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STATE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 15, 1972

between

BETHLEHEM STEEL CORPORATION

and

**CHICAGO & EASTERN ILLINOIS
RAILROAD COMPANY**

AGREEMENT AND ASSIGNMENT

Dated as of September 15, 1972

between

BETHLEHEM STEEL CORPORATION

and

FIRST NATIONAL CITY BANK

**300 100-Ton 2200 Cu. Ft. Open Hoppers With Side Dump
\$3,400,000 Maximum Committed Amount**

CONDITIONAL SALE AGREEMENT dated as of September 15, 1972, 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 29 hereof), and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, an Indiana 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 December 31, 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 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; *provided, however*, that the Builder shall not be relieved of its warranties contained herein.

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.

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) an amount equal to 20% of the 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");

(ii) the amount, if any, which (i) the sum of (A) the Interim Invoiced Purchase Price plus (B) the aggregate amount of the Interim Invoiced Purchase Prices of all other units of Equipment for which settlement has heretofore been, or is then being, made exceeds (ii) the sum of (x) \$3,400,000 plus (y) any amount previously paid under this subparagraph (a); and

(iii) 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") exceeds the sum of the Interim Invoiced Purchase Prices of all such Groups; and

(c) In 20 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 20, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the sum of the Interim Invoiced Purchase Prices of all units of Equipment, less the amounts paid or payable in respect thereof pursuant to subparagraph (a) of this paragraph (the amount payable pursuant to this subparagraph (c), which shall not exceed \$3,400,000 in aggregate principal amount, being hereinafter called the "Conditional Sale Indebtedness"), *provided, however*, that the last such instalment shall be in the amount necessary to repay in full the unpaid amount of the Conditional Sale Indebtedness.

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, 1973, and subsequent instalments shall be payable semi-annually thereafter on September 15 and March 15 through September 15, 1982. 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 $\frac{1}{4}$ of 1% per annum above the Base Rate which shall be the base rate

of First National City Bank on loans of 90-day maturity to substantial and responsible commercial borrowers in effect from time to time. Each change in such interest rate shall take effect on the first day of the month following the change in such Base Rate. Such interest shall be payable quarterly on the fifteenth day of each March, June, September and December, commencing December 15, 1972.

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 December 31, 1972.

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

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.

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 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 25 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 of the Vendee to the Equipment and will pay to the Vendee any money paid to the Manufacturer pursuant to Article 8 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing, or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Vendee.

ARTICLE 7. *Marking of Equipment.* The Vendee will cause each unit of the Equipment delivered to it to be kept numbered with the identifying number as set out in Schedule B hereto and will cause each side of each such unit to be kept plainly, distinctly, permanently and conspicuously marked, by a metal plate or otherwise, in letters not less than one-half inch in height, with the name of the Manufacturer followed by the word "Owner" or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. The Vendee will not place any

unit of the Equipment which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such plate, or renew any such marking, which may be removed, defaced or destroyed. The Vendee will not change the numbers of any such units except with the consent of the Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Manufacturer by the Vendee and shall promptly be filed and recorded by the Vendee with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and in all other public offices where this Agreement shall have been filed, registered, recorded or deposited.

Except as above provided, the Vendee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Vendee may cause the Equipment to be lettered with the name, emblem, or initials of the Vendee or with the name, emblem or initials of a subsidiary or affiliated company controlling or controlled by the Vendee or may letter it in some other appropriate manner for convenience of identification of the interest of the Vendee therein, or if the Equipment is sublet or used as permitted by Article 13 hereof, the name of such lessee or user of the service to be furnished thereby may be lettered thereon.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, requisitioned, condemned, stolen or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full indebtedness in respect to the

Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Vendee shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On or before March 1 in each year the Vendee shall pay to the Manufacturer a sum equal to the fair value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however*, that from time to time, in any calendar year, when the total fair value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of what a payment shall theretofore have been made to the Manufacturer pursuant to this Article 8) shall exceed \$100,000, the Vendee, within 30 days of such event, shall pay to the Manufacturer a sum equal to the fair value of such units.

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation at a rate not in excess of 6% per annum for the period elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 19 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Vendee may direct in a written instrument filed with the Manufacturer, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than Septem-

ber 15, 1972, to replace such unit having suffered a Casualty Occurrence, as the Vendee may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments of the indebtedness hereunder thereafter falling due in the inverse order of their maturities (but without premium and whether or not such amount shall be sufficient to prepay one or more entire instalments). In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the Vendee shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the applicable rate of depreciation on the replaced unit shall be conclusively determined by the certificate of the President, a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Vendee.

The Vendee will cause any replacing unit to be plated or marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Vendee shall execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of an appropriate supplemental agreement

describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements.

Whenever the Vendee shall file with the Manufacturer pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of new standard gauge railroad equipment, the Vendee shall file therewith:

(1) a certificate of the President, a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Vendee certifying that such replacing unit is standard-gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than September 15, 1972, and has been plated or marked as required by the provisions of this Article 8 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on the earliest date when any such money was paid to the Manufacturer;

(2) an opinion of counsel for the Vendee that title to such replacing unit is vested in the Manufacturer free and clear of all claims, liens, security interests and other encumbrances, and that such unit has come under and become subject to this Agreement and that the Vendee has duly filed with the Interstate Commerce Commission the supplemental agreement required hereby and duly taken all other action required hereby; and

(3) a bill of sale to the Manufacturer from the Owner of such replacing unit in form and substance satisfactory to the Manufacturer.

So long as none of the events of default specified in Article 19 hereof shall have occurred and be continuing,

any money paid to the Manufacturer pursuant to this Article 8, shall, if the Vendee shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, maturing in not more than five years from the date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Vendee may in writing direct. Any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Vendee as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest or earned discount received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon the disposition of any Government Securities by the Manufacturer pursuant hereto, whether at maturity or by sale or redemption or otherwise, any amounts received thereon, including any interest received by the Manufacturer upon or prior to such disposition, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturer for application pursuant to this Article 8, and any excess shall be paid to the Vendee. If the amounts so received on such Government Securities (including such interest or earned discount) shall be less than such cost, the Vendee will promptly pay to the Manufacturer an amount equal to such deficiency. The Vendee will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Government Securities.

In the event that any moneys paid to, or held by, the Manufacturer pursuant to this Article 8 are applied to the

prepayment of indebtedness in respect of the Purchase Price the Vendee will pay to the Manufacturer on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If one of the events of default specified in Article 18 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 (including for this purpose Government Securities and interest thereon) shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

ARTICLE 9. *Maintenance and Repair.* The Vendee will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 10. *Builder's Warranty of Material and Workmanship.* The Builder warrants that the Equipment will be built in accordance with the requirements, Specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment to be free from defects in material and workmanship (except as to specialties incorporated therein specified by the Vendee and not manufactured by the Builder) under normal use and service, the Builder's obligation under this Article 10 being limited to making good at its plant, any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Vendee, be returned to the Builder (unless return is waived by the Builder in writing) with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind. **The foregoing warranty of the Builder is expressly in lieu of all other warranties expressed or implied, including any implied warranty of**

merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2 and 16 hereof, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

ARTICLE 11. *Compliance With Laws and Rules.* During the term of this Agreement the Vendee will comply and will require lessees or users of the Equipment to comply in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Vendee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules, *provided, however,* that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 12. *Reports and Inspections.* On or before March 1, in each year, commencing with the year 1973, the Vendee will furnish to the Manufacturer a signed statement showing, as at the preceding December 31, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use, whether by accident, or otherwise, during

the preceding calendar year, and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request. The Manufacturer shall have the right, by its agents, but shall be under no obligation to inspect the Equipment and the Vendee's records with respect thereto once in every year.

ARTICLE 13. *Possession and Use.* Vendee, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by the Vendee or any subsidiary or affiliated company controlling, controlled by or under common control with the Vendee, and upon connecting and other railroads in the usual interchange of traffic, and also to lease the equipment or permit its use under the terms of car contracts to or by any subsidiary or affiliated company controlled by, controlling or under common control with the Vendee, upon lines of railroad in the United States of America, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 14. *Prohibition Against Liens.* The Vendee will pay or satisfy and discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns, which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 15. *Vendee's Indemnities.* The Vendee agrees to indemnify and save harmless the Manufacturer from and

against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment or out of the use and operation thereof by the Vendee or other users during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

After acceptance by the Vendee of any unit or units of Equipment under Article 2 hereof the Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment; *provided, however,* that the Builder shall not be relieved from its warranty covering material and workmanship hereinabove in Article 10 set forth.

ARTICLE 16. *Patent Indemnities.* Except in cases of designs, articles and materials specified by the Vendee and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee 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 Vendee 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 infringing or claimed to infringe on any United States patent or other right; and the Vendee likewise will indemnify, protect and hold harmless the Manufacturer 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 Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material specified by the Vendee and not manufactured by the Builder which infringes or is claimed to infringe on any United States patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendee every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any designs or against the seller or sellers of any designs, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the grounds that any such design, article or material or operation thereof infringes or is claimed to infringe on any United States patent or other right, and the Builder further agrees to execute and deliver to the Vendee, or its assigns, all and every such further assurance as may be reasonably requested by the Vendee, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give prompt notice to the Vendee of any claim known to the Builder from which liability may be charged against the Vendee hereunder, and the Vendee will give prompt notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder.

ARTICLE 17. *Assignments.* The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a company

or other purchaser (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the properties of the Vendee and which, by execution of an appropriate instrument satisfactory to the Manufacturer, shall assume and agree to perform each and all of the obligations and covenants of the Vendee hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Vendee of its obligations to the Builder under Articles 2, 5, 10, 15 and 16 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Vendee recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Vendee expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

In the event of any such transfer or assignment, or successive transfers or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Vendee will, whenever requested by such transferee or assignee, change the name plates or other marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such plates or other marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements

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. *Application of Default and Remedy Provisions.* It is contemplated that coincident with the execution and delivery of this Agreement, the Builder will assign to a single assignee under a single agreement of

assignment or, under such an agreement to a single agent for several assignees: (a) all the right, title and interest of the Builder in and to the Equipment and each such unit thereof, to be constructed and sold by the Builder under this Agreement, when and as severally delivered and accepted, and upon payment to the Builder of the amounts required to be paid by the said assignee or assignees pursuant to the said agreement of assignment; (b) all the right, title and interest of the Builder in and to this Agreement in respect of the Equipment to be constructed and sold by the Builder under this Agreement (except the rights to construct and to deliver, the rights to receive the payments specified in subparagraphs (a) and (b) of the third paragraph of Article 3 and in the final paragraph of Article 17 of this Agreement and without relieving the Vendee of its obligations to the Builder under Article 16 hereof), and the right to reimbursement for taxes as provided for in Article 5 herein, and in and to any and all amounts which may be or become due or owing by the Vendee to the Builder under this Agreement on account of the Vendee's indebtedness in respect of the aggregate Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under this Agreement other than those hereinabove excluded; and (c) all of the Builder's rights (except as aforesaid), powers, privileges and remedies under this Agreement. It is the intent of the parties to this Agreement that if, following such assignments by the Builder to a single assignee or a single agent for several assignees, an event of default shall have occurred and be continuing as hereinafter provided in Article 19 of this Agreement in respect of any obligation of the Vendee to the Builder so assigned, such single assignee or agent shall be entitled to enforce all of the assigned rights, powers, privileges and remedies of the Builder under this Agreement as if such default were a default in respect of the Vendee's obligations to the Builder under this Agreement.

ARTICLE 19. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(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

(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 unpaid balance of the Purchase Price of the Equipment together with the interest thereon then accrued and unpaid and all other amounts payable by the Vendee under this Agreement and not theretofore paid 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 enforce-

able) 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 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 20. *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 20 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.

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 immedi-

ately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 20 provided) may at its election, to the extent not prohibited by any mandatory 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 from, 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 given to the Vendee by telegram or registered mail addressed to the Vendee as provided in Article 25 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 20.

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 25 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 20), and in payment of the Purchase Price

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 25. *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 3 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 26. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 27. *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 writ-

ing and signed by duly authorized officers of the Manufacturer and the Vendee.

ARTICLE 28. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and to the recording provisions of any other statute pursuant to which this Agreement may be recorded.

ARTICLE 29. *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. The term "Vendee" whenever used in this Agreement, means Chicago & Eastern Illinois Railroad Company and also any assignee of its rights pursuant to Article 17 hereof.

ARTICLE 30. *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, 1972, for conveni-

ence, 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 *Frank L. ...*
Vice President

[Seal]

Attest:

Curtis A. Smith
Assistant Secretary

CHICAGO & EASTERN ILLINOIS RAILROAD
COMPANY

By *Arthur ...*
Vice President

[Seal]

Attest:

H. J. ...
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON }^{ss.}

On this 26th day of *September*, 1972, 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. Weeks

Notary Public

City of Bethlehem

Northampton County

[NOTARIAL SEAL]

My Commission expires *October 13, 1974*

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

On this 25th day of *September*, 1972, before me personally appeared *H.M. Hoffmeister*, to me personally known, who being duly sworn, says that he is the Vice President of CHICAGO & EASTERN ILLINOIS RAILROAD 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.

R. C. Mason
Notary Public
R. C. MASON

[NOTARIAL SEAL]

My Commission expires *Sept 28, 1974*

NOTARY PUBLIC, CITY OF ST. LOUIS, MO.

In the event that the Manufacturer shall bring any suit 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 21. *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 22. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein pro-

vided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's rights 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 23. *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 24. *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

SCHEDULE A

Item 1: Bethlehem Steel Corporation, a Delaware Corporation.

Item 2: For the purposes of making settlement, the Equipment shall be delivered to and accepted by the Vendee hereunder and settled for in not exceeding two Groups, the first Group to consist of not less than 150 units of Equipment and the final Group to consist of the balance of the Equipment.

Item 3: 701 East Third Street, Bethlehem, Pennsylvania 18016.

SCHEDULE B

BETHLEHEM STEEL CORPORATION, BUILDER

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

Type	Quantity	Specifications	Vendee's Car Nos.	Unit Base Price	Delivery
Open Hoppers 100-ton Nominal Capacity 2200 C.F. with Side Dump	300	Builder's Spec. X-300-125, DF 3400-287, and Missouri Pacific Spec. FC-12-72	C&EI 16000-299	\$14,121	September 1972

All in accordance with Builder's proposal dated June 6, 1972, and Vendee's acceptance dated June 22, 1972.

Delivery F. O. B. Johnstown, Pennsylvania on delivery to a common carrier for shipment to St. Louis, Missouri. Includes all changes to July 6, 1972; 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, 1972, by and between BETHLEHEM STEEL CORPORATION (hereinafter called the Builder), and FIRST NATIONAL CITY BANK (hereinafter called the Assignee), a national banking association having a principal office at 399 Park Avenue, New York, New York 10022.

WHEREAS the Builder and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, an Indiana corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement dated as of September 15, 1972 (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 obligations of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its warranties and indemnities 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 all claims and demands whatsoever, all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee until the filings and recordations referred to in Article 22 of the Conditional Sale Agreement have been effected.

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 instalments 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:

“FIRST NATIONAL CITY BANK, 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, ex-

cept 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 or this Assignment 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 December 31, 1972.

It is understood and agreed that the Assignee shall not be required to make (i) 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 or, (ii) any payment under this Section 6 at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement shall constitute an event of default, shall be subsisting under the Conditional Sale Agreement. 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 confirm 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 New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and to the recording provisions of any other statutes pursuant to which this Assignment may be recorded. 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, 1972, 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 *Lawrence Van Horn*
Vice President

[SEAL]

Attest: *Curtis H. Bennett*
Assistant Secretary

FIRST NATIONAL CITY BANK

By *Melville E. Ingalls Jr*
Vice President

[SEAL]

Attest: *Walter C. Vash*
Assistant Cashier

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF NORTHAMPTON } ss.

On this 26th day of September, 1972, 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. Weeks
Notary Public

[NOTARIAL SEAL]

City of Bethlehem
Northampton County

My Commission expires October 13, 1974

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

On this 27th day of September, 1972, before me personally appeared *McWille E. Inhaus Jr.*, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL CITY BANK, 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.

Alexander Zwarych
Notary Public

[SEAL]

My Commission Expires

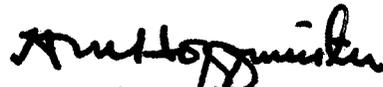
ALEXANDER ZWARYCH
Notary Public, State of New York
No. 30-4400815
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1973

ACKNOWLEDGMENT 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, 1972.

CHICAGO & EASTERN ILLINOIS RAILROAD
COMPANY

By


Vice President