Manufacturer on presentation of an invoice therefor; *provided, further,* that the Vendee shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid

business days following presentation by the Builder to the Vendee of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Vendee by written notice delivered to the Manufacturer at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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

The Vendee will pay, to the extent legally enforceable, interest at the rate of 10% 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 by the Vendee 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.

The Vendee may, at its option, at any time, prepay any or all of the principal instalments, without premium, in the inverse order of maturity; provided, however, that if such prepayment shall be made directly or indirectly from proceeds of borrowings, a premium shall be payable in the amount of $\frac{1}{2}$ of 1% per annum upon each instalment so prepaid from the date of prepayment to the date upon which such instalment is due.

ARTICLE 4. *Changes in Prices.* The base price or prices of the Equipment are subject to increase or decrease as may be agreed to by the Builder and the Vendee, and in accordance with the Builder's Proposal referred to in Schedule B hereto, as such Proposal shall be from time to time amended.

If this Agreement shall have been assigned by the Builder, the obligations of the Vendee under subparagraph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligation.

The first instalment of the portion of the Purchase Price of each Group payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on March 15, 1972, and subsequent instalments shall be payable semi-annually thereafter on September 15 and March 15 through September 15, 1979. The unpaid portion of such indebtedness shall bear interest, from the respective Closing Dates, or, in the case of any portion thereof owing by reason of the fact that the Final Invoiced Purchase Price exceeds the aggregate of the Group Invoiced Purchase Prices, from the tenth business day after delivery of the Final Certificate, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at a rate per annum equal to the best rate of The Boatmen's National Bank of St. Louis for loans of 90-day maturity to substantial and responsible commercial borrowers (hereinafter called the Prime Rate) as from time to time in effect. Each change in such interest rate shall take effect on the first day of the month following the change in such Prime Rate. Such interest shall be payable semi-annually on the dates of maturity of principal as above set forth.

Anything herein contained to the contrary notwithstanding, the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before February 1, 1972.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, not more than 10

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

(a) On each Closing Date (as hereinafter defined) with respect to each Group:

(i) the amount, if any, by which the estimated aggregate Purchase Price of units of Equipment in such Group as stated in the invoice or invoices for such units (hereinafter called the "Interim Invoiced Purchase Price") exceeds the amount set forth in Item 3 of Schedule A hereto (hereinafter called the "Committed Amount"); and

(ii) the amount, if any, of prepaid freight paid by the Builder in respect of such units upon shipment thereof from the Builder's plant to the place for delivery thereof designated by the Vendee;

(b) Upon receipt of a final certificate of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph;

(c) In 16 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 16, result in an amount ending in an integral cent) semi-annual instalments, as hereinafter provided, the lesser of the Final Invoiced Purchase Price and the Committed Amount.

the Builder, a certificate of acceptance (hereinafter called the Certificate of Acceptance) executed by an agent designated by the Vendee stating that such unit has been inspected and is accepted by him on behalf of the Vendee, has been completed in accordance with the Specifications and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of the Equipment covered thereby has been delivered to the Vendee and conforms with the Specifications and is acceptable to the Vendee in all details.

On delivery of each of such units hereunder, the Vendee assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest and freight charges, are set forth in Schedule B hereto (which price is hereinafter called the base price). The base price or prices shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group); *provided, however,* that, if there shall at any time have been delivered to and accepted by the Vendee units of the Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of Purchase Price due hereunder. In addition, the Vendee will pay all reasonable costs, charges and expenses, except fees and expenses of counsel, but including stamp and other taxes, if any, of the first assignee of this Agreement.

ARTICLE 24. *Notice.* Any notice hereunder to the Vendee shall be deemed to be properly served if delivered or mailed to the Vendee at 210 North 13th Street, St. Louis, Missouri 63103, or at such other address as may have been furnished in writing to the Manufacturer by the Vendee. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto, or at such other address as may have been furnished in writing to the Vendee by the Builder. Any notice hereunder to any assignee of the Manufacturer or of the Vendee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Vendee or the Manufacturer, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of

its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Vendee.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term “Manufacturer” 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 as regards any rights hereunder that are retained and excluded from any assignment; and the term “Builder”, 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 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which 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 September 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, 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, all as of the day, month and year first above written.

BETHLEHEM STEEL CORPORATION

By 
Vice President

[SEAL]

Attest:

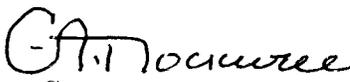

Assistant Secretary

MISSOURI IMPROVEMENT COMPANY

By 
Vice President

[SEAL]

Attest:


Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.

On this ^{2nd} 8... day of ~~September~~, 1971, before me personally appeared FRANCIS VAN NUN to me personally known, who being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn S. Weeks
Notary Public

My Commission Expires
City of Bethlehem
Northampton County

[NOTARIAL SEAL]

My Commission expires . October 13, 1974

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this ~~2nd~~ day of ~~September~~, 1971, before me personally appeared M. M. HENNELLY to me personally known, who being duly sworn, says that he is the Vice President of MISSOURI IMPROVEMENT COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

M. M. Hennelly
Notary Public

[NOTARIAL SEAL]

My Commission expires . May 30, 1972

SCHEDULE A

Item 1: Bethlehem Steel Corporation, a Delaware corporation.

Item 2: Settlement for the Equipment delivered to and accepted by the Vendee hereunder shall be made on one closing date.

Item 3: The Committed Amount of the Equipment is 80% of the final invoiced price of the cars plus freight but not to exceed \$800,000.00 for all 60 units of the Equipment.

Item 4: 701 East Third Street, Bethlehem, Pennsylvania 18016.

SCHEDULE B

BETHLEHEM STEEL CORPORATION, BUILDER

MISSOURI IMPROVEMENT COMPANY, VENDEE

Type	Quantity	Specifications	Vendee's Car Nos.	Unit Base Price*	Delivery
100- 14-Ton 3736 cu. ft. Quadruple Open Top Hopper Cars	60	Builder's Spec. 3400-085 and Missouri Pacific Spec. FC-6-71.	MLHX 587500 to 587559.	15,650.	September 1971

All in accordance with Builder's proposal dated July 9, 1971, and Vendee's acceptance dated July 16, 1971.

* Delivery F. O. B. Johnston, Pennsylvania on delivery to a common carrier for shipment to St. Louis, Missouri. Includes all changes to July 16, 1971; price rounded to nearest dollar. Price subject to adjustment by reason of agreed changes and variation in prices of specialties.

unless the Manufacturer shall have been legally liable in respect thereof, or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Vendee hereunder until the Vendee shall have made all of 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 Vendee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto 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.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed by the Vendee, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Vendee so to do, will then execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Vendee or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Vendee at its address specified in Article 24 hereof, and will then execute and deliver at the same place, for record or for filing 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

ARTICLE 5. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or federal taxes (other than income, gross receipts [except gross receipts taxes in the nature of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Vendee assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Vendee will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Vendee or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result in a lien upon any unit of the Equipment; *provided, however,* that the Vendee shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Vendee shall reimburse the Manufacturer on presentation of an invoice therefor; *provided, further,* that the Vendee shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid

business days following presentation by the Builder to the Vendee of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Vendee by written notice delivered to the Manufacturer at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

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

The Vendee will pay, to the extent legally enforceable, interest at the rate of 10% 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 by the Vendee 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.

The Vendee may, at its option, at any time, prepay any or all of the principal instalments, without premium, in the inverse order of maturity; provided, however, that if such prepayment shall be made directly or indirectly from proceeds of borrowings, a premium shall be payable in the amount of $\frac{1}{2}$ of 1% per annum upon each instalment so prepaid from the date of prepayment to the date upon which such instalment is due.

ARTICLE 4. *Changes in Prices.* The base price or prices of the Equipment are subject to increase or decrease as may be agreed to by the Builder and the Vendee, and in accordance with the Builder's Proposal referred to in Schedule B hereto, as such Proposal shall be from time to time amended.

If this Agreement shall have been assigned by the Builder, the obligations of the Vendee under subparagraph (b) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligation.

The first instalment of the portion of the Purchase Price of each Group payable pursuant to subparagraph (c) of the third paragraph of this Article 3 shall be payable on March 15, 1972, and subsequent instalments shall be payable semi-annually thereafter on September 15 and March 15 through September 15, 1979. The unpaid portion of such indebtedness shall bear interest, from the respective Closing Dates, or, in the case of any portion thereof owing by reason of the fact that the Final Invoiced Purchase Price exceeds the aggregate of the Group Invoiced Purchase Prices, from the tenth business day after delivery of the Final Certificate, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at a rate per annum equal to the best rate of The Boatmen's National Bank of St. Louis for loans of 90-day maturity to substantial and responsible commercial borrowers (hereinafter called the Prime Rate) as from time to time in effect. Each change in such interest rate shall take effect on the first day of the month following the change in such Prime Rate. Such interest shall be payable semi-annually on the dates of maturity of principal as above set forth.

Anything herein contained to the contrary notwithstanding, the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before February 1, 1972.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, not more than 10

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

(a) On each Closing Date (as hereinafter defined) with respect to each Group:

(i) the amount, if any, by which the estimated aggregate Purchase Price of units of Equipment in such Group as stated in the invoice or invoices for such units (hereinafter called the "Interim Invoiced Purchase Price") exceeds the amount set forth in Item 3 of Schedule A hereto (hereinafter called the "Committed Amount"); and

(ii) the amount, if any, of prepaid freight paid by the Builder in respect of such units upon shipment thereof from the Builder's plant to the place for delivery thereof designated by the Vendee;

(b) Upon receipt of a final certificate of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph;

(c) In 16 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 16, result in an amount ending in an integral cent) semi-annual instalments, as hereinafter provided, the lesser of the Final Invoiced Purchase Price and the Committed Amount.

the Builder, a certificate of acceptance (hereinafter called the Certificate of Acceptance) executed by an agent designated by the Vendee stating that such unit has been inspected and is accepted by him on behalf of the Vendee, has been completed in accordance with the Specifications and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of the Equipment covered thereby has been delivered to the Vendee and conforms with the Specifications and is acceptable to the Vendee in all details.

On delivery of each of such units hereunder, the Vendee assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest and freight charges, are set forth in Schedule B hereto (which price is hereinafter called the base price). The base price or prices shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group); *provided, however,* that, if there shall at any time have been delivered to and accepted by the Vendee units of the Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of Purchase Price due hereunder. In addition, the Vendee will pay all reasonable costs, charges and expenses, except fees and expenses of counsel, but including stamp and other taxes, if any, of the first assignee of this Agreement.

ARTICLE 24. *Notice.* Any notice hereunder to the Vendee shall be deemed to be properly served if delivered or mailed to the Vendee at 210 North 13th Street, St. Louis, Missouri 63103, or at such other address as may have been furnished in writing to the Manufacturer by the Vendee. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto, or at such other address as may have been furnished in writing to the Vendee by the Builder. Any notice hereunder to any assignee of the Manufacturer or of the Vendee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Vendee or the Manufacturer, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of

its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Vendee.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term “Manufacturer” 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 as regards any rights hereunder that are retained and excluded from any assignment; and the term “Builder”, 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 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which 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 September 15, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, 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, all as of the day, month and year first above written.

BETHLEHEM STEEL CORPORATION

By 
Vice President

[SEAL]

Attest:

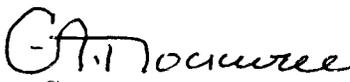

Assistant Secretary

MISSOURI IMPROVEMENT COMPANY

By 
Vice President

[SEAL]

Attest:


Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.

On this ^{8th} day of ~~September~~, 1971, before me personally appeared **FRANCIS VAN NUN** to me personally known, who being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn S. Weeks
Notary Public

My Commission Expires
City of Bethlehem
Northampton County

[NOTARIAL SEAL]

My Commission expires . October 13, 1974

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this ~~2nd~~ day of ~~September~~, 1971, before me personally appeared **M. M. HENNELLY**, to me personally known, who being duly sworn, says that he is the Vice President of MISSOURI IMPROVEMENT COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

W. E. Burke
Notary Public

[NOTARIAL SEAL]

My Commission expires . May 30, 1972

SCHEDULE A

Item 1: Bethlehem Steel Corporation, a Delaware corporation.

Item 2: Settlement for the Equipment delivered to and accepted by the Vendee hereunder shall be made on one closing date.

Item 3: The Committed Amount of the Equipment is 80% of the final invoiced price of the cars plus freight but not to exceed \$800,000.00 for all 60 units of the Equipment.

Item 4: 701 East Third Street, Bethlehem, Pennsylvania 18016.

SCHEDULE B

BETHLEHEM STEEL CORPORATION, BUILDER

MISSOURI IMPROVEMENT COMPANY, VENDEE

Type	Quantity	Specifications	Vendee's Car Nos.	Unit Base Price*	Delivery
100- 14-Ton 3736 cu. ft. Quadruple Open Top Hopper Cars	60	Builder's Spec. 3400-085 and Missouri Pacific Spec. FC-6-71.	MLHX 587500 to 587559.	15,650.	September 1971

All in accordance with Builder's proposal dated July 9, 1971, and Vendee's acceptance dated July 16, 1971.

* Delivery F. O. B. Johnston, Pennsylvania on delivery to a common carrier for shipment to St. Louis, Missouri. Includes all changes to July 16, 1971; price rounded to nearest dollar. Price subject to adjustment by reason of agreed changes and variation in prices of specialties.

AGREEMENT AND ASSIGNMENT dated as of September 15, 1971, by and between the BETHLEHEM STEEL CORPORATION (hereinafter called the Builder), and BOATMEN'S NATIONAL BANK OF ST. LOUIS (hereinafter called the Assignee), a corporation duly organized and existing under the laws of the United States of America.

WHEREAS the Builder and MISSOURI IMPROVEMENT COMPANY, a Missouri corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement dated as of September 15, 1971 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Vendee of the railroad equipment described or referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted and, as to each such unit, upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (except the right to manufacture and

the right to receive the payments specified in the third paragraph of Article 2 thereof and in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof, and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Vendee to the Builder under the Conditional Sale Agreement on account of the Vendee's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Vendee from its obligations to the Builder under Articles 2, 5, 10, 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Vendee's obligations under Articles 10, 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee in respect of the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder

hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder.

SECTION 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for

any instalment of, or interest on, indebtedness in respect of Purchase Price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 10 and 16 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations shall be and remain enforceable by the Vendee against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments.

The Builder will indemnify, protect and hold harmless the Assignee 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 Assignee or its assigns 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 right, except for any design, article or material specified by the Vendee and not manufactured by the Builder. The Builder agrees that any amount payable to it by the Vendee in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Vendee, there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one-half inch in height:

“THE BOATMEN’S NATIONAL BANK OF ST. LOUIS,
ASSIGNEE, OWNER”

SECTION 5. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Builder an amount equal to that portion of the Interim Invoiced Purchase Price of such Group not payable by the Vendee pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 5 business days prior to such Closing Date, the following documents, in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Vendee that at the time of delivery to the Vendee under the Conditional Sale

Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature, except only the rights of the Vendee under the Conditional Sale Agreement;

(b) A Certificate of Acceptance signed by an officer or other authorized representative of the Vendee stating that the Units of the Equipment in such Group have been delivered to the Vendee in accordance with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of the Vendee and further stating that all such units have been marked as required by Section 4 hereof;

(c) An invoice for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee as to the correctness of the prices of such units as set forth in said invoice;

(d) An opinion of counsel for the Vendee stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Vendee and is a valid instrument binding upon the Vendee and enforceable against the Vendee in accordance with its terms, (iii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (iv) no approval of the Interstate Commerce

Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, free of all claims, liens, security interests and other encumbrances, except only the rights of the Vendee under the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Vendee, were free of all claims, liens and encumbrances except only the rights of the Vendee under the Conditional Sale Agreement; and

(f) Unless payment of the amount (if any) payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement is made by the Assignee through the use of funds furnished to it for the purpose by the Vendee, a counterpart of a receipt from the Builder acknowledging such payment.

Within ten business days after delivery to the Assignee of the Final Certificate (as defined in the Conditional Sale Agreement) accompanied by or bearing thereon a certification by the Vendee as to the correctness of the prices stated therein, Assignee shall pay to the Builder the amount, if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable by the Vendee pursuant to subparagraph (c) of the third paragraph of Article 3 of the Conditional Sale Agreement shall exceed the amount theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. The Final Certificate shall be delivered on or before February 1, 1972.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof. The Assignee shall at the request of the Builder or the Vendee execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any

such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming valid authorization, execution and delivery by the Vendee) the Conditional Sale Agreement is a valid and existing agreement binding upon the Builder and enforceable against the Builder in accordance with its terms and that it is now in force without amendment thereto; and

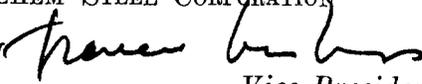
(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee, or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate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

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of September 15, 1971, 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, 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, all as of the day, month and year first above written.

BETHLEHEM STEEL CORPORATION

By  Vice President

[SEAL]

Attest:

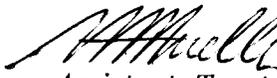

Assistant Secretary

THE BOATMEN'S NATIONAL BANK
OF ST. LOUIS

By  Senior Vice President

[SEAL]

Attest:


Assistant Trust Officer

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.

On this 8th day of September, 1971, before me personally appeared FRANCIS VAN NUYS, to me personally known, who, being by me duly sworn, says that he is a Vice President of BETHLEHEM STEEL CORPORATION; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Evelyn S. Wicks
My Commission Expires Notary Public
City of Bethlehem [NOTARIAL SEAL]
Northampton County

My Commission expires . October 13, 1974

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

On this 10th day of September, 1971, before me personally appeared H. PARKER SMITH, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE BOATMEN'S NATIONAL BANK OF ST. LOUIS; that one of the seals affixed to the foregoing instrument is the seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James R. Wilmot
Notary Public
[NOTARIAL SEAL]

My Commission Expires . MAR 23 1974

This is to certify that this act was performed in the City of St. Louis which adjoins St. Louis County, within and for which I have been commissioned.

ACKNOWLEDGEMENT OF NOTICE OF
ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment, is acknowledged as of September 15, 1971.

MISSOURI IMPROVEMENT COMPANY

By *M. M. Kennedy*
Vice President