

7945

RECORDATION NO. Filed & Recorded

JUN 05 1975 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1975

among

NATIONAL RAILWAY UTILIZATION CORPORATION, as Vendor/Builder

FIRST SECURITY STATE BANK, Trustee
for Itel Leasing International, Inc, under a Trust Agreement
dated as of March 15, 1975, as Vendee

and

ITEL CORPORATION, as Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1975

between

NATIONAL RAILWAY UTILIZATION CORPORATION

and

FIRST SECURITY BANK OF UTAH, N. A.

CONDITIONAL SALE AGREEMENT dated as of March 15, 1975, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), FIRST SECURITY STATE BANK, a state banking corporation (hereinafter with its successors and assigns called the Vendee), not in its individual capacity but solely as Trustee pursuant to a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with ITEL Leasing International, Inc. (hereinafter called the Beneficiary) and ITEL Corporation, a Delaware corporation (hereinafter called the Guarantor).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a lease dated as of the date hereof (hereinafter called the Lease) of the Equipment with PICKENS RAILROAD COMPANY, a South Carolina corporation, as lessee (hereinafter called the Lessee);

WHEREAS the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions; Additional Agreements. The parties hereto contemplate that the Vendee will furnish that portion of the purchase price for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such purchase price shall be paid to the Builder by an assignee of the Builder's right, title and interest

under this Agreement pursuant to an Agreement and Assignment between the Builder and First Security Bank of Utah, N. A., as agent under a Finance Agreement dated as of March 15, 1975.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment 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 or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

Additional Agreements, if any, set forth in Annex A hereto shall be deemed to be a part of this Agreement as fully as though such Additional Agreements had been set forth in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement has been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act nor until settlement for such units of Equipment has occurred pursuant to Article 4 hereof; provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clauses C or D of § 9 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

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, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance

with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an authorized inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices may not be increased but are subject to such decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as set forth in Annex B or as so decreased. If on any Closing Date (as hereinafter defined in this Article) the Purchase Price of any unit of Equipment for which settlement is then being made under this Agreement exceeds \$30,000, the Builder (and any assignee of the Builder) will, upon request of the Vendee and the Guarantor, enter into an agreement excluding from this Agreement such unit of Equipment.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (not later than November 30, 1975, such date being hereinafter called the Cut-Off Date) as shall be fixed by the Lessee by written notice delivered by the Lessee to the Builder, the Vendor and the Vendee at least ten business days prior to the Closing Date designated therein. The term "business days" as used herein

means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Salt Lake City, Utah are authorized or obligated to remain closed.

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

(a) on the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore been and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$2,400,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) in 179 consecutive monthly instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on the first day of each month, commencing January 1, 1976, to and including November 1, 1990 (or if any such date is not a business day, on the next following business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred or from the immediately preceding interest payment date, as the case maybe, at a rate per annum equal to (i) 4% above (ii) the lowest minimum lending rate publicly quoted by Bank of America, NT&SA for loans of 90-day maturities to substantial borrowers as from time to time in effect, changing on the first day of the month following any change in such rate (such lowest rate being hereinafter called the Prime Rate), provided, however, that if such Prime Rate plus 4% exceeds an interest rate of 10% per annum then such interest

rate shall be at a rate equal to 10% per annum. The Vendor will, not less than three days prior to the date each such interest payment is due and payable, notify the Vendee and the Lessee of the Prime Rate applicable on such interest payment date as well as the amount of the interest payment to be made by the Vendee on such date. Such interest shall be payable, to the extent accrued, on December 1, 1975, and on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated in accordance with Annex C hereto by multiplying the percentage set forth therein opposite the applicable principal payment date times the original unpaid principal amount of the Conditional Sale Indebtedness and such instalments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year and actual days elapsed in each month.

The Vendee will pay interest, to the extent legally enforceable, at the rate of 1% per annum in excess of the interest rate then payable on the Conditional Sale Indebtedness upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement 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 and the Lessee as provided in this Agreement. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the

terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, at the expense of the Vendee and without liability to the Vendor, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 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 instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses,

taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement.

ARTICLE 7. Maintenance, Casualty Occurrences. The Vendee will at all times maintain and keep the Equipment, or cause the Equipment to be maintained and kept, in good order and repair at its own expense.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully notified in regard thereto. On the next succeeding Payment Date, pay to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Article 7 the Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each unit as to which such payment is being made. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee and without liability to the Vendor, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

Any condemnation payments received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article. If the Vendor shall receive any condemnation payments in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such condemnation payment, the Vendor shall pay such condemnation payments to the Vendee.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the pre-

ceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

The Guarantor will furnish to the Vendor upon its written request (i) as soon as available and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Guarantor, copies of the balance sheet of the Guarantor as of the end of such accounting period and copies of the related statements of income and retained earnings of the Guarantor for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; and (ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Guarantor copies of the balance sheet of the Guarantor and of the related statements of income and retained earnings of the Guarantor for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Guarantor's independent public accountants.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to pro-

protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee and/or the Lessee or their respective affiliates.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense, 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 Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns and sublessees under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this Agreement, be used (i) upon the lines of railroad owned or operated by the Lessee or its affiliates (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and (ii) upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; provided, however, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Vendee may also lease the Equipment to any company incorporated in any state in the United States or in the District of Columbia with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement. A copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or the Beneficiary or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly

discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations

hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without its vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertaking of the Guarantor hereunder, may be assigned by the Vendor 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 or referred to in Article 13 hereof, or relieve the Vendee or the Guarantor of their obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agree-

ment, 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 and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee and the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

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

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, upon request by the assignee, change, or cause to be changed, the markings on each side of each unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of

less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with each settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

ARTICLE 15. 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 and the Guarantor shall fail to pay in full any indebtedness in respect of the Purchase Price or any other sum payable by the Vendee as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Vendee and the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Vendee or the Guarantor hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness

shall continue), all the obligations of the Vendee or the Guarantor under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Guarantor or for their 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 and this Agreement or any interest therein or on any unit of Equipment, as the case may be, shall not be reassigned or retransferred with 30 days of written notice from the Vendor to do so;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease and any other lease with respect to the Equipment, or any unit or units thereof, then in effect immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid 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 of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Upon a Declaration of Default, the Vendor shall 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 or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with

the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease or any such other lease by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease or any such other lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Guarantor 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 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, may take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other 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 Lessee, with or without process of law, provided, however, if within 30 days from a notice of termination of the Lease or a Declaration of Default, the Vendee or the Guarantor pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event, the Vendor may not take or cause to be taken possession of the Equipment and absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be.

In case the Vendor shall demand possession of the

Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee and the Guarantor shall, at their own expense, forthwith and in the usual manner, (a) cause the Equipment to be moved to and assembled at such location as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee has agreed to furnish pursuant to the Lease, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee, and to permit inspection of the Equipment by any prospective purchaser or lessee of the Equipment. This agreement to deliver the Equipment and furnish facilities 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 Vendor shall be entitled to a decree requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may request permission from the Vendee and the Guarantor to retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and to make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's request to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendee and the Guarantor shall by written consent permit the Vendor to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained

by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee or the Guarantor, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be; provided, further, that if the Vendee or the Guarantor shall not give such written consent within such 30-day period, or if any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee or the Guarantor should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be. The proceeds of such sale or other disposition, less

the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Guarantor or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's

or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor 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 Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted

by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. Prior to the delivery and acceptance of any unit of the Equipment, the Vendee will cause this Agreement, any assignments hereof by the Vendee and any amendments or supplements hereto and thereto, and prior to the settlement for such unit, the Vendee will cause any assignment hereof by the Builder and any amendment or supplement thereto, in each case to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Vendee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States of America, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 19. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 4 hereof and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pur-

suant to subparagraph (a) of the third paragraph of Article 4 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; provided, however, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement.

ARTICLE 21. Article Headings; Effect and Modification of Agreement; Immunities. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Vendor, the Vendee and the Guarantor this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, between them 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 representatives of the Vendor, the Vendee and the Guarantor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of First Security State Bank are each and every one of them made and intended not as personal representations, undertakings and agreements by said Bank, or for the purpose or with the intention of binding said Bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by said Bank solely in the exercise of the powers expressly conferred upon said Bank as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank on account of any representation, undertaking or agreement of said Bank, either expressed or implied, all such personal liability of said Bank, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate and to the Beneficiary for satisfaction of the same.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, c/o First Security Bank of Utah, N.A., Trust Department; Corporate Division, 79 South Main Street, Salt Lake City, Utah 84111, with a copy to the Beneficiary at One Embarcadero Center, San Francisco, California 94111, Attention:

Itel Leasing Corporation-Contract Administration
Department

(b) to the Builder, at the address specified in
Item 1 of Annex A hereto,

(c) to the Guarantor at One Embarcadero Center,
San Francisco, California 94111, Attention: Itel Leasing
Corporation-Contract Administration Department

(d) to any assignee of the Vendor, or of the
Vendee, at such address as may have been furnished in
writing to the Vendee or the Vendor, as the case may
be, by such assignee,

or at such other address as may have been furnished in writ-
ing by such party to the other parties to this Agreement.

ARTICLE 23. Law Governing. The terms of this
Agreement and all rights and obligations hereunder shall
be governed by the laws of the State of Utah; provided, how-
ever, that the parties shall be entitled to all rights con-
ferred by Section 20c of the Interstate Commerce Act, such
additional rights arising out of the filing, recording, reg-
istering or depositing hereof and of any assignment hereof as
shall be conferred by the laws of the several jurisdictions
in which this Agreement or any assignment hereof shall be
filed, recorded, registered or deposited, or in which any
unit of the Equipment shall be located, and any rights aris-
ing out of the marking on the units of the Equipment.

ARTICLE 24. Execution. This Agreement may be
executed in any number of counterparts, each of which so
executed shall be deemed to be an original, and such counter-
parts together shall constitute but one and the same contract,
which shall be sufficiently evidenced by any such original
counterpart. Although for convenience this Agreement is
dated as of the date first above written, the actual date
or dates of execution hereof by the parties hereto is or
are, respectively, the date or dates stated in the acknowl-
edgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have exe-
cuted or caused this instrument to be executed all as of the

date first above written.

NATIONAL RAILWAY UTILIZATION CORPORATION,

by John H. Res
~~Vice~~ President

[Corporate Seal]

Attest:

John M. Sterling Jr.
Assistant Secretary

FIRST SECURITY STATE BANK,
solely in its capacity as
Trustee,

by _____
Authorized Officer

[Corporate Seal]

Attest:

Authorized Officer

ITEL CORPORATION,

by _____
Vice President

[Corporate Seal]

Attest:

Secretary

state South Carolina
~~COMMONWEALTH OF PENNSYLVANIA~~,)
Greenville) ss.:
COUNTY OF ~~PHILADELPHIA~~,)

On this 4 day of June 1975, before me personally appeared John H. Rees, to me personally known, who, being by me duly sworn, says that he is ~~Vice~~ President of NATIONAL RAILWAY UTILIZATION 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.

Carl C. Kell

Notary Public

[Notarial Seal]

My Commission expires 11/19/79

STATE OF UTAH ,)
) ss.:
COUNTY OF SALT LAKE ,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking 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 banking corporation.

Notary Public

[Notarial Seal]

My Commission expires

ANNEX A

TO

CONDITIONAL SALE AGREEMENT

- Item 1: National Railway Utilization Corporation, a corporation having an address at 1247 Suburban Station, Philadelphia, Pennsylvania 19103.
- Item 2: The Equipment shall be settled for in not more than eight Groups of units of the Equipment delivered to and accepted by the Vendee on the date of settlement unless a greater number shall be agreed to by the Vendor and the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its other obligations or liabilities under Articles 2, 3 and 4 of this Agreement and Item 4 of this Annex A, 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. It

is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee and its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Vendee or the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any 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, 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

seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee or the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give 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 notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ANNEX B

TO

NATIONAL RAILWAY UTILIZATION CORPORATION

CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Maximum Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
10-ton 10' 6" box cars	steel box car, outside stake, welded construc- tion, end steel- lined, cubic feet 5077, light weight 62,000 approx., inside length 50' 6", length over strickers 52' 9", length over end sill 50' 6-5/8", truck centers 40' 10", inside width 9' 6", width overall maximum 10' 4", height rail to roof 14' 3-3/8"	Pickens, South Carolina	100	PICK 55200- 55299	\$30,000	\$3,000,000	May thru Nov- ember 1975 at Build- ers plant

ANNEX C

TO

CONDITIONAL SALE AGREEMENT

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
1/1/76	.2026%
2/1/76	.2046
3/1/76	.2067
4/1/76	.2087
5/1/76	.2108
6/1/76	.2129
7/1/76	.2151
8/1/76	.2172
9/1/76	.2194
10/1/76	.2216
11/1/76	.2238
12/1/76	.2260
1/1/77	.2283
2/1/77	.2306
3/1/77	.2329
4/1/77	.2352
5/1/77	.2376
6/1/77	.2399
7/1/77	.2423
8/1/77	.2448
9/1/77	.2472
10/1/77	.2497
11/1/77	.2522
12/1/77	.2547
1/1/78	.2572
2/1/78	.2598
3/1/78	.2624
4/1/78	.2650
5/1/78	.2677
6/1/78	.2704
7/1/78	.2731
8/1/78	.2758
9/1/78	.2786
10/1/78	.2813
11/1/78	.2842
12/1/78	.2870

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
1/1/79	.2899%
2/1/79	.2928
3/1/79	.2957
4/1/79	.2987
5/1/79	.3016
6/1/79	.3047
7/1/79	.3077
8/1/79	.3108
9/1/79	.3139
10/1/79	.3170
11/1/79	.3202
12/1/79	.3234
1/1/80	.3266
2/1/80	.3299
3/1/80	.3332
4/1/80	.3365
5/1/80	.3399
6/1/80	.3433
7/1/80	.3467
8/1/80	.3502
9/1/80	.3537
10/1/80	.3572
11/1/80	.3608
12/1/80	.3644
1/1/81	.3681
2/1/81	.3717
3/1/81	.3755
4/1/81	.3792
5/1/81	.3830
6/1/81	.3868
7/1/81	.3907
8/1/81	.3946
9/1/81	.3986
10/1/81	.4025
11/1/81	.4066
12/1/81	.4106
1/1/82	.4147
2/1/82	.4189
3/1/82	.4231
4/1/82	.4273
5/1/82	.4316
6/1/82	.4359
7/1/82	.4403
8/1/82	.4447

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
9/1/82	.4491
10/1/82	.4536
11/1/82	.4581
12/1/82	.4627
1/1/83	.4673
2/1/83	.4720
3/1/83	.4767
4/1/83	.4815
5/1/83	.4863
6/1/83	.4912
7/1/83	.4961
8/1/83	.5011
9/1/83	.5061
10/1/83	.5111
11/1/83	.5162
12/1/83	.5214
1/1/84	.5266
2/1/84	.5319
3/1/84	.5372
4/1/84	.5426
5/1/84	.5480
6/1/84	.5535
7/1/84	.5590
8/1/84	.5646
9/1/84	.5702
10/1/84	.5759
11/1/84	.5817
12/1/84	.5875
1/1/85	.5934
2/1/85	.5993
3/1/85	.6053
4/1/85	.6114
5/1/85	.6175
6/1/85	.6237
7/1/85	.6299
8/1/85	.6362
9/1/85	.6426
10/1/85	.6490
11/1/85	.6555
12/1/85	.6620
1/1/86	.6687
2/1/86	.6753
3/1/86	.6821
4/1/86	.6889
5/1/86	.6958

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
6/1/86	.7028%
7/1/86	.7098
8/1/86	.7169
9/1/86	.7241
10/1/86	.7313
11/1/86	.7386
12/1/86	.7460
1/1/87	.7535
2/1/87	.7610
3/1/87	.7686
4/1/87	.7763
5/1/87	.7841
6/1/87	.7919
7/1/87	.7998
8/1/87	.8078
9/1/87	.8159
10/1/87	.8240
11/1/87	.8323
12/1/87	.8406
1/1/88	.8490
2/1/88	.8575
3/1/88	.8661
4/1/88	.8747
5/1/88	.8835
6/1/88	.8923
7/1/88	.9012
8/1/88	.9103
9/1/88	.9194
10/1/88	.9286
11/1/88	.9378
12/1/88	.9472
1/1/89	.9567
2/1/89	.9663
3/1/89	.9759
4/1/89	.9857
5/1/89	.9955
6/1/89	1.0055
7/1/89	1.0155
8/1/89	1.0257
9/1/89	1.0360
10/1/89	1.0463
11/1/89	1.0568
12/1/89	1.0674

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
1/1/90	1.0780%
2/1/90	1.0888
3/1/90	1.0997
4/1/90	1.1107
5/1/90	1.1218
6/1/90	1.1330
7/1/90	1.1443
8/1/90	1.1558
9/1/90	1.1673
10/1/90	1.1790
11/1/90	1.1791

LEASE OF RAILROAD EQUIPMENT

Between

FIRST SECURITY STATE BANK,

AS Trustee for

Itel Leasing International, Inc.

Under a Trust Agreement Dated

as of March 15, 1975

and

PICKENS RAILROAD COMPANY

Dated as of March 15, 1975

[Covering 100 70-ton 50'6" Box Cars]

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1975, between FIRST SECURITY STATE BANK, a state banking corporation, not in its individual capacity but solely as Trustee pursuant to a Trust Agreement dated as of March 15, 1975, with ITEL Leasing International Inc. (said bank being hereinafter called the Lessor and said corporation being hereinafter called the Beneficiary), and PICKENS RAILROAD COMPANY, a South Carolina corporation (hereinafter called the Lessee).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of March 15, 1975 (hereinafter called the Conditional Sale Agreement), with NATIONAL RAILWAY UTILIZATION CORPORATION (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Annex A hereto; and

WHEREAS the Builder has assigned certain of its interests in the Conditional Sale Agreement to FIRST SECURITY BANK OF UTAH, N.A., as Agent under a Finance Agreement dated as of March 15, 1975 (said Agent hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS the Lessee desires to lease all the units of such equipment or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreement on or prior to November 30, 1975 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the lessor

under the Conditional Sale Agreement. Upon such delivery, the Lessee, at its own expense, will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be acceptance, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been delivered, inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 4 hereof and Article 9 of the Conditional Sale Agreement; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease:

(a) on December 1, 1975, an amount equal to the sum of (i) interest on the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the Closing Date (as such term is defined in the Conditional Sale Agreement) for such Unit to December 1, 1975, at a rate per annum equal to (x) 4% above (y) the lowest minimum lending rate publicly quoted by Bank of America, N.T.&S.A. for loans of 90-day maturities to substantial commercial borrowers as in time to time in effect, changing on the first day of the month following any change in such rate (such lowest rate being hereinafter called the Prime Rate) and (ii) interest on the Conditional Sale indebtedness (as such term is defined in the Conditional Sale Agreement) for each day elapsed from and including November 1, 1975, to December 1, 1975, at a rate per annum equal to (x) 4% above (y) the Prime Rate, (iii) .4421 of the Purchase Price of each Unit then subject to this Lease; and (iv) 8-3/4% of the Gross Revenues (as hereinafter defined) earned from each such Unit then subject to this Lease from the Closing Date for such Unit to September 1, 1975;

(b) on January 1, 1976, and on the first day of each month thereafter to and including November 1, 1990, an amount equal to the sum of (i) the principal

and interest payments then due on the Conditional Sale Indebtedness, and (ii) .2800% of the Purchase Price of each such Unit; and

(c) On January 1, 1976, and on the first day of each month thereafter to and including March 1, 1991, an amount equal to 8-3/4% of the Gross Revenues earned during the fourth month preceding the date of such payment from each such Unit then subject to this Lease.

The portions of rental payable under this § 2 which are computed on the basis of interest shall be determined on the basis of a 360-day year and actual days elapsed in each month. If any of the rental payment dates referred to above is not a business day (as defined in the Conditional Sale Agreement), the rental payment otherwise payable on such date shall be payable on the next succeeding business day.

For purposes of this § 2, the term Gross Revenues with respect to each Unit shall mean the total of all income earned and received by the Lessee for use of such Unit by others, including all income received from users pursuant to the Interstate Commerce Commission Car Hire Rate Table in effect from time to time during the term of this Lease. The Lessee will, at or within a reasonable time after the time each such monthly payment is made furnish the Lessor with a written verification of such payment in a form satisfactory to the Lessor.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement and second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available Salt Lake City or Federal funds in the city where such payment is to be made not later than 11:00 a.m. Salt Lake City time.

As soon as reasonably possible after the execution of this Lease, the Lessor and the Lessee agree to establish

an escrow account at First Piedmont Bank & Trust Company of Greenville, South Carolina, in the name of the Lessor into which the Lessee will deposit all Adjusted Gross Revenues (as hereinafter defined) earned and received by the Lessee for the use of the Units by others. Adjusted Gross Revenues shall mean Gross Revenues (as previously defined in this § 2) minus the sum of (i) an amount equal to the monthly rental payments payable pursuant to subclauses (b) and (c) of this § 2 and (ii) an amount equal to \$2.35 per Unit per day for each day of the month in which such Gross Revenues were earned with respect to such Unit. Such adjustments to Gross Revenues will be made with respect to the months for which Gross Revenues shall have been received by the Lessee. The Lessee hereby agrees to use the funds so escrowed exclusively, and the escrow holder will be instructed to release the escrow funds only, to purchase a total of twelve new and unused standard gauge railroad box cars substantially similar to the Units. Each such unit of new equipment so purchased shall conform to the requirements for design, quality and component parts set forth in Article 2 of the Conditional Sale Agreement with respect to the Units. The Lessee agrees to grant to the Lessor a security interest in such units of railroad equipment, free and clear of any liens, unpaid charges (including taxes) encumbrances and other security interests. After the Lessee has filed an appropriate instrument with respect to the granting of such security interest, in a form satisfactory to the Lessor, in the manner set forth in § 16 hereof, the Lessor shall release the security interest granted it by the terms of the Security Agreement dated as of March 15, 1975, between the Lessor and the Lessee and the Lessor shall file an appropriate instrument in the manner set forth in § 16 hereof so releasing such interest. The Lessor agrees that interest earned on the funds so escrowed are for the account of the Lessee. Notwithstanding anything contained in this paragraph, if the Lessee has for any reason failed to purchase the twelve above-mentioned units of equipment or any thereof with the funds so escrowed or has not subjected them to the above-mentioned security interest in favor of the Lessor by December 1, 1977, the Lessee agrees that it will immediately purchase twelve such units of equipment with funds of the Lessee not in said escrow account, if necessary, and will subject such units to said security interest.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abate-

ments, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future laws to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided, unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9, and 12 hereof, shall terminate on December 1, 1990, except that the obligation of the Lessee to make the rental payments due and payable under subclause (c) of § 2 hereof shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units are subject to the rights and remedies of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale

Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed recorded and deposited and (ii) the Lessee shall have furnished to the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph C of § 14 hereof in respect of such statement.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States Federal income tax [and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state, county or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state, county and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to such Article.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), during the term of this Lease, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. The Lessee shall, on the monthly rental payment date next succeeding notice of the Casualty Occurrence, pay to the Lessor a sum equal to (i) the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Annex B hereto referred to below and (ii) the arrears rental payable quarterly for such Unit which has accrued to such rental payment date. Concurrently with each payment of Casualty Value pursuant to this § 6 the Lessee shall file with the Lessor and the Vendor a certificate of an officer of the Lessee setting forth the Casualty Value of each Unit as to which such payment is being made. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the

proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor less reasonable expenses of disposition.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Annex B hereto opposite the number of such payment date.

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Any condemnation payments received by the Lessor in respect of Units suffering a Casualty occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such condemnation payments after the Lessee shall have made payments pursuant to this § 6 without deduction for such condemnation payments, the Lessor shall pay such condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such condemnation payments shall remain the property of the Lessor.

The Lessee will procure, maintain and pay for all risk, physical loss and damage insurance in an amount equal at all times to the Casualty Value of the Units then subject to this Lease. The Lessee warrants that the foregoing insurance coverage shall be in effect at the execution of this Lease. Such insurance shall name as additional insureds (as their interests may appear) and as the sole loss payees the Lessor and/or any holder of a security interest in the Units. Such insurance shall provide that it cannot be canceled except upon 30 days' prior written notice to the Lessor and any holder of a security interest in the Units.

§ 7. Reports. On or before March 31 in each year, commencing with the year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other

than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Lease, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced. The Lessor and the Vendor shall have the right by their respective agents, to inspect the Units and the Lessee's records with respect thereto, at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

§ 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation,

the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair and faithfully meet its obligations in respect of the condition of the Units upon expiration of the term of this Lease as set out in § 13 hereof.

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

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 13 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwith-

standing the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as such Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred

by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises

of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value, if any, of the rentals which the Lessor reasonably estimates to be obtainable by the Lessor for the use of the Unit during such period, such present value to be computed in each case on a basis of 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Depreciation Deduction (as defined in § 15 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other

provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Interest Deduction (as defined in § 15 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make rental payments regardless of any offset or claim which may be asserted by the lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. Return of Units Upon Default. If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall, at its own cost, expense and risk:

A. forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic

and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or such other premises as the Lessor reasonably may designate, or, in the absence of such designation, as the Lessee may select; provided, however, that such storage on the tracks of the Lessee will not be required if such storage will interfere with the operations of the railroad of the Lessee;

B. permit the Lessor to store such Units on such tracks or other premises at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

C. transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Conditional Sale Agreement, the Lessee shall pay to the Vendor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof. The Lessee agrees to provide the storage facilities for the Vendor specified in the second paragraph of Article 16 of the Con-

ditional Sale Agreement and to permit the inspection provided therein.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as there shall be no default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreement, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as there shall be no default under this Lease or the Conditional Sale Agreement, the Lessee shall be entitled to the possession of the Units and shall be entitled (i) to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines or railroad over which the Lessee

or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, (ii) to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and (iii) to sublease any Unit or Units to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation (subject to the provisions of § 2 hereof) for such use from other railroads and companies so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in any default under any provision of this Lease.

All the rights of the Lessor hereunder (including but not limited to the rights under §§ 5, 6, 9 and 15 hereof) shall inure to the benefit of the Lessor's assigns, and whenever the term Lessor is used in this Lease, it shall apply and refer to each assignee of the Lessor.

§ 12. Right of First Refusal; Termination. In the event the Lessor elects to lease or to sell the Units to third parties at the expiration of the initial or any extended term of this Lease, as the case may be, the Lessor shall in a commercially reasonable manner solicit offers to lease or buy such Units, as the case may be, and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable offer, and the Lessee shall have a right of first refusal exercisable by written notice, delivered within

15 days of the receipt of said copy, to lease or purchase such Units, as the case may be, at the rental or sale price set forth in such offer.

The Lessee shall have the right, at its option, on at least 60 days' prior written notice to the Lessor, to terminate this Lease or any extended term thereof on the first rental payment date following the expiration of such notice. On such rental payment date the Lessee shall pay to the Lessor the Termination Value (as hereinafter defined) for all Units then subject to this Lease as of the date of such payment in accordance with Annex C hereto. The Termination Value of each such Unit as of such rental payment date shall be that percentage of the Purchase Price of each such Unit then subject to this Lease as is set forth in Annex C hereto opposite the number of such rental payment date. Upon the making of such payment by the Lessee in respect of each such Unit, the rental for such Unit shall cease to accrue, the term of this Lease shall terminate and the Lessee shall return each such Unit to the Lessor pursuant to § 13 hereof.

On or prior to December 1, 1976, but not before June 1, 1976, the Lessor shall have the right, at its option, on at least 180 days' notice to terminate this Lease if it is unable, in good faith, to arrange for refinancing of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) at an interest rate per annum of not more than 12%. If the Lessor so terminates this Lease, the Lessee shall have no further obligation with respect to the Units other than to furnish such documentation to Lessor as the Lessor reasonably determines is necessary to assign all of the Lessee's interest in the Units, to transfer as soon as reasonably possible to the Lessor any Gross Revenues earned on the Units after such date and to furnish documentation satisfactory to the Lessor as soon as reasonably possible establishing the location of each such Unit.

§ 13. Return of Units Upon Expiration of Term.
As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will (unless such Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or other premises as the Lessor reasonably may designate, provided that such storage on the Lessee's storage tracks does not interfere with the

operation of the Railroad of the Lessee or such other place or places as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks or other premises for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee. The Lessee agrees to transport the Units during said three-month period to any reasonable place designated by the Lessor, the movement of such Units to such places (other than to the storage tracks of the Lessee) to be at the expense and risk of the Lessor except that the Lessee shall pay any such expenses of the Lessor to the extent of any Gross Revenues (as defined in § 2 hereof) earned by such Units during such movement, and the Lessee shall use its best efforts to realize such Gross Revenues on such Units during such movement. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear expected, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction.

During the period of time during which the Units are being returned on or after the original or any extended term of this Lease, the Lessee will pay to the Lessor as "holdover rent" for each such Unit being returned, the daily equivalent of the rental payment in effect pursuant to sub-

clause (b) of § 2 of this Lease on the last rental payment date thereunder for each day elapsed from the date of expiration of the original or any extended term of this Lease, as the case may be, to the date each such Unit is returned to the Lessor pursuant to this § 13.

§ 14. Representations and Warranties of Lessee and Opinion of Counsel. The Lessee represents and warrants as follows:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of South Carolina, with adequate corporate power to own its properties and to carry on its business as now conducted and to enter into this Lease;

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

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state, local or foreign government or agency thereof is necessary in order to protect the interests of the Lessor in and to the Units in the United States of America;

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

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

F. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or

hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units; and

G. all Units will qualify for "incentive income" as that term is defined in the Interstate Commerce Commission Car Hire Rate Tables, in effect as of the Closing Date for such Units.

On each Closing Date (as defined in the Conditional Sale Agreement) the Lessee will deliver to the Lessor and the Vendor counterparts of the written opinion of outside counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth in subparagraphs A through G in the immediately preceding paragraph.

§ 15. Federal Income Taxes.

(a) This Lease has been entered into on the basis that the Lessor shall be entitled to such deductions, credits and other benefits as are provided to an owner of property including, without limitation:

(i) the maximum depreciation (hereinafter called the Depreciation Deduction)

(A) based on a 12-year depreciable life authorized with respect to a Unit pursuant to Section 167(m) of the Code for an asset described in Asset Guideline Class No. 00.25 in accordance with the Revenue Procedure 72-10, as supplemented to the date hereof, taking into account an estimated Gross Salvage Value of 20% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Unit which will be reduced by 10% as provided in Section 167(f) of the Code.

(B) utilizing either the "modified half-year" or the "half-year" convention pursuant to Reg. 1.167(a)-11(c)(2), and

(C) using a method of depreciation consisting initially of double declining balance method and thereafter switching to the sum-of-the-years digits

method without the consent of the Commissioner of Internal Revenue pursuant to Section 167(m) of the Code and Reg. 1.167(a)-11(c); and

(ii) the deduction under Section 163 of the Code (hereinafter called the Interest Deduction) in the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to the Conditional Sale Indebtedness.

(b) If the Lessor shall lose, shall not have or shall lose the right to claim, or if there shall be disallowed or recaptured with respect to Lessor, all or any portion of the Interest Deduction or the Depreciation Deduction as are provided to an owner of property with respect to a Unit (hereinafter called a Loss), then the monthly rental rate, Casualty Values (as defined in § 7 hereof) and Termination Values (as defined in § 12 hereof) applicable to such monthly rental payment date after written notice to the Lessee by the Lessor that a Loss has occurred, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return and after-tax cash flow over the term of the Lease in respect of such Unit to equal the net return and after-tax cash flow that would have been available if the Lessor had been entitled to utilization of all of the Interest Deduction or the Depreciation Deduction and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States or any state against the Lessor attributable to the Loss.

In determining any adjustment in the monthly rental rate, Casualty values and Termination Values under this § 15(b), Lessor shall give due consideration to (i) any subsequent tax benefits to the Lessor as a result of a Loss or attributable to the exclusion from Lessor's income which would have otherwise been includible therein or attributable to the amounts by which the deduction for depreciation in later years will exceed the amounts which would have been allowable had there not been reductions in the amounts of depreciation allowed for earlier years and (ii) the fact that state and local income taxes are deductible for Federal income tax purposes.

(c) For purposes of this § 15, a Loss shall occur upon the earliest of (1) the happening of any event (such

as disposition or change in use of any Unit) which may cause such Loss, (2) the payment by the Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (3) the adjustment of the tax return of the Lessor to reflect such Loss. The Lessor shall be responsible for, and shall not be entitled to a payment under this Section on account of, any Loss due to one or more of the following events: (1) a disposition due to sale of the Unit or the lease thereof by the Lessor prior to any default by the Lessee, or (2) a failure of the Lessor to timely or properly claim the Interest Deduction or Depreciation Deduction for the Unit in the tax return of the Lessor, or (3) a disqualifying change in the nature of the Lessor's business or liquidation thereof, or (4) a foreclosure by any person holding through the Lessor of a lien on the Unit, which foreclosure results solely from an act of the Lessor, or (5) any event which by the terms of this Lease requires payment by the Lessee of the Casualty Value or Termination Value, if such Casualty Value or Termination Value is thereafter actually paid by the Lessee, to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Lessee pursuant to this Section, or (6) the failure of the Lessor to have sufficient taxable income against which to apply such Depreciation Deduction or Interest Deduction.

In the event (i) Lessor proposes to make a payment to the Internal Revenue Service of a tax increase resulting from a Loss, (ii) there is an adjustment of the tax return of the Lessor to reflect such a Loss, or (iii) a claim shall be made by the Internal Revenue Service with respect to the disallowance in whole or in part of the Depreciation Deduction or the Interest Deduction, the Lessor hereby agrees promptly to notify Lessee of such event and not to make payment of such tax until the 30-day period referred to in (a) of the following sentence shall have expired. The Lessor agrees to take such action in connection with contesting such Loss, adjustment or claim as Lessee shall reasonably request from time to time, provided that: (A) within 30 days after receipt by Lessee of the notice of such event referred to above, Lessee shall have requested that the Lessor continue to claim the deduction being threatened or contest any such Loss, adjustment, claim or assertion of the Internal Revenue Service, (B) the Lessor, at its sole option, but after giving consideration to any recommendation by Lessee, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such Loss, adjustment or claim and may, at its option,

either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, (C) Lessee shall, if requested by the Lessor to do so, have furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that a meritorious defense exists to the claim or assertion of the Internal Revenue Service and (D) Lessee shall have indemnified the Lessor in a manner satisfactory to Lessor for any liability or loss which the Lessor may incur as the result of continuing to claim the deduction being threatened or contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with continuing to claim such deduction or contesting such claim, including, without limitation, (x) reasonable attorneys' and accountants' fees and disbursements, and (y) the amount of any interest or penalty which may ultimately be payable to the United States or any state as the result of contesting such claim. If a refund with respect to a Unit of income tax is obtained with respect to a Loss and the monthly rental rate has been increased to reflect such Loss, the monthly rental rate applicable to such unit shall, on and after the next succeeding monthly rental payment date, be reduced by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return and after-tax cash flow over the term of the Lease in respect of such item to equal the net return and after-tax cash flow that would have been realized by the Lessor prior to such Loss and the Lessor shall forthwith pay to the Lessee any interest paid by the United States on any such refund. If the term of this Lease has expired or is insufficient to permit Lessee to recover the amount of the reduction provided under the preceding sentence, the amount of such reduction shall forthwith be paid to the Lessee by the Lessor.

(d) All the Lessor's rights and privileges arising from the indemnities contained in this § 15 shall survive the expiration or other termination of this Lease with respect to any or all items leased hereunder, and such indemnities are expressly made for the benefit of, and shall be enforceable by the Lessor, its successors and assigns.

(e) The Lessor will make, for each taxable year of the Lessee in which possession of the Units is transferred under this Lease by the Lessor to the Lessee, an irrevocable

general election satisfactory to the Lessee as conforming to the requirements and regulations promulgated under the Code, as the same may from time to time be amended (the "Regulations") to treat the Lessee as having purchased all the Units during such taxable year for purposes of any Investment Tax Credit or Job Development Credit allowed by Section 38 and related sections of the Code which may be applicable with respect to the Units. The Lessor shall further deliver timely statements to the Lessee evidencing such general election and complying with the Regulations; it will make filings with the Internal Revenue Service required by the Regulations and requested by the Lessee, and it will do or perform any other act desirable or necessary to assign to the Lessee, with respect to the Units, possession of which is transferred by the Lessor to the Lessee, any such credit against Federal income taxes afforded by the Code, as the same may from time to time be amended, with respect to the purchase or acquisition of the Units.

§ 16. Recording; Expenses. Prior to the delivery and acceptance hereunder of any Unit, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, recording and depositing and refiling, reregistering, rerecording and redepositing required of the Lessor under Article 18 of the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the first assignment thereof by the Builder, and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor.

The Lessor will pay the expenses of financing (including commissions, legal fees and printing, etc.) and other related expenses normally associated with such trans-

action. The Lessee will pay its own legal fees and other expenses (including expenses and fees imposed or incurred in carrying out its responsibilities under this § 16).

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also, to the extent legally enforceable, an amount equal to 1% per annum in excess of the rate payable on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, c/o First Security Bank of Utah, N.A., attention: Trust Department, Corporate Division, 79 South Main Street, Salt Lake City, Utah 84111, with a copy to the Beneficiary at One Embarcadero Center, San Francisco, California 94111, attention of ITEL Leasing Corporation, Contract Administrator;

if to the Lessee, at P. O. Box 8931, Greenville, South Carolina 29204;

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

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited

or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements,

oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although for convenience this Lease is dated as of the date first above set forth, 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.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of South Carolina; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking on the Units.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed 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 date first above written.

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Trustee,

by

[Corporate Seal]

Authorized Officer

Attest:

Authorized Officer

PICKENS RAILROAD COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Secretary

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY STATE 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.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF SOUTH CAROLINA,)
) ss.:
COUNTY OF GREENVILLE,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President of PICKENS 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.

Notary Public

[Notarial Seal]

My Commission Expires

ANNEX A

Type	Builder's Specifications	Builder's Plant	Maximum Quantity	Lessee's Road Numbers (Both Inclusive)	Maximum Unit Base Price	Total Base Price	Delivery
70-ton 50' 6" box cars	Steel box car, out-side stake, welded construction, end steel-lined, cubic feet 5077, light-weight 62,000 approx., inside length 50'6", length over strikers 52'9", length over end sill 50'6-5/8", truck centers 40'10", inside width 9'6", width overall maximum 10'4", height rail to roof 14'3-3/8"	Pickens, South Carolina	100	PICK 55200-55299	\$30,000	\$3,000,000	May thru November at Builder's plant

ANNEX B

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim	100.2068	42	96.7787
1	100.1909	43	96.6098
2	100.1723	44	96.4365
3	100.1526	45	96.2585
4	100.1328	46	96.0758
5	100.1110	47	95.8885
6	100.0891	48	95.6964
7	100.0671	49	95.4995
8	100.0422	50	95.2978
9	100.0153	51	95.0921
10	99.9864	52	94.8829
11	99.9545	53	94.6691
12	99.9207	54	94.4516
13	99.8847	55	94.2303
14	99.8457	56	94.0041
15	99.8002	57	93.7730
16	99.7470	58	93.5372
17	99.6898	59	93.2962
18	99.6249	60	93.0503
19	99.5522	61	92.7994
20	99.4760	62	92.5431
21	99.3956	63	92.2825
22	99.3108	64	92.0183
23	99.2224	65	91.7494
24	99.1295	66	91.4769
25	99.0321	67	91.2007
26	98.9310	68	90.9189
27	98.8269	69	90.6322
28	98.7192	70	90.3406
29	98.6072	71	90.0433
30	98.4915	72	89.7410
31	98.3722	73	89.4336
32	98.2489	74	89.1202
33	98.1212	75	88.8020
34	97.9888	76	88.4804
35	97.8524	77	88.1540
36	97.7114	78	87.8241
37	97.5657	79	87.4905
38	97.4158	80	87.1508
39	97.2624	81	86.8061
40	97.1054	82	86.4566
41	96.9439	83	86.1007

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
84	85.7397	133	61.8392
85	85.3736	134	61.2200
86	85.0010	135	60.5937
87	84.6230	136	59.9660
88	84.2417	137	59.3347
89	83.8557	138	58.7018
90	83.4664	139	58.0675
91	83.0736	140	57.4238
92	82.6740	141	56.7765
93	82.2695	142	56.1253
94	81.8602	143	55.4648
95	81.4438	144	54.8003
96	81.0224	145	54.1319
97	80.5959	146	53.4540
98	80.1623	147	52.7687
99	79.7228	148	52.0828
100	79.2803	149	51.3939
101	78.8332	150	50.7045
102	78.3830	151	50.0145
103	77.9296	152	49.3147
104	77.4687	153	48.6119
105	77.0031	154	47.9059
106	76.5327	155	47.1901
107	76.0547	156	46.4710
108	75.5718	157	45.7487
109	75.0838	158	45.0164
110	74.5881	159	44.2765
111	74.0861	160	43.5372
112	73.5814	161	42.7959
113	73.0723	162	42.0551
114	72.5606	163	41.3149
115	72.0460	164	40.5645
116	71.5233	165	39.8120
117	70.9961	166	39.0573
118	70.4643	167	38.2923
119	69.9243	168	37.5250
120	69.3795	169	36.7554
121	68.8300	170	35.9754
122	68.2720	171	35.1879
123	67.7074	172	34.4023
124	67.1405	173	33.6159
125	66.5697	174	32.8315
126	65.9966	175	32.0492
127	65.4212	176	31.2565
128	64.8372	177	30.4628
129	64.2489	178	30.0000
130	63.6565	179	30.0000
131	63.0551	180	30.0000
132	62.4494		

ANNEX C

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim	20.0288	44	22.0409
1	19.1719	45	22.0565
2	19.2755	46	22.0696
3	19.3792	47	22.0802
4	19.4839	48	22.0881
5	19.5878	49	22.0934
6	19.6928	50	22.0960
7	19.7986	51	22.0970
8	19.9029	52	22.0963
9	20.0066	53	22.0933
10	20.1094	54	22.0888
11	20.2107	55	22.0827
12	20.3114	56	22.0738
13	20.4113	57	22.0626
14	20.5096	58	22.0489
15	20.6031	59	22.0323
16	20.6910	60	22.0133
17	20.7763	61	21.9917
18	20.8558	62	21.9673
19	20.9296	63	21.9408
20	21.0015	64	21.9130
21	21.0707	65	21.8832
22	21.1373	66	21.8521
23	21.2018	67	21.8196
24	21.2637	68	21.7842
25	21.3227	69	21.7465
26	21.3798	70	21.7064
27	21.4355	71	21.6633
28	21.4893	72	21.6179
29	21.5406	73	21.5702
30	21.5899	74	21.5192
31	21.6373	75	21.4661
32	21.6826	76	21.4121
33	21.7251	77	21.3562
34	21.7652	78	21.2993
35	21.8029	79	21.2416
36	21.8379	80	21.1805
37	21.8702	81	21.1175
38	21.9002	82	21.0523
39	21.9286	83	20.9839
40	21.9563	84	20.9133
41	21.9795	85	20.8407
42	22.0020	86	20.7646
43	22.0226	87	20.6862

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
88	20.6074	134	15.2940
89	20.5270	135	15.1479
90	20.4461	136	15.0044
91	20.3647	137	14.8619
92	20.2799	138	14.7223
93	20.1933	139	14.5855
94	20.1051	140	14.4444
95	20.0132	141	14.3044
96	19.9196	142	14.1653
97	19.8242	143	14.0219
98	19.7251	144	13.8795
99	19.6236	145	13.7381
100	19.5223	146	13.5924
101	19.4198	147	13.4447
102	19.3174	148	13.3010
103	19.2151	149	13.1593
104	19.1090	150	13.0218
105	19.0018	151	12.8883
106	18.8932	152	12.7508
107	18.7808	153	12.6153
108	18.6672	154	12.4819
109	18.5521	155	12.3444
110	18.4333	156	12.2089
111	18.3119	157	12.0755
112	18.1914	158	11.9380
113	18.0702	159	11.7988
114	17.9499	160	11.6651
115	17.8304	161	11.5349
116	17.7070	162	11.4103
117	17.5829	163	11.2915
118	17.4582	164	11.1688
119	17.3294	165	11.0404
120	17.1999	166	10.9336
121	17.0696	167	10.8138
122	16.9353	168	10.6975
123	16.7985	169	10.5845
124	16.6635	170	10.4678
125	16.5285	171	10.3498
126	16.3951	172	10.2394
127	16.2636	173	10.1338
128	16.1281	174	10.0361
129	15.9924	175	10.0000
130	15.8569	176	10.0000
131	15.7173	177	10.0000
132	15.5775	178	10.0000
133	15.4378	179	10.0000
		180	10.0000

AGREEMENT AND ASSIGNMENT dated as of March 15, 1975, between the corporation first named following the testimonium below (hereinafter called the Builder), and FIRST SECURITY BANK OF UTAH, N.A., acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the party named in Annex I thereto (hereinafter called the Investor), said Agent, so acting, being hereinafter called the Assignee).

WHEREAS the Builder, FIRST SECURITY STATE BANK (hereinafter called the Vendee), as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with ITEL Leasing International, Inc. (hereinafter called the Beneficiary) and ITEL CORPORATION (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

WHEREAS the Vendee, and PICKENS RAILROAD COMPANY, a South Carolina corporation (hereinafter called the Lessee), have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Vendee to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) 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, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) all the right, security title and interest of the Builder in and to each unit of the Equipment, when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Guarantor 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 deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to 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 and the Guarantor 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 agrees that it shall 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 of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit 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 and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Builder further 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 under the Conditional Sale Agreement; 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 under the Conditional Sale Agreement until the filings, registrations, recordations and deposits referred to in Article 18 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Vendee that such filings, registrations, recordations and deposits have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, 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. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

The Builder agrees that any amounts payable to it by the Vendee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agree-

ment with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to that portion of the Purchase Price thereof not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 4, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Vendee that, at the time of delivery of such units 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 and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 1 of the Lease;

(c) a certificate of an officer of the Builder to the effect that none of the units of the Equipment in such Group was placed in the service of the Lessee or otherwise was used by the Lessee or any other person prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee,

dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) 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 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 or in the District of Columbia, and (viii) registration of the Conditional Sale Agreement or this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(f) an opinion of counsel for the Guarantor dated as of such Closing Date, to the effect set forth in clause (vi) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and carry on its business as now con-

ducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms;

(g) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction 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, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder in accordance with its terms; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

(i) an opinion of counsel for the Vendee, dated as of such Closing Date, to the effect set forth in clauses (i), (iii), (iv) and (vi), as such subclause (vi) pertains to Federal banking laws and the laws of the State of Utah, of subparagraph (e) above and stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, is a legal

and valid instrument binding upon the Vendee and enforceable against the Vendee in accordance with its terms and (iii) the Trust Agreement has been duly authorized, executed and delivered on behalf of the Vendee and, assuming due authorization, execution and delivery by the Beneficiary, is a legal and valid instrument binding upon the Vendee and enforceable in accordance with its terms.

(j) an opinion of counsel for the Beneficiary, dated as of the Closing Date, stating that the Trust Agreement has been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the Vendee, is a legal and valid instrument binding upon the Beneficiary and enforceable in accordance with its terms.

In giving the opinions specified in subparagraphs (e), (f) and (g) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e) and (i), counsel may rely as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and in giving the opinion specified in said subparagraph (e) counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder, the Guarantor or the Vendee as to such matter.

The assignee shall not be required to make payment for any Group or Groups of the Equipment assigned hereunder:

(i) on the Closing Date for such Group or Groups, unless the Assignee has on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment;

(ii) on the Closing Date for such Group or Groups, unless the Vendee has paid the amount or amounts required to be paid by it on such Closing Date pursuant to subparagraph (a) of the third paragraph of Article 4

of the Conditional Sale Agreement; or

(iii) at any time after the commencement of any proceedings specified in clause (c) of Article 15 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement.

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.

SECTION 5. 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 or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

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

(b) 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, titles and interests hereby assigned

and transferred to the Assignee or intended so to be;
and

(c) agrees that, upon request of the Assignee, its successors and assigns, it 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 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded, registered or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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 this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NATIONAL RAILWAY UTILIZATION
CORPORATION,

by

John H. Pees
President

[Corporate Seal]

Attest:

by

John M. Sterling, Jr.
Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

by

Authorized Officer

[Corporate Seal]

Attest:

by

Authorized Officer

state South Carolina

COMMONWEALTH OF PENNSYLVANIA)
Greenville) ss.:
COUNTY OF ~~PHILADELPHIA~~)

On this 4 day of June 1975, before me personally appeared John H. Rees, to me personally known, who, being by me duly sworn, says that he is ~~Vice~~ Vice President of NATIONAL RAILWAY UTILIZATION 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.

C. L. Clark

Notary Public

[Notarial Seal]

My Commission expires 11/19/79

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 15, 1975.

FIRST SECURITY STATE BANK,
as Trustee,

by

Vice President

ITEL CORPORATION,

by

Vice President

7845

RECORDATION NO. Filed & Recorded

JUN 05 1975 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1975

among

NATIONAL RAILWAY UTILIZATION CORPORATION, as Vendor/Builder

FIRST SECURITY STATE BANK, Trustee
for Itel Leasing International, Inc, under a Trust Agreement
dated as of March 15, 1975, as Vendee

and

ITEL CORPORATION, as Guarantor

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1975

between

NATIONAL RAILWAY UTILIZATION CORPORATION

and

FIRST SECURITY BANK OF UTAH, N. A.

CONDITIONAL SALE AGREEMENT dated as of March 15, 1975, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), FIRST SECURITY STATE BANK, a state banking corporation (hereinafter with its successors and assigns called the Vendee), not in its individual capacity but solely as Trustee pursuant to a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with ITEL Leasing International, Inc. (hereinafter called the Beneficiary) and ITEL Corporation, a Delaware corporation (hereinafter called the Guarantor).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a lease dated as of the date hereof (hereinafter called the Lease) of the Equipment with PICKENS RAILROAD COMPANY, a South Carolina corporation, as lessee (hereinafter called the Lessee);

WHEREAS the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions; Additional Agreements. The parties hereto contemplate that the Vendee will furnish that portion of the purchase price for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such purchase price shall be paid to the Builder by an assignee of the Builder's right, title and interest

under this Agreement pursuant to an Agreement and Assignment between the Builder and First Security Bank of Utah, N. A., as agent under a Finance Agreement dated as of March 15, 1975.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment 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 or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

Additional Agreements, if any, set forth in Annex A hereto shall be deemed to be a part of this Agreement as fully as though such Additional Agreements had been set forth in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement has been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act nor until settlement for such units of Equipment has occurred pursuant to Article 4 hereof; provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (c) of Article 15 hereof or clauses C or D of § 9 of the Lease or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

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, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance

with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an authorized inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices may not be increased but are subject to such decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as set forth in Annex B or as so decreased. If on any Closing Date (as hereinafter defined in this Article) the Purchase Price of any unit of Equipment for which settlement is then being made under this Agreement exceeds \$30,000, the Builder (and any assignee of the Builder) will, upon request of the Vendee and the Guarantor, enter into an agreement excluding from this Agreement such unit of Equipment.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (not later than November 30, 1975, such date being hereinafter called the Cut-Off Date) as shall be fixed by the Lessee by written notice delivered by the Lessee to the Builder, the Vendor and the Vendee at least ten business days prior to the Closing Date designated therein. The term "business days" as used herein

means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Salt Lake City, Utah are authorized or obligated to remain closed.

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

(a) on the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore been and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$2,400,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) in 179 consecutive monthly instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on the first day of each month, commencing January 1, 1976, to and including November 1, 1990 (or if any such date is not a business day, on the next following business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred or from the immediately preceding interest payment date, as the case maybe, at a rate per annum equal to (i) 4% above (ii) the lowest minimum lending rate publicly quoted by Bank of America, NT&SA for loans of 90-day maturities to substantial borrowers as from time to time in effect, changing on the first day of the month following any change in such rate (such lowest rate being hereinafter called the Prime Rate), provided, however, that if such Prime Rate plus 4% exceeds an interest rate of 10% per annum then such interest

rate shall be at a rate equal to 10% per annum. The Vendor will, not less than three days prior to the date each such interest payment is due and payable, notify the Vendee and the Lessee of the Prime Rate applicable on such interest payment date as well as the amount of the interest payment to be made by the Vendee on such date. Such interest shall be payable, to the extent accrued, on December 1, 1975, and on each Payment Date thereafter. The instalments of principal payable on each Payment Date shall be calculated in accordance with Annex C hereto by multiplying the percentage set forth therein opposite the applicable principal payment date times the original unpaid principal amount of the Conditional Sale Indebtedness and such instalments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year and actual days elapsed in each month.

The Vendee will pay interest, to the extent legally enforceable, at the rate of 1% per annum in excess of the interest rate then payable on the Conditional Sale Indebtedness upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement 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 and the Lessee as provided in this Agreement. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the

terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, at the expense of the Vendee and without liability to the Vendor, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 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 instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses,

taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement.

ARTICLE 7. Maintenance, Casualty Occurrences. The Vendee will at all times maintain and keep the Equipment, or cause the Equipment to be maintained and kept, in good order and repair at its own expense.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully notified in regard thereto. On the next succeeding Payment Date, pay to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Article 7 the Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each unit as to which such payment is being made. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee and without liability to the Vendor, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

Any condemnation payments received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article. If the Vendor shall receive any condemnation payments in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such condemnation payment, the Vendor shall pay such condemnation payments to the Vendee.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the pre-

ceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

The Guarantor will furnish to the Vendor upon its written request (i) as soon as available and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Guarantor, copies of the balance sheet of the Guarantor as of the end of such accounting period and copies of the related statements of income and retained earnings of the Guarantor for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; and (ii) as soon as available and in any event within 120 days after the end of each fiscal year of the Guarantor copies of the balance sheet of the Guarantor and of the related statements of income and retained earnings of the Guarantor for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by the Guarantor's independent public accountants.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number of the Lessee as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to pro-

protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee and/or the Lessee or their respective affiliates.

ARTICLE 10. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense, 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 Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns and sublessees under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this Agreement, be used (i) upon the lines of railroad owned or operated by the Lessee or its affiliates (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and (ii) upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; provided, however, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Vendee may also lease the Equipment to any company incorporated in any state in the United States or in the District of Columbia with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement. A copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or the Beneficiary or their successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly

discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations

hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without its vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertaking of the Guarantor hereunder, may be assigned by the Vendor 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 or referred to in Article 13 hereof, or relieve the Vendee or the Guarantor of their obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agree-

ment, 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 and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee and the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

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

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, upon request by the assignee, change, or cause to be changed, the markings on each side of each unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of

less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with each settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

ARTICLE 15. 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 and the Guarantor shall fail to pay in full any indebtedness in respect of the Purchase Price or any other sum payable by the Vendee as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Vendee and the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Vendee or the Guarantor hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness

shall continue), all the obligations of the Vendee or the Guarantor under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Guarantor or for their 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 and this Agreement or any interest therein or on any unit of Equipment, as the case may be, shall not be reassigned or retransferred with 30 days of written notice from the Vendor to do so;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease and any other lease with respect to the Equipment, or any unit or units thereof, then in effect immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid 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 of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Upon a Declaration of Default, the Vendor shall 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 or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with

the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease or any such other lease by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease or any such other lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Guarantor 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 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, may take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other 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 Lessee, with or without process of law, provided, however, if within 30 days from a notice of termination of the Lease or a Declaration of Default, the Vendee or the Guarantor pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event, the Vendor may not take or cause to be taken possession of the Equipment and absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be.

In case the Vendor shall demand possession of the

Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee and the Guarantor shall, at their own expense, forthwith and in the usual manner, (a) cause the Equipment to be moved to and assembled at such location as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee has agreed to furnish pursuant to the Lease, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee, and to permit inspection of the Equipment by any prospective purchaser or lessee of the Equipment. This agreement to deliver the Equipment and furnish facilities 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 Vendor shall be entitled to a decree requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may request permission from the Vendee and the Guarantor to retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and to make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's request to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendee and the Guarantor shall by written consent permit the Vendor to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained

by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee or the Guarantor, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be; provided, further, that if the Vendee or the Guarantor shall not give such written consent within such 30-day period, or if any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee or the Guarantor should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or the Guarantor, as the case may be. The proceeds of such sale or other disposition, less

the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Guarantor or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's

or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor 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 Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted

by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. Prior to the delivery and acceptance of any unit of the Equipment, the Vendee will cause this Agreement, any assignments hereof by the Vendee and any amendments or supplements hereto and thereto, and prior to the settlement for such unit, the Vendee will cause any assignment hereof by the Builder and any amendment or supplement thereto, in each case to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Vendee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States of America, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 19. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 4 hereof and interest thereon, and the due and punctual performance of all obligations of the Vendee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pur-

suant to subparagraph (a) of the third paragraph of Article 4 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; provided, however, that after the payment by the Guarantor to the Vendor of all sums payable under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement.

ARTICLE 21. Article Headings; Effect and Modification of Agreement; Immunities. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Vendor, the Vendee and the Guarantor this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, between them 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 representatives of the Vendor, the Vendee and the Guarantor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of First Security State Bank are each and every one of them made and intended not as personal representations, undertakings and agreements by said Bank, or for the purpose or with the intention of binding said Bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by said Bank solely in the exercise of the powers expressly conferred upon said Bank as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank on account of any representation, undertaking or agreement of said Bank, either expressed or implied, all such personal liability of said Bank, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate and to the Beneficiary for satisfaction of the same.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, c/o First Security Bank of Utah, N.A., Trust Department; Corporate Division, 79 South Main Street, Salt Lake City, Utah 84111, with a copy to the Beneficiary at One Embarcadero Center, San Francisco, California 94111, Attention:

Itel Leasing Corporation-Contract Administration
Department

(b) to the Builder, at the address specified in
Item 1 of Annex A hereto,

(c) to the Guarantor at One Embarcadero Center,
San Francisco, California 94111, Attention: Itel Leasing
Corporation-Contract Administration Department

(d) to any assignee of the Vendor, or of the
Vendee, at such address as may have been furnished in
writing to the Vendee or the Vendor, as the case may
be, by such assignee,

or at such other address as may have been furnished in writ-
ing by such party to the other parties to this Agreement.

ARTICLE 23. Law Governing. The terms of this
Agreement and all rights and obligations hereunder shall
be governed by the laws of the State of Utah; provided, how-
ever, that the parties shall be entitled to all rights con-
ferred by Section 20c of the Interstate Commerce Act, such
additional rights arising out of the filing, recording, reg-
istering or depositing hereof and of any assignment hereof as
shall be conferred by the laws of the several jurisdictions
in which this Agreement or any assignment hereof shall be
filed, recorded, registered or deposited, or in which any
unit of the Equipment shall be located, and any rights aris-
ing out of the marking on the units of the Equipment.

ARTICLE 24. Execution. This Agreement may be
executed in any number of counterparts, each of which so
executed shall be deemed to be an original, and such counter-
parts together shall constitute but one and the same contract,
which shall be sufficiently evidenced by any such original
counterpart. Although for convenience this Agreement is
dated as of the date first above written, the actual date
or dates of execution hereof by the parties hereto is or
are, respectively, the date or dates stated in the acknowl-
edgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have exe-
cuted or caused this instrument to be executed all as of the

date first above written.

NATIONAL RAILWAY UTILIZATION CORPORATION,

by

[Corporate Seal]

Vice President

Attest:

Assistant Secretary

FIRST SECURITY STATE BANK,
solely in its capacity as
Trustee,

by

Jay D. Kimb

Authorized Officer

[Corporate Seal]

Attest:

Paul L. Murphy
Authorized Officer

ITEL CORPORATION,

by

John T. Smith
Vice President
Attorney-in-Fact

[Corporate Seal]

Attest:

Ayres C. Dossa
Secretary

Attorney-in-Fact

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF PHILADELPHIA ,)

On this day of 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is Vice President of NATIONAL RAILWAY UTILIZATION 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.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH ,)
) ss.:
COUNTY OF SALT LAKE ,)

On this *4th* day of *June* 1975, before me personally appeared *Jay D. Knudsen*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said banking corporation, that said instrument was signed and sealed on behalf of said banking 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 banking corporation.

Robert J. Longfield

Notary Public

[Notarial Seal]

My Commission expires

July 22, 1978

STATE OF UTAH)
) ss.:
COUNTY OF SALT LAKE)

On this 4th day of June, 1975, before me personally appeared John G. Bannister, Jr., to me personally know, who, being by me duly sworn, says that he is an Attorney in Fact of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed by its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

(Notarial Seal)

My Commission Expires
July 22, 1978

ANNEX A

TO

CONDITIONAL SALE AGREEMENT

- Item 1: National Railway Utilization Corporation, a corporation having an address at 1247 Suburban Station, Philadelphia, Pennsylvania 19103.
- Item 2: The Equipment shall be settled for in not more than eight Groups of units of the Equipment delivered to and accepted by the Vendee on the date of settlement unless a greater number shall be agreed to by the Vendor and the Vendee.
- Item 3: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called this Agreement) and warrants that the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Vendee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its other obligations or liabilities under Articles 2, 3 and 4 of this Agreement and Item 4 of this Annex A, 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. It

is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind.

The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee of any of its rights under this Item 3.

Item 4: Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee and its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Vendee or the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any 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, 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

seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee or the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give 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 notice to the Builder of any claim known to the Vendee from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ANNEX B

TO

NATIONAL RAILWAY UTILIZATION CORPORATION

CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Maximum Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
10-ton 50' 6" box cars	steel box car, outside stake, welded construc- tion, end steel- lined, cubic feet 5077, light weight 62,000 approx., inside length 50' 6", length over strickers 52' 9", length over end sill 50' 6-5/8", truck centers 40' 10", inside width 9' 6", width overall maximum 10' 4", height rail to roof 14' 3-3/8"	Pickens, South Carolina	100	PICK 55200- 55299	\$30,000	\$3,000,000	May thru Nov- ember 1975 at Build- ers plant

ANNEX C

TO

CONDITIONAL SALE AGREEMENT

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
1/1/76	.2026%
2/1/76	.2046
3/1/76	.2067
4/1/76	.2087
5/1/76	.2108
6/1/76	.2129
7/1/76	.2151
8/1/76	.2172
9/1/76	.2194
10/1/76	.2216
11/1/76	.2238
12/1/76	.2260
1/1/77	.2283
2/1/77	.2306
3/1/77	.2329
4/1/77	.2352
5/1/77	.2376
6/1/77	.2399
7/1/77	.2423
8/1/77	.2448
9/1/77	.2472
10/1/77	.2497
11/1/77	.2522
12/1/77	.2547
1/1/78	.2572
2/1/78	.2598
3/1/78	.2624
4/1/78	.2650
5/1/78	.2677
6/1/78	.2704
7/1/78	.2731
8/1/78	.2758
9/1/78	.2786
10/1/78	.2813
11/1/78	.2842
12/1/78	.2870

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
1/1/79	.2899%
2/1/79	.2928
3/1/79	.2957
4/1/79	.2987
5/1/79	.3016
6/1/79	.3047
7/1/79	.3077
8/1/79	.3108
9/1/79	.3139
10/1/79	.3170
11/1/79	.3202
12/1/79	.3234
1/1/80	.3266
2/1/80	.3299
3/1/80	.3332
4/1/80	.3365
5/1/80	.3399
6/1/80	.3433
7/1/80	.3467
8/1/80	.3502
9/1/80	.3537
10/1/80	.3572
11/1/80	.3608
12/1/80	.3644
1/1/81	.3681
2/1/81	.3717
3/1/81	.3755
4/1/81	.3792
5/1/81	.3830
6/1/81	.3868
7/1/81	.3907
8/1/81	.3946
9/1/81	.3986
10/1/81	.4025
11/1/81	.4066
12/1/81	.4106
1/1/82	.4147
2/1/82	.4189
3/1/82	.4231
4/1/82	.4273
5/1/82	.4316
6/1/82	.4359
7/1/82	.4403
8/1/82	.4447

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
9/1/82	.4491
10/1/82	.4536
11/1/82	.4581
12/1/82	.4627
1/1/83	.4673
2/1/83	.4720
3/1/83	.4767
4/1/83	.4815
5/1/83	.4863
6/1/83	.4912
7/1/83	.4961
8/1/83	.5011
9/1/83	.5061
10/1/83	.5111
11/1/83	.5162
12/1/83	.5214
1/1/84	.5266
2/1/84	.5319
3/1/84	.5372
4/1/84	.5426
5/1/84	.5480
6/1/84	.5535
7/1/84	.5590
8/1/84	.5646
9/1/84	.5702
10/1/84	.5759
11/1/84	.5817
12/1/84	.5875
1/1/85	.5934
2/1/85	.5993
3/1/85	.6053
4/1/85	.6114
5/1/85	.6175
6/1/85	.6237
7/1/85	.6299
8/1/85	.6362
9/1/85	.6426
10/1/85	.6490
11/1/85	.6555
12/1/85	.6620
1/1/86	.6687
2/1/86	.6753
3/1/86	.6821
4/1/86	.6889
5/1/86	.6958

<u>Principal Payment Date</u>	<u>Percentage to Be Multiplied Times Original Unpaid Balance of Conditional Sale Indebtedness</u>
6/1/86	.7028%
7/1/86	.7098
8/1/86	.7169
9/1/86	.7241
10/1/86	.7313
11/1/86	.7386
12/1/86	.7460
1/1/87	.7535
2/1/87	.7610
3/1/87	.7686
4/1/87	.7763
5/1/87	.7841
6/1/87	.7919
7/1/87	.7998
8/1/87	.8078
9/1/87	.8159
10/1/87	.8240
11/1/87	.8323
12/1/87	.8406
1/1/88	.8490
2/1/88	.8575
3/1/88	.8661
4/1/88	.8747
5/1/88	.8835
6/1/88	.8923
7/1/88	.9012
8/1/88	.9103
9/1/88	.9194
10/1/88	.9286
11/1/88	.9378
12/1/88	.9472
1/1/89	.9567
2/1/89	.9663
3/1/89	.9759
4/1/89	.9857
5/1/89	.9955
6/1/89	1.0055
7/1/89	1.0155
8/1/89	1.0257
9/1/89	1.0360
10/1/89	1.0463
11/1/89	1.0568
12/1/89	1.0674

Principal
Payment
Date

Percentage to Be Multiplied
Times Original Unpaid Balance of
Conditional Sale Indebtedness

1/1/90	1.0780%
2/1/90	1.0888
3/1/90	1.0997
4/1/90	1.1107
5/1/90	1.1218
6/1/90	1.1330
7/1/90	1.1443
8/1/90	1.1558
9/1/90	1.1673
10/1/90	1.1790
11/1/90	1.1791

LEASE OF RAILROAD EQUIPMENT

Between

FIRST SECURITY STATE BANK,

AS Trustee for

Itel Leasing International, Inc.

Under a Trust Agreement Dated

as of March 15, 1975

and

PICKENS RAILROAD COMPANY

Dated as of March 15, 1975

[Covering 100 70-ton 50'6" Box Cars]

LEASE OF RAILROAD EQUIPMENT dated as of March 15, 1975, between FIRST SECURITY STATE BANK, a state banking corporation, not in its individual capacity but solely as Trustee pursuant to a Trust Agreement dated as of March 15, 1975, with ITEL Leasing International Inc. (said bank being hereinafter called the Lessor and said corporation being hereinafter called the Beneficiary), and PICKENS RAILROAD COMPANY, a South Carolina corporation (hereinafter called the Lessee).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of March 15, 1975 (hereinafter called the Conditional Sale Agreement), with NATIONAL RAILWAY UTILIZATION CORPORATION (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Annex A hereto; and

WHEREAS the Builder has assigned certain of its interests in the Conditional Sale Agreement to FIRST SECURITY BANK OF UTAH, N.A., as Agent under a Finance Agreement dated as of March 15, 1975 (said Agent hereinafter, together with its successors and assigns, called the Vendor); and

WHEREAS the Lessee desires to lease all the units of such equipment or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreement on or prior to November 30, 1975 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. Delivery and Acceptance of Units. The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the lessor

under the Conditional Sale Agreement. Upon such delivery, the Lessee, at its own expense, will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be acceptance, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) in accordance with the provisions of Article 3 of the Conditional Sale Agreement, stating that such Unit has been delivered, inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 4 hereof and Article 9 of the Conditional Sale Agreement; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease:

(a) on December 1, 1975, an amount equal to the sum of (i) interest on the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the Closing Date (as such term is defined in the Conditional Sale Agreement) for such Unit to December 1, 1975, at a rate per annum equal to (x) 4% above (y) the lowest minimum lending rate publicly quoted by Bank of America, N.T.&S.A. for loans of 90-day maturities to substantial commercial borrowers as in time to time in effect, changing on the first day of the month following any change in such rate (such lowest rate being hereinafter called the Prime Rate) and (ii) interest on the Conditional Sale indebtedness (as such term is defined in the Conditional Sale Agreement) for each day elapsed from and including November 1, 1975, to December 1, 1975, at a rate per annum equal to (x) 4% above (y) the Prime Rate, (iii) .4421 of the Purchase Price of each Unit then subject to this Lease; and (iv) 8-3/4% of the Gross Revenues (as hereinafter defined) earned from each such Unit then subject to this Lease from the Closing Date for such Unit to September 1, 1975;

(b) on January 1, 1976, and on the first day of each month thereafter to and including November 1, 1990, an amount equal to the sum of (i) the principal

and interest payments then due on the Conditional Sale Indebtedness, and (ii) .2800% of the Purchase Price of each such Unit; and

(c) On January 1, 1976, and on the first day of each month thereafter to and including March 1, 1991, an amount equal to 8-3/4% of the Gross Revenues earned during the fourth month preceding the date of such payment from each such Unit then subject to this Lease.

The portions of rental payable under this § 2 which are computed on the basis of interest shall be determined on the basis of a 360-day year and actual days elapsed in each month. If any of the rental payment dates referred to above is not a business day (as defined in the Conditional Sale Agreement), the rental payment otherwise payable on such date shall be payable on the next succeeding business day.

For purposes of this § 2, the term Gross Revenues with respect to each Unit shall mean the total of all income earned and received by the Lessee for use of such Unit by others, including all income received from users pursuant to the Interstate Commerce Commission Car Hire Rate Table in effect from time to time during the term of this Lease. The Lessee will, at or within a reasonable time after the time each such monthly payment is made furnish the Lessor with a written verification of such payment in a form satisfactory to the Lessor.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement and second, so long as no event of default under the Conditional Sale Agreement shall have occurred and be continuing, to pay any balance promptly to the Lessor at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available Salt Lake City or Federal funds in the city where such payment is to be made not later than 11:00 a.m. Salt Lake City time.

As soon as reasonably possible after the execution of this Lease, the Lessor and the Lessee agree to establish

an escrow account at First Piedmont Bank & Trust Company of Greenville, South Carolina, in the name of the Lessor into which the Lessee will deposit all Adjusted Gross Revenues (as hereinafter defined) earned and received by the Lessee for the use of the Units by others. Adjusted Gross Revenues shall mean Gross Revenues (as previously defined in this § 2) minus the sum of (i) an amount equal to the monthly rental payments payable pursuant to subclauses (b) and (c) of this § 2 and (ii) an amount equal to \$2.35 per Unit per day for each day of the month in which such Gross Revenues were earned with respect to such Unit. Such adjustments to Gross Revenues will be made with respect to the months for which Gross Revenues shall have been received by the Lessee. The Lessee hereby agrees to use the funds so escrowed exclusively, and the escrow holder will be instructed to release the escrow funds only, to purchase a total of twelve new and unused standard gauge railroad box cars substantially similar to the Units. Each such unit of new equipment so purchased shall conform to the requirements for design, quality and component parts set forth in Article 2 of the Conditional Sale Agreement with respect to the Units. The Lessee agrees to grant to the Lessor a security interest in such units of railroad equipment, free and clear of any liens, unpaid charges (including taxes) encumbrances and other security interests. After the Lessee has filed an appropriate instrument with respect to the granting of such security interest, in a form satisfactory to the Lessor, in the manner set forth in § 16 hereof, the Lessor shall release the security interest granted it by the terms of the Security Agreement dated as of March 15, 1975, between the Lessor and the Lessee and the Lessor shall file an appropriate instrument in the manner set forth in § 16 hereof so releasing such interest. The Lessor agrees that interest earned on the funds so escrowed are for the account of the Lessee. Notwithstanding anything contained in this paragraph, if the Lessee has for any reason failed to purchase the twelve above-mentioned units of equipment or any thereof with the funds so escrowed or has not subjected them to the above-mentioned security interest in favor of the Lessor by December 1, 1977, the Lessee agrees that it will immediately purchase twelve such units of equipment with funds of the Lessee not in said escrow account, if necessary, and will subject such units to said security interest.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abate-

ments, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease, or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future laws to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided, unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9, and 12 hereof, shall terminate on December 1, 1990, except that the obligation of the Lessee to make the rental payments due and payable under subclause (c) of § 2 hereof shall survive the expiration of the term of this Lease.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units are subject to the rights and remedies of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale

Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein.

§ 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c"

or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Conditional Sale Agreement shall have been filed recorded and deposited and (ii) the Lessee shall have furnished to the Vendor and the Lessor an opinion of counsel to the effect set forth in subparagraph C of § 14 hereof in respect of such statement.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States Federal income tax [and, to the extent that the Lessor receives credit therefor against its United States Federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state, county or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state, county and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; provided, however, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to such Article.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. Payment for Casualty Occurrences; Insurance.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), during the term of this Lease, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. The Lessee shall, on the monthly rental payment date next succeeding notice of the Casualty Occurrence, pay to the Lessor a sum equal to (i) the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Annex B hereto referred to below and (ii) the arrears rental payable quarterly for such Unit which has accrued to such rental payment date. Concurrently with each payment of Casualty Value pursuant to this § 6 the Lessee shall file with the Lessor and the Vendor a certificate of an officer of the Lessee setting forth the Casualty Value of each Unit as to which such payment is being made. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the

proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit and shall pay any excess to the Lessor less reasonable expenses of disposition.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of such Unit as is set forth in Annex B hereto opposite the number of such payment date.

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Any condemnation payments received by the Lessor in respect of Units suffering a Casualty occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such condemnation payments after the Lessee shall have made payments pursuant to this § 6 without deduction for such condemnation payments, the Lessor shall pay such condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such condemnation payments shall remain the property of the Lessor.

The Lessee will procure, maintain and pay for all risk, physical loss and damage insurance in an amount equal at all times to the Casualty Value of the Units then subject to this Lease. The Lessee warrants that the foregoing insurance coverage shall be in effect at the execution of this Lease. Such insurance shall name as additional insureds (as their interests may appear) and as the sole loss payees the Lessor and/or any holder of a security interest in the Units. Such insurance shall provide that it cannot be canceled except upon 30 days' prior written notice to the Lessor and any holder of a security interest in the Units.

§ 7. Reports. On or before March 31 in each year, commencing with the year 1976, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other

than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Lease, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced. The Lessor and the Vendor shall have the right by their respective agents, to inspect the Units and the Lessee's records with respect thereto, at such reasonable times as the Lessor or the Vendor may request during the continuance of this Lease.

§ 8. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification. The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have against the Builder under the provisions of Items 3 and 4 of Annex A to the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation,

the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; provided, however, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair and faithfully meet its obligations in respect of the condition of the Units upon expiration of the term of this Lease as set out in § 13 hereof.

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

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 13 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwith-

standing the full payment of all obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. Default. If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as such Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred

by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises

of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value, if any, of the rentals which the Lessor reasonably estimates to be obtainable by the Lessor for the use of the Unit during such period, such present value to be computed in each case on a basis of 6% per annum discount, compounded monthly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Depreciation Deduction (as defined in § 15 hereof) lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other

provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Interest Deduction (as defined in § 15 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make rental payments regardless of any offset or claim which may be asserted by the lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. Return of Units Upon Default. If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall, at its own cost, expense and risk:

A. forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic

and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged to return the Unit or Units so interchanged) place such Units upon such storage tracks of the Lessee or such other premises as the Lessor reasonably may designate, or, in the absence of such designation, as the Lessee may select; provided, however, that such storage on the tracks of the Lessee will not be required if such storage will interfere with the operations of the railroad of the Lessee;

B. permit the Lessor to store such Units on such tracks or other premises at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor; and

C. transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Conditional Sale Agreement, the Lessee shall pay to the Vendor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof. The Lessee agrees to provide the storage facilities for the Vendor specified in the second paragraph of Article 16 of the Con-

ditional Sale Agreement and to permit the inspection provided therein.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

So long as there shall be no default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreement, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as there shall be no default under this Lease or the Conditional Sale Agreement, the Lessee shall be entitled to the possession of the Units and shall be entitled (i) to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines or railroad over which the Lessee

or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, (ii) to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and (iii) to sublease any Unit or Units to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; provided, however, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation (subject to the provisions of § 2 hereof) for such use from other railroads and companies so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition be in any default under any provision of this Lease.

All the rights of the Lessor hereunder (including but not limited to the rights under §§ 5, 6, 9 and 15 hereof) shall inure to the benefit of the Lessor's assigns, and whenever the term Lessor is used in this Lease, it shall apply and refer to each assignee of the Lessor.

§ 12. Right of First Refusal; Termination. In the event the Lessor elects to lease or to sell the Units to third parties at the expiration of the initial or any extended term of this Lease, as the case may be, the Lessor shall in a commercially reasonable manner solicit offers to lease or buy such Units, as the case may be, and upon receipt thereof shall exhibit to the Lessee a true copy of the most favorable offer, and the Lessee shall have a right of first refusal exercisable by written notice, delivered within

15 days of the receipt of said copy, to lease or purchase such Units, as the case may be, at the rental or sale price set forth in such offer.

The Lessee shall have the right, at its option, on at least 60 days' prior written notice to the Lessor, to terminate this Lease or any extended term thereof on the first rental payment date following the expiration of such notice. On such rental payment date the Lessee shall pay to the Lessor the Termination Value (as hereinafter defined) for all Units then subject to this Lease as of the date of such payment in accordance with Annex C hereto. The Termination Value of each such Unit as of such rental payment date shall be that percentage of the Purchase Price of each such Unit then subject to this Lease as is set forth in Annex C hereto opposite the number of such rental payment date. Upon the making of such payment by the Lessee in respect of each such Unit, the rental for such Unit shall cease to accrue, the term of this Lease shall terminate and the Lessee shall return each such Unit to the Lessor pursuant to § 13 hereof.

On or prior to December 1, 1976, but not before June 1, 1976, the Lessor shall have the right, at its option, on at least 180 days' notice to terminate this Lease if it is unable, in good faith, to arrange for refinancing of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) at an interest rate per annum of not more than 12%. If the Lessor so terminates this Lease, the Lessee shall have no further obligation with respect to the Units other than to furnish such documentation to Lessor as the Lessor reasonably determines is necessary to assign all of the Lessee's interest in the Units, to transfer as soon as reasonably possible to the Lessor any Gross Revenues earned on the Units after such date and to furnish documentation satisfactory to the Lessor as soon as reasonably possible establishing the location of each such Unit.

§ 13. Return of Units Upon Expiration of Term.
As soon as practicable on or after the expiration of the original or any extended term of this Lease with respect to any Unit, the Lessee will (unless such Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or other premises as the Lessor reasonably may designate, provided that such storage on the Lessee's storage tracks does not interfere with the

operation of the Railroad of the Lessee or such other place or places as the Lessor may reasonably designate or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks or other premises for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor, the movement and storage of such Unit to be at the expense and risk of the Lessee. The Lessee agrees to transport the Units during said three-month period to any reasonable place designated by the Lessor, the movement of such Units to such places (other than to the storage tracks of the Lessee) to be at the expense and risk of the Lessor except that the Lessee shall pay any such expenses of the Lessor to the extent of any Gross Revenues (as defined in § 2 hereof) earned by such Units during such movement, and the Lessee shall use its best efforts to realize such Gross Revenues on such Units during such movement. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear expected, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction.

During the period of time during which the Units are being returned on or after the original or any extended term of this Lease, the Lessee will pay to the Lessor as "holdover rent" for each such Unit being returned, the daily equivalent of the rental payment in effect pursuant to sub-

clause (b) of § 2 of this Lease on the last rental payment date thereunder for each day elapsed from the date of expiration of the original or any extended term of this Lease, as the case may be, to the date each such Unit is returned to the Lessor pursuant to this § 13.

§ 14. Representations and Warranties of Lessee and Opinion of Counsel. The Lessee represents and warrants as follows:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of South Carolina, with adequate corporate power to own its properties and to carry on its business as now conducted and to enter into this Lease;

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

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state, local or foreign government or agency thereof is necessary in order to protect the interests of the Lessor in and to the Units in the United States of America;

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

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

F. no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or

hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units; and

G. all Units will qualify for "incentive income" as that term is defined in the Interstate Commerce Commission Car Hire Rate Tables, in effect as of the Closing Date for such Units.

On each Closing Date (as defined in the Conditional Sale Agreement) the Lessee will deliver to the Lessor and the Vendor counterparts of the written opinion of outside counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth in subparagraphs A through G in the immediately preceding paragraph.

§ 15. Federal Income Taxes.

(a) This Lease has been entered into on the basis that the Lessor shall be entitled to such deductions, credits and other benefits as are provided to an owner of property including, without limitation:

(i) the maximum depreciation (hereinafter called the Depreciation Deduction)

(A) based on a 12-year depreciable life authorized with respect to a Unit pursuant to Section 167(m) of the Code for an asset described in Asset Guideline Class No. 00.25 in accordance with the Revenue Procedure 72-10, as supplemented to the date hereof, taking into account an estimated Gross Salvage Value of 20% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Unit which will be reduced by 10% as provided in Section 167(f) of the Code.

(B) utilizing either the "modified half-year" or the "half-year" convention pursuant to Reg. 1.167(a)-11(c)(2), and

(C) using a method of depreciation consisting initially of double declining balance method and thereafter switching to the sum-of-the-years digits

method without the consent of the Commissioner of Internal Revenue pursuant to Section 167(m) of the Code and Reg. 1.167(a)-11(c); and

(ii) the deduction under Section 163 of the Code (hereinafter called the Interest Deduction) in the full amount of any interest paid or accrued by the Lessor in accordance with the Lessor's method of accounting for tax purposes with respect to the Conditional Sale Indebtedness.

(b) If the Lessor shall lose, shall not have or shall lose the right to claim, or if there shall be disallowed or recaptured with respect to Lessor, all or any portion of the Interest Deduction or the Depreciation Deduction as are provided to an owner of property with respect to a Unit (hereinafter called a Loss), then the monthly rental rate, Casualty Values (as defined in § 7 hereof) and Termination Values (as defined in § 12 hereof) applicable to such monthly rental payment date after written notice to the Lessee by the Lessor that a Loss has occurred, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return and after-tax cash flow over the term of the Lease in respect of such Unit to equal the net return and after-tax cash flow that would have been available if the Lessor had been entitled to utilization of all of the Interest Deduction or the Depreciation Deduction and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States or any state against the Lessor attributable to the Loss.

In determining any adjustment in the monthly rental rate, Casualty values and Termination Values under this § 15(b), Lessor shall give due consideration to (i) any subsequent tax benefits to the Lessor as a result of a Loss or attributable to the exclusion from Lessor's income which would have otherwise been includible therein or attributable to the amounts by which the deduction for depreciation in later years will exceed the amounts which would have been allowable had there not been reductions in the amounts of depreciation allowed for earlier years and (ii) the fact that state and local income taxes are deductible for Federal income tax purposes.

(c) For purposes of this § 15, a Loss shall occur upon the earliest of (1) the happening of any event (such

as disposition or change in use of any Unit) which may cause such Loss, (2) the payment by the Lessor to the Internal Revenue Service of the tax increase resulting from such Loss, or (3) the adjustment of the tax return of the Lessor to reflect such Loss. The Lessor shall be responsible for, and shall not be entitled to a payment under this Section on account of, any Loss due to one or more of the following events: (1) a disposition due to sale of the Unit or the lease thereof by the Lessor prior to any default by the Lessee, or (2) a failure of the Lessor to timely or properly claim the Interest Deduction or Depreciation Deduction for the Unit in the tax return of the Lessor, or (3) a disqualifying change in the nature of the Lessor's business or liquidation thereof, or (4) a foreclosure by any person holding through the Lessor of a lien on the Unit, which foreclosure results solely from an act of the Lessor, or (5) any event which by the terms of this Lease requires payment by the Lessee of the Casualty Value or Termination Value, if such Casualty Value or Termination Value is thereafter actually paid by the Lessee, to the extent that such payment reimburses the Lessor for amounts otherwise payable by the Lessee pursuant to this Section, or (6) the failure of the Lessor to have sufficient taxable income against which to apply such Depreciation Deduction or Interest Deduction.

In the event (i) Lessor proposes to make a payment to the Internal Revenue Service of a tax increase resulting from a Loss, (ii) there is an adjustment of the tax return of the Lessor to reflect such a Loss, or (iii) a claim shall be made by the Internal Revenue Service with respect to the disallowance in whole or in part of the Depreciation Deduction or the Interest Deduction, the Lessor hereby agrees promptly to notify Lessee of such event and not to make payment of such tax until the 30-day period referred to in (a) of the following sentence shall have expired. The Lessor agrees to take such action in connection with contesting such Loss, adjustment or claim as Lessee shall reasonably request from time to time, provided that: (A) within 30 days after receipt by Lessee of the notice of such event referred to above, Lessee shall have requested that the Lessor continue to claim the deduction being threatened or contest any such Loss, adjustment, claim or assertion of the Internal Revenue Service, (B) the Lessor, at its sole option, but after giving consideration to any recommendation by Lessee, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such Loss, adjustment or claim and may, at its option,

either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Lessor shall elect, or contest such claim in the Tax Court of the United States, (C) Lessee shall, if requested by the Lessor to do so, have furnished the Lessor with an opinion of independent tax counsel satisfactory to the Lessor to the effect that a meritorious defense exists to the claim or assertion of the Internal Revenue Service and (D) Lessee shall have indemnified the Lessor in a manner satisfactory to Lessor for any liability or loss which the Lessor may incur as the result of continuing to claim the deduction being threatened or contesting such claim and shall have agreed to pay the Lessor on demand all costs and expenses which the Lessor may incur in connection with continuing to claim such deduction or contesting such claim, including, without limitation, (x) reasonable attorneys' and accountants' fees and disbursements, and (y) the amount of any interest or penalty which may ultimately be payable to the United States or any state as the result of contesting such claim. If a refund with respect to a Unit of income tax is obtained with respect to a Loss and the monthly rental rate has been increased to reflect such Loss, the monthly rental rate applicable to such unit shall, on and after the next succeeding monthly rental payment date, be reduced by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return and after-tax cash flow over the term of the Lease in respect of such item to equal the net return and after-tax cash flow that would have been realized by the Lessor prior to such Loss and the Lessor shall forthwith pay to the Lessee any interest paid by the United States on any such refund. If the term of this Lease has expired or is insufficient to permit Lessee to recover the amount of the reduction provided under the preceding sentence, the amount of such reduction shall forthwith be paid to the Lessee by the Lessor.

(d) All the Lessor's rights and privileges arising from the indemnities contained in this § 15 shall survive the expiration or other termination of this Lease with respect to any or all items leased hereunder, and such indemnities are expressly made for the benefit of, and shall be enforceable by the Lessor, its successors and assigns.

(e) The Lessor will make, for each taxable year of the Lessee in which possession of the Units is transferred under this Lease by the Lessor to the Lessee, an irrevocable

general election satisfactory to the Lessee as conforming to the requirements and regulations promulgated under the Code, as the same may from time to time be amended (the "Regulations") to treat the Lessee as having purchased all the Units during such taxable year for purposes of any Investment Tax Credit or Job Development Credit allowed by Section 38 and related sections of the Code which may be applicable with respect to the Units. The Lessor shall further deliver timely statements to the Lessee evidencing such general election and complying with the Regulations; it will make filings with the Internal Revenue Service required by the Regulations and requested by the Lessee, and it will do or perform any other act desirable or necessary to assign to the Lessee, with respect to the Units, possession of which is transferred by the Lessor to the Lessee, any such credit against Federal income taxes afforded by the Code, as the same may from time to time be amended, with respect to the purchase or acquisition of the Units.

§ 16. Recording; Expenses. Prior to the delivery and acceptance hereunder of any Unit, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, recording and depositing and refiling, reregistering, rerecording and redepositing required of the Lessor under Article 18 of the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the first assignment thereof by the Builder, and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor.

The Lessor will pay the expenses of financing (including commissions, legal fees and printing, etc.) and other related expenses normally associated with such trans-

action. The Lessee will pay its own legal fees and other expenses (including expenses and fees imposed or incurred in carrying out its responsibilities under this § 16).

§ 17. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also, to the extent legally enforceable, an amount equal to 1% per annum in excess of the rate payable on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, c/o First Security Bank of Utah, N.A., attention: Trust Department, Corporate Division, 79 South Main Street, Salt Lake City, Utah 84111, with a copy to the Beneficiary at One Embarcadero Center, San Francisco, California 94111, attention of IteL Leasing Corporation, Contract Administrator;

if to the Lessee, at P. O. Box 8931, Greenville, South Carolina 29204;

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

§ 19. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited

or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements,

oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although for convenience this Lease is dated as of the date first above set forth, 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.

§ 21. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of South Carolina; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking on the Units.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed 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 date first above written.

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Trustee,

by

[Corporate Seal]

Authorized Officer

Attest:

Authorized Officer

PICKENS RAILROAD COMPANY,

by

Vice President

[Corporate Seal]

Attest:

Secretary

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of 1975, before me
personally appeared , to me personally
known, who, being by me duly sworn, says that he is an autho-
rized officer of FIRST SECURITY STATE BANK, that one of
the seals affixed to the foregoing instrument is the corpo-
rate 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.

Notary Public

[Notarial Seal]

My Commission Expires

STATE OF SOUTH CAROLINA,)
) ss.:
COUNTY OF GREENVILLE,)

On this day of 1975, before me
personally appeared , to me personally
known, who, being by me duly sworn, says that he is Vice
President of PICKENS 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.

Notary Public

[Notarial Seal]

My Commission Expires

ANNEX A

Type	Builder's Specifications	Builder's Plant	Maximum Quantity	Lessee's Road Numbers (Both Inclusive)	Maximum Unit Base Price	Total Base Price	Delivery
70-ton 50' 6" box cars	Steel box car, out- side stake, welded construction, end steel-lined, cubic feet 5077, light- weight 62,000 approx., inside length 50'6", length over strikers 52'9", length over end sill 50'6-5/8", truck centers 40'10", inside width 9'6", width overall maximum 10'4", height rail to roof 14'3-3/8"	Pickens, South Carolina	100	PICK 55200- 55299	\$30,000	\$3,000,000	May thru Novem- ber 1975 at Build- er's plant

ANNEX B

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim	100.2068	42	96.7787
1	100.1909	43	96.6098
2	100.1723	44	96.4365
3	100.1526	45	96.2585
4	100.1328	46	96.0758
5	100.1110	47	95.8885
6	100.0891	48	95.6964
7	100.0671	49	95.4995
8	100.0422	50	95.2978
9	100.0153	51	95.0921
10	99.9864	52	94.8829
11	99.9545	53	94.6691
12	99.9207	54	94.4516
13	99.8847	55	94.2303
14	99.8457	56	94.0041
15	99.8002	57	93.7730
16	99.7470	58	93.5372
17	99.6898	59	93.2962
18	99.6249	60	93.0503
19	99.5522	61	92.7994
20	99.4760	62	92.5431
21	99.3956	63	92.2825
22	99.3108	64	92.0183
23	99.2224	65	91.7494
24	99.1295	66	91.4769
25	99.0321	67	91.2007
26	98.9310	68	90.9189
27	98.8269	69	90.6322
28	98.7192	70	90.3406
29	98.6072	71	90.0433
30	98.4915	72	89.7410
31	98.3722	73	89.4336
32	98.2489	74	89.1202
33	98.1212	75	88.8020
34	97.9888	76	88.4804
35	97.8524	77	88.1540
36	97.7114	78	87.8241
37	97.5657	79	87.4905
38	97.4158	80	87.1508
39	97.2624	81	86.8061
40	97.1054	82	86.4566
41	96.9439	83	86.1007

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
84	85.7397	133	61.8392
85	85.3736	134	61.2200
86	85.0010	135	60.5937
87	84.6230	136	59.9660
88	84.2417	137	59.3347
89	83.8557	138	58.7018
90	83.4664	139	58.0675
91	83.0736	140	57.4238
92	82.6740	141	56.7765
93	82.2695	142	56.1253
94	81.8602	143	55.4648
95	81.4438	144	54.8003
96	81.0224	145	54.1319
97	80.5959	146	53.4540
98	80.1623	147	52.7687
99	79.7228	148	52.0828
100	79.2803	149	51.3939
101	78.8332	150	50.7045
102	78.3830	151	50.0145
103	77.9296	152	49.3147
104	77.4687	153	48.6119
105	77.0031	154	47.9059
106	76.5327	155	47.1901
107	76.0547	156	46.4710
108	75.5718	157	45.7487
109	75.0838	158	45.0164
110	74.5881	159	44.2765
111	74.0861	160	43.5372
112	73.5814	161	42.7959
113	73.0723	162	42.0551
114	72.5606	163	41.3149
115	72.0460	164	40.5645
116	71.5233	165	39.8120
117	70.9961	166	39.0573
118	70.4643	167	38.2923
119	69.9243	168	37.5250
120	69.3795	169	36.7554
121	68.8300	170	35.9754
122	68.2720	171	35.1879
123	67.7074	172	34.4023
124	67.1405	173	33.6159
125	66.5697	174	32.8315
126	65.9966	175	32.0492
127	65.4212	176	31.2565
128	64.8372	177	30.4628
129	64.2489	178	30.0000
130	63.6565	179	30.0000
131	63.0551	180	30.0000
132	62.4494		

ANNEX C

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim	20.0288	44	22.0409
1	19.1719	45	22.0565
2	19.2755	46	22.0696
3	19.3792	47	22.0802
4	19.4839	48	22.0881
5	19.5878	49	22.0934
6	19.6928	50	22.0960
7	19.7986	51	22.0970
8	19.9029	52	22.0963
9	20.0066	53	22.0933
10	20.1094	54	22.0888
11	20.2107	55	22.0827
12	20.3114	56	22.0738
13	20.4113	57	22.0626
14	20.5096	58	22.0489
15	20.6031	59	22.0323
16	20.6910	60	22.0133
17	20.7763	61	21.9917
18	20.8558	62	21.9673
19	20.9296	63	21.9408
20	21.0015	64	21.9130
21	21.0707	65	21.8832
22	21.1373	66	21.8521
23	21.2018	67	21.8196
24	21.2637	68	21.7842
25	21.3227	69	21.7465
26	21.3798	70	21.7064
27	21.4355	71	21.6633
28	21.4893	72	21.6179
29	21.5406	73	21.5702
30	21.5899	74	21.5192
31	21.6373	75	21.4661
32	21.6826	76	21.4121
33	21.7251	77	21.3562
34	21.7652	78	21.2993
35	21.8029	79	21.2416
36	21.8379	80	21.1805
37	21.8702	81	21.1175
38	21.9002	82	21.0523
39	21.9286	83	20.9839
40	21.9563	84	20.9133
41	21.9795	85	20.8407
42	22.0020	86	20.7646
43	22.0226	87	20.6862

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
88	20.6074	134	15.2940
89	20.5270	135	15.1479
90	20.4461	136	15.0044
91	20.3647	137	14.8619
92	20.2799	138	14.7223
93	20.1933	139	14.5855
94	20.1051	140	14.4444
95	20.0132	141	14.3044
96	19.9196	142	14.1653
97	19.8242	143	14.0219
98	19.7251	144	13.8795
99	19.6236	145	13.7381
100	19.5223	146	13.5924
101	19.4198	147	13.4447
102	19.3174	148	13.3010
103	19.2151	149	13.1593
104	19.1090	150	13.0218
105	19.0018	151	12.8883
106	18.8932	152	12.7508
107	18.7808	153	12.6153
108	18.6672	154	12.4819
109	18.5521	155	12.3444
110	18.4333	156	12.2089
111	18.3119	157	12.0755
112	18.1914	158	11.9380
113	18.0702	159	11.7988
114	17.9499	160	11.6651
115	17.8304	161	11.5349
116	17.7070	162	11.4103
117	17.5829	163	11.2915
118	17.4582	164	11.1688
119	17.3294	165	11.0404
120	17.1999	166	10.9336
121	17.0696	167	10.8138
122	16.9353	168	10.6975
123	16.7985	169	10.5845
124	16.6635	170	10.4678
125	16.5285	171	10.3498
126	16.3951	172	10.2394
127	16.2636	173	10.1338
128	16.1281	174	10.0361
129	15.9924	175	10.0000
130	15.8569	176	10.0000
131	15.7173	177	10.0000
132	15.5775	178	10.0000
133	15.4378	179	10.0000
		180	10.0000

AGREEMENT AND ASSIGNMENT dated as of March 15, 1975, between the corporation first named following the testimonium below (hereinafter called the Builder), and FIRST SECURITY BANK OF UTAH, N.A., acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the party named in Annex I thereto (hereinafter called the Investor), said Agent, so acting, being hereinafter called the Assignee).

WHEREAS the Builder, FIRST SECURITY STATE BANK (hereinafter called the Vendee), as Trustee under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with ITEL Leasing International, Inc. (hereinafter called the Beneficiary) and ITEL CORPORATION (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

WHEREAS the Vendee, and PICKENS RAILROAD COMPANY, a South Carolina corporation (hereinafter called the Lessee), have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Vendee to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) 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, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) all the right, security title and interest of the Builder in and to each unit of the Equipment, when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee or the Guarantor 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 deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee or the Guarantor from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to 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 and the Guarantor 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 agrees that it shall 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 of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit 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 and the rights of the Lessee under the Lease (as such terms are defined in the Conditional Sale Agreement); and the Builder further 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 under the Conditional Sale Agreement; 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 under the Conditional Sale Agreement until the filings, registrations, recordations and deposits referred to in Article 18 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Vendee that such filings, registrations, recordations and deposits have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, 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. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, 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 any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

The Builder agrees that any amounts payable to it by the Vendee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agree-

ment with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to that portion of the Purchase Price thereof not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 4, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Vendee that, at the time of delivery of such units 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 and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 1 of the Lease;

(c) a certificate of an officer of the Builder to the effect that none of the units of the Equipment in such Group was placed in the service of the Lessee or otherwise was used by the Lessee or any other person prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee,

dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) 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 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 or in the District of Columbia, and (viii) registration of the Conditional Sale Agreement or this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(f) an opinion of counsel for the Guarantor dated as of such Closing Date, to the effect set forth in clause (vi) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and carry on its business as now con-

ducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Guarantor and, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms;

(g) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction 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, assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder in accordance with its terms; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

(i) an opinion of counsel for the Vendee, dated as of such Closing Date, to the effect set forth in clauses (i), (iii), (iv) and (vi), as such subclause (vi) pertains to Federal banking laws and the laws of the State of Utah, of subparagraph (e) above and stating that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, is a legal

and valid instrument binding upon the Vendee and enforceable against the Vendee in accordance with its terms and (iii) the Trust Agreement has been duly authorized, executed and delivered on behalf of the Vendee and, assuming due authorization, execution and delivery by the Beneficiary, is a legal and valid instrument binding upon the Vendee and enforceable in accordance with its terms.

(j) an opinion of counsel for the Beneficiary, dated as of the Closing Date, stating that the Trust Agreement has been duly authorized, executed and delivered and, assuming due authorization, execution and delivery by the Vendee, is a legal and valid instrument binding upon the Beneficiary and enforceable in accordance with its terms.

In giving the opinions specified in subparagraphs (e), (f) and (g) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e) and (i), counsel may rely as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and in giving the opinion specified in said subparagraph (e) counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder, the Guarantor or the Vendee as to such matter.

The assignee shall not be required to make payment for any Group or Groups of the Equipment assigned hereunder:

(i) on the Closing Date for such Group or Groups, unless the Assignee has on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment;

(ii) on the Closing Date for such Group or Groups, unless the Vendee has paid the amount or amounts required to be paid by it on such Closing Date pursuant to subparagraph (a) of the third paragraph of Article 4

of the Conditional Sale Agreement; or

(iii) at any time after the commencement of any proceedings specified in clause (c) of Article 15 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement.

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.

SECTION 5. 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 or the Guarantor thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

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

(b) 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, titles and interests hereby assigned

and transferred to the Assignee or intended so to be;
and

(c) agrees that, upon request of the Assignee, its successors and assigns, it 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 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded, registered or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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 this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NATIONAL RAILWAY UTILIZATION
CORPORATION,

by

[Corporate Seal]

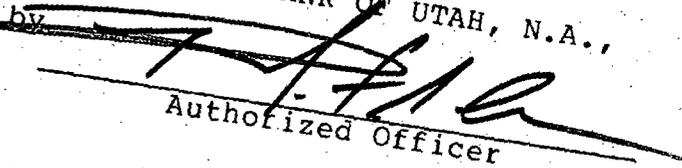
Vice President

Attest:

by

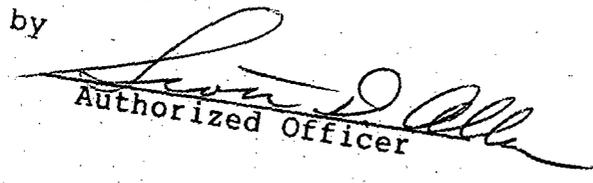
Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

by 
Authorized Officer

[Corporate Seal]

Attest:

by 
Authorized Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 15, 1975.

FIRST SECURITY STATE BANK,
as Trustee,

by

Fred L. Murphy
Vice President

ITEL CORPORATION,

by

John J. Santerley Jr.
Vice President
Attorney-in-Fact