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AGREEMENT OF CONDITIONAL SALE RECORDATION NO. Filed & Recorded

between

APR 29 1976 4 16 PM

BETHLEHEM STEEL CORPORATION INTERSTATE COMMERCE COMMISSION

and

THE PITTSBURG & SHAWMUT RAILROAD COMPANY

Dated as of March 1, 1976

AGREEMENT AND ASSIGNMENT

between

BETHLEHEM STEEL CORPORATION

and

MELLON BANK, N.A.

Dated as of March 1, 1976

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Dated as of March 1, 1976

COVERING SALE AND PURCHASE OF 100 OPEN TOP 100-TON TRIPLE HOPPER CARS
PITTSBURG & SHAWMUT SERIES 200-299

AGREEMENT OF CONDITIONAL SALE
between
BETHLEHEM STEEL CORPORATION
and
THE PITTSBURG & SHAWMUT RAILROAD COMPANY

Dated as of March 1, 1976

Covering sale and purchase of 100 Open
Top 100-Ton Triple Hopper Cars
Pittsburg & Shawmut Series 200-299

AGREEMENT OF CONDITIONAL SALE

THIS ARTICLE OF AGREEMENT made and concluded as of the first day of March, 1976, by and between BETHLEHEM STEEL CORPORATION, a corporation created and existing under and by virtue of the laws of the State of Delaware and having its principal place of business at Bethlehem, Pennsylvania, party of the first part, hereinafter referred to as "Vendor", and THE PITTSBURG & SHAWMUT RAILROAD COMPANY, a corporation created and existing under and by virtue of the laws of the Commonwealth of Pennsylvania and having its principal place of business at R.D. 2, Middle Street, Brookville, Pennsylvania, party of the second part, hereinafter referred to as "Vendee".

WITNESSETH, that for and in consideration of the mutual promises of the parties hereto hereinafter set forth, it is mutually understood and agreed by and between the parties as follows:

SECTION 1. The Vendor undertakes and agrees to sell and deliver to Vendee one hundred (100) Open Top 100-Ton Triple Hopper Cars (hereinafter collectively referred to as the "Cars"), f.o.b. at the Plant of Vendor at Johnstown, Pennsylvania, and Vendee shall accept delivery of and purchase the Cars, subject to each and all of the terms and conditions of this agreement. The Cars shall conform to Bethlehem Steel Corporation Specification dated March 1, 1976 and letters from Vendor to Vendee dated November 4, 1975, November 10, 1975 and January 22, 1976 (hereinafter collectively referred to as the

"Specifications" and incorporated herein by reference thereto), and shall be subject to final inspection and acceptance by Vendee before releasing from the aforesaid place of delivery.

SECTION 2. Vendee shall pay Vendor as the purchase price for each Car the sum of Twenty-Seven Thousand Nine Hundred (\$27,900) Dollars, making the aggregate purchase price Two Million Seven Hundred Ninety Thousand (\$2,790,000) Dollars for all of the Cars. Said purchase price shall be payable to the Vendor by deposit to its account in a bank designated by it, as follows:

(a) Upon delivery to the Vendee and its acceptance at the point of delivery above stated of the Cars, (i) the sum of Two Hundred Ninety Thousand (\$290,000) Dollars as a down payment on account of the purchase price of the Cars, and (ii) the balance of the purchase price in the sum of Two Million Five Hundred Thousand (\$2,500,000) Dollars in forty (40) consecutive quarterly installments of Sixty-Two Thousand Five Hundred (\$62,500) Dollars each, payable on the first days of January, April, July and October in each calendar year, commencing on October 1, 1976;

(b) Interest at a rate per annum (based on a year of 365 or 366 days, as the case may be) equal to 1% above the prime rate of interest of Mellon Bank, N.A. on new 90-day loans to commercial borrowers of substantial size and highest credit standing in effect at said Bank from time to time, such interest rate to change automatically from time to time effective as of the effective date of each change in

such prime rate, shall apply to and be payable on the balance of the purchase price of the Cars payable under clause (ii) of subdivision (a) above remaining unpaid from time to time, and shall begin to accrue from the date the Cars are delivered to and accepted by the Vendee, or, if this agreement is assigned by the Vendor as provided in Section 12 hereof, from the date the Assignee of the Vendor pays the Vendor the balance of the purchase price of the Cars so delivered and accepted, payable quarterly on the first days of January, April, July and October in each calendar year, commencing on October 1, 1976.

Vendee shall have the right, on any interest payment date, without the payment of premium, but after giving at least three (3) days previous notice in writing to Vendor, to anticipate the payment of the whole or any part of the unpaid quarterly installments of the balance of the purchase price of the Cars in the inverse order of their scheduled maturities.

SECTION 3. Vendor shall give Vendee full opportunity to inspect the Cars during the building thereof at the plant where such building is being done. On completion of each of the Cars, Vendee shall arrange for final inspection and acceptance thereof at said plant and shall have its agent execute and deliver to Vendor in duplicate a Certificate of Acceptance covering all Cars found to be completed in accordance with the Specifications. Subject to the provisions of Section 21 hereof, each such Certificate with respect to the Cars covered thereby shall be final and conclusive evidence that such Cars conform in workmanship, material, construction and in all respects to

the requirements and provisions of this agreement and the Specifications and have been accepted on behalf of Vendee.

SECTION 4. Vendor shall deliver the Cars at the place of delivery, ready for service and free of all liens and encumbrances and free of any claims of any nature by or in favor of any person or party claiming from, through or under Vendor, and subject only to the reservation of title thereto by Vendor in accordance with the provisions hereof. Delivery of Cars shall be commenced on or after April 30, 1976 and shall be completed on or before June 30, 1976, or such later date as Vendor and Vendee shall mutually agree upon, subject to delays due to labor troubles, fires, floods, explosions or other accidents, or delays of carriers or of subcontractors, or in receipt of materials, governmental restrictions or any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond Vendor's reasonable control.

SECTION 5. Vendor for itself and any successor or successors to its plant and manufacturing properties or business agrees that it will indemnify and save harmless Vendee against all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of alleged infringement of United States patents heretofore issued and now in existence involved in the construction of the Cars, or any part or appliance thereof, excepting those patents covering constructions or devices or specialties specifically designated by Vendee to be used by Vendor in the building of the Cars and which are not manufactured

by Vendor; and Vendee, in like manner, shall indemnify and save harmless Vendor and its assignees against all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of alleged infringement of patents by reason of the use of or incorporation in the Cars of any such devices or specialties so designated by Vendee to be used by Vendor in the building of the Cars and which are not manufactured by Vendor. Prompt notice in writing shall be given by each party to the other of any claim of patent infringement presented to such party with respect to the Cars, and the party responsible for such alleged infringement as above provided shall promptly undertake and assume the defense thereof at its own expense.

SECTION 6. All payments by Vendee hereunder shall be free of expense to Vendor for collection or other such charges. Vendee shall pay all taxes that may be assessed upon the Cars or the sale, shipment, delivery or use thereof (except income taxes). All payments provided for in this agreement shall be made by Vendee to Vendor in such currency of the United States of America as at the time of payment shall be legal tender for payment of public and private debts.

Vendee shall also pay promptly all taxes, assessments and governmental charges which from time to time after delivery hereunder may be imposed upon the Cars, or the earnings arising therefrom, or the operation thereof, or upon Vendor by reason of its ownership thereof, by any government of any country, state or political subdivision thereof, in which the Cars may be located, or which shall

have jurisdiction over the Cars or any part of them, and Vendee agrees at all times to keep the Cars free and clear of all tax liens and encumbrances, other than the lien of taxes not yet due or payable; provided, however, that Vendee shall not be required to pay any tax, assessment or other governmental charge, the validity of which Vendee shall contest in good faith and by appropriate legal proceedings, until such contest shall have been decided, unless in the reasonable judgment of Vendor its rights and interests in the Cars may be materially endangered by such delay.

Vendee shall be entitled to such deductions, credits and other benefits as are or may be available under the provisions of the Internal Revenue Code, as now or hereafter amended, by reason of Vendee's acquisition and use of the Cars, including any and all allowances for investment tax credit and for depreciation.

Vendee shall comply in all respects with all laws of the United States of America and of the several states, in or through which the Cars may be operated, covering the use, operation or maintenance of the Cars and with the lawful rules of the Interstate Commerce Commission with respect to the Cars, and of every other legislative, administrative or judicial body, exercising any power or jurisdiction over the Cars; and in the event that the said laws or rules require any alterations of any of the Cars, or any additional equipment or appliances thereon, Vendee shall conform therewith at its own expense and shall maintain the Cars in proper condition for operation under such laws and rules during the life of this agreement; provided, however, that 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 reasonable judgment of Vendor, adversely affect its rights and interests in the Cars.

SECTION 7. Vendor shall retain full legal title to and property in all the Cars until Vendee shall have made all of the payments and shall have performed all of the covenants in this agreement provided to be made, kept and performed by Vendee, notwithstanding the delivery of any or all of the Cars to and the possession and use thereof by Vendee as herein provided. Any and all replacements of parts of the Cars or additional equipment or facilities installed thereon or therein shall constitute accessions to the Cars the title to which shall be immediately vested in Vendor, and which shall be subject to all the terms, reservations and conditions of this agreement. When Vendee shall have paid in full the entire purchase price for all of the Cars, with interest thereon, and all other payments herein provided to be made by Vendee with respect thereto, title to and property in each and all the Cars shall pass to Vendee free and clear of all liens and encumbrances created by Vendor or any person claiming by, through or under Vendor without further transfer or act on the part of Vendor, but Vendor shall, if requested by Vendee, execute and deliver to Vendee a bill of sale covering the Cars when the full purchase price with interest and any and all other payments as aforesaid shall have been fully paid, together with such instrument of satisfaction or release as may be necessary or appropriate in the reasonable judgment of Vendee for filing or recording in all jurisdictions in which this agreement is filed, registered or recorded as provided for in Section 18 hereof.

SECTION 8. From and after delivery of each Car to Vendee, as aforesaid, Vendee shall insure and keep insured such Car against

loss or damage thereto by lightning, collision, derailment and other risks of physical damage to the same extent and in such manner as such insurance is maintained by Vendee on similar equipment which it owns, and shall furnish Vendor with evidence of such insurance.

SECTION 9. Vendee at its own cost shall keep all of the Cars in good order and proper running repair and in case of damage thereto will promptly repair the Car or Cars so damaged and restore them to good running order. In case any Car shall be damaged beyond repair, lost or destroyed, Vendee shall pay to Vendor the then unpaid balance of the purchase price of such Car plus accrued and unpaid interest thereon to the date of such payment and such amount, without further accrual of interest thereon, shall be applied by Vendor toward payment of the unpaid quarterly installment or installments last maturing. Within twenty (20) days after receiving advice of damage beyond repair to or loss or destruction of any of the Cars, Vendee shall give Vendor written notice thereof with full particulars of the extent of the loss or damage incurred. Any failure on the part of Vendee to pay for each Car which may be damaged beyond repair, lost or destroyed with reasonable promptness, shall entitle Vendor to declare a default hereunder and to take such action as is authorized to be taken by Vendor in case of a default by Vendee in making payment for the Cars as herein provided. Vendee shall permit inspection of the Cars from time to time by agents of Vendor at reasonable times and upon reasonable notice and, upon reasonable request of Vendor from time to time, shall furnish Vendor with a statement showing the location (as nearly as may be

possible) and condition of the Cars and what, if any, substantial repairs have been made upon any of them since the last preceding report.

SECTION 10. Before delivery of each of the Cars to Vendee Vendor shall paint or stencil upon each side of each Car the following words in letters not less than one (1) inch in height: "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c". Such words shall be so located as to be readily visible. In case, at any time before all monies due or to become due by Vendee under this agreement shall have been paid in full, such words shall at any time be removed, defaced or destroyed, Vendee shall immediately, at its own cost, cause the same to be restored or replaced; and, if by reason of change of law or otherwise, additional or other words shall be required to protect the interests of Vendor, Vendee shall, at Vendor's request, provide and install and thereafter maintain the same on all the Cars.

The Cars shall be lettered "SHAWMUT LINE" and also with the symbol of the Vendee, which is a hexagon enclosing a circle on which appears the letters "P&SRR" and a double-headed arrow on which appears the letters "Shawmut", and the Cars shall be stenciled with numbers from 200 to 299 and with such other data and information as shall be requested by Vendee not inconsistent with restrictions herein set forth; but, until all monies due or to become due by it under this agreement shall have been paid in full, Vendee shall not allow the name of any corporation or other party to be placed on any of the Cars in such manner that such name or designation might be

interpreted as a claim of ownership thereof by any person, association or corporation other than Vendor or its assignee. In case Vendee shall wish to change the number assigned to or placed on any Car, prior notice of such change shall be given to Vendor so that it may revise all appropriate records accordingly.

SECTION 11. Vendee shall bear the risk of loss and shall not be released from its obligations hereunder in the event of any damage to or destruction or loss of any of the Cars from any cause whatsoever after delivery thereof to Vendee. Vendee further agrees to save, indemnify and keep harmless Vendor from and against all loss, damages, injuries, claims or demands whatsoever, regardless of the cause thereof, in connection with any accident or otherwise arising from or caused by the operation or use of the Cars while this agreement is in force; provided, however, that the provisions of this Section shall in no way affect the obligations of Vendor expressed in Section 5 hereof; and provided further that nothing in this Section shall in any way relieve Vendor from its warranty obligations covering material and workmanship as provided in Section 21 hereof.

SECTION 12. All or any of the rights of Vendor under this agreement including the right to receive the payments herein provided to be made by Vendee, may be assigned by Vendor and reassigned by any assignee at any time and from time to time; provided, however, that no such assignment shall subject any assignee to or relieve Vendor or the successor or successors to its plant and manufacturing properties

or business from any of the obligations of Vendor as to the building or delivery of the Cars or to respond to its warranties and indemnities contained herein or relieve Vendee of its obligations to Vendor contained herein; and provided further, that no such assignment shall be deemed to enlarge the obligations of Vendor or, Vendee having failed to make any payment or perform any obligation upon its part to be made or performed, subject Vendor to any liability resulting from any action taken by any assignee or any failure of any assignee to comply with any of the provisions hereof or of any applicable law in the enforcement of any rights of Vendor which may be assigned pursuant to this Section or relieve Vendee of its obligations to Vendor under Sections 5 and 6 hereof.

Upon any such assignment the assignor shall give written notice to Vendee, together with a counterpart or certified copy of such assignment, stating the identity of the assignee, and such assignee shall, by virtue of such assignment, acquire all of Vendor's right, title and interest in and to the Cars and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by Vendee

hereunder shall, to the extent so assigned, be made to the assignee or upon its written order.

In the event that this agreement is assigned by Vendor or assigned by any assignee as herein provided, the rights of such assignee to the entire unpaid purchase price or such part thereof as may be assigned hereunder shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Vendor or the successor or successors to its business. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee against and only against Vendor and the successor or successors to its business, and shall not be enforceable against any party or parties in whom title to the Cars, or any of them, or the rights of Vendor hereunder shall vest by reason of any sale, assignment or transfer, or successive sales, assignments or transfers.

The term "Vendor" whenever used in this agreement means, before any assignment of all or any rights of Vendor hereunder as hereinbefore provided, Bethlehem Steel Corporation, and after any such assignment, the assignee or assignees for the time being of all of the rights hereunder, or in the event of any assignment of less than all of the rights hereunder, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also the assignor as regards any rights hereunder that are retained and excluded from such assignment; and the term "Bethlehem Steel Corporation" whenever used in this agreement means both before and after any such

remove the same therefrom. The assembling and delivery of the Cars as hereinbefore provided are of the essence of this agreement between the parties and, upon application to any court of equity having jurisdiction in the premises, Vendor shall be entitled to a decree against Vendee requiring specific performance hereof.

(c) If Vendee shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after declaring the entire unpaid purchase price and accrued interest thereof immediately due and payable as hereinbefore provided, Vendor, with or without taking possession thereof, may sell the Cars or any of them, and all improvements, equipment, attachments and accessories now or hereafter placed thereon, free from any and all claims of Vendee, or of any party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as Vendor may determine, all subject to and in compliance with mandatory legal requirements then in force and applicable to such sale. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at such location and at such time or times as Vendor may fix, 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 commercially reasonable manner as Vendor may determine in compliance with any mandatory legal requirements, provided that written notice of such sale shall be given to Vendee at least ten (10) days prior thereto, by telegram or certified mail addressed to Vendee at its office in

Brookville, Pennsylvania, or such other notice, if any, as may be necessary to comply with any such mandatory legal requirements. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of Vendee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any mandatory legal requirements then in force and applicable to such sale, Vendor may itself bid for and become the purchaser of the Cars or any of them so offered for sale without accountability to Vendee (except to the extent of surplus money received as hereinafter provided in the last subdivision of this Section 13), and in payment of such purchase price Vendor shall be entitled to the extent aforesaid to have credited on account thereof all sums due to Vendor from Vendee under this agreement.

(d) Each and every power or remedy hereby specifically given to Vendor shall be in addition to every other power or 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 Vendor. All such powers and remedies shall be cumulative and the exercising of one shall not be deemed a waiver of the right to exercise any other or others. No delays or omission of 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 any acquiescence therein.

(e) If Vendor shall exercise any of the powers or remedies conferred upon it hereunder, Vendee shall have the right after all sums due hereunder to Vendor shall have been received by it in full, including reasonable costs and expenses incident to the collection thereof to require title to any of the Cars, if not previously sold or otherwise disposed of by Vendor pursuant to the provisions hereof, to be transferred and assigned by Vendor to Vendee free from any further liabilities or obligations to Vendor. If after applying all sums of money realized by Vendor under the remedies herein provided, there shall remain any amount due it under the provisions of this agreement, Vendee shall pay the amount of such deficit to Vendor. If after applying as aforesaid all sums realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Vendee or as a court of competent jurisdiction shall direct.

SECTION 14. Vendee shall not assign or transfer this agreement or any of its rights hereunder nor, until Vendee shall have made all of the payments provided for in this agreement, transfer or sublet the Cars or any of them without Vendor's written consent first had and obtained, and shall not cause or permit any of the Cars to be pledged or held for any debt or obligation owing by Vendee or to be in any manner encumbered and shall not suffer the Cars or any of them to pass out of Vendee's control, except in the ordinary course of interchange of freight cars with connecting railway carriers.

The filing by Vendee or by creditors of Vendee of any petition for reorganization (or debt adjustment affecting the obligations of

manner and in such places as to comply with all applicable laws in order to publish notice of and to protect Vendor's title to the Cars, and from time to time will execute any and all further instruments that reasonably shall be requested by Vendor for such publication and protection of title; and Vendee will promptly furnish to Vendor certificates, or other evidences satisfactory to Vendor, of such filing, registration, docketing and recording. Vendee will also, with all convenient speed, cause any assignment of any interest of Vendor in this agreement to be filed with the Interstate Commerce Commission for recordation in accordance with Section 20c of the Interstate Commerce Act, as amended, and the rules and regulations thereunder approved and prescribed by said Commission, and in addition to such recordation, or in lieu thereof, in such other offices, if any in which this agreement shall have been filed, registered, docketed or recorded in accordance with the foregoing provision.

SECTION 19. Vendee shall pay all costs, charges and expenses, including counsel fees of any initial assignee, incident to the preparation, execution, acknowledgment, delivery, filing, registering and recording of this agreement, and of any instrument supplemental hereto or amendatory hereof above referred to. However, nothing in this agreement shall obligate Vendee for any such costs, charges or expenses of any assignee subsequent to the first assignment or transfer between Vendor and its assignee.

SECTION 20. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to

OR LIABILITIES ON THE PART OF BETHLEHEM STEEL CORPORATION. Such warranty shall survive the delivery to and acceptance of the Cars by the Vendee.

SECTION 22. This agreement of conditional sale, together with the Specifications hereinabove referred to, constitutes the entire agreement between Vendor and Vendee with respect to the delivery and sale of the Cars above referred to. No variation or modifications of this agreement, and no waiver of any of its conditions and provisions shall be valid unless in writing and signed by duly authorized officers of Vendor and Vendee.

SECTION 23. So long as Vendee shall not be in default under this agreement, it shall be entitled to the possession of the Cars and shall have the full right of use thereof upon the lines of railroad owned, leased or operated by it, or over which it has trackage rights, or upon any railroad company a majority of the voting capital stock of which is at the time directly or indirectly owned by the Vendee, and upon connecting and other railroads in the usual interchange of freight cars, but subject at all times to all terms and conditions of this agreement.

SECTION 24. It is agreed that all rights and obligations of the parties hereto to each other under the terms and conditions of this agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Vendor and Vendee, respectively, each

pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and duly attested as of the day and year first above written.

Attest:

R. A. Masters
Title Assistant Secretary

[Corporate Seal]

Attest:

Thomas W. Stauffer
Title Secretary

[Corporate Seal]

BETHLEHEM STEEL CORPORATION

By *A. M. Reed*
Title Vice President

THE PITTSBURG & SHAWMUT RAILROAD COMPANY

By *K. P. Keow*
Title President

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF Allegheny)

ss:

On this, the 27th day of April, 1976, before me, a Notary Public in and for said county and state, personally appeared W. R. Weaver, to me personally known, who being by me duly sworn, says that he is the President of THE PITTSBURG & SHAWMUT RAILROAD COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Grace W. Linkert
Notary Public

GRACE H. LINKERT, Notary Public
Pittsburgh, Pa.
My Commission Expires
June 3, 1978

My Commission expires:

June 3, 1978

AGREEMENT AND ASSIGNMENT

between

BETHLEHEM STEEL CORPORATION

and

MELLON BANK, N.A.

.....

Dated as of March 1, 1976

.....

Relating to Agreement of Conditional Sale between
Bethlehem Steel Corporation and The Pittsburg &
Shawmut Railroad Company dated as of March 1,
1976, covering sale and purchase of 100 Open Top
100-Ton Triple Hopper Cars, Pittsburg & Shawmut
Series 200-299

AGREEMENT AND ASSIGNMENT

THIS ARTICLE OF AGREEMENT AND ASSIGNMENT made as of the first day of March, 1976, between BETHLEHEM STEEL CORPORATION, a corporation created and existing under and by virtue of the laws of the State of Delaware and having its principal place of business at Bethlehem, Pennsylvania (hereinafter referred to as the "Assignor"), party of the first part, and MELLON BANK, N.A., a national banking association and having a branch office at Main and Diamond Streets, Butler, Pennsylvania (hereinafter referred to as the "Assignee"), party of the second part, witnesseth:

WHEREAS, an Agreement of Conditional Sale (hereinafter referred to as the "Agreement of Conditional Sale") was made and concluded between the Assignor, as Vendor, and The Pittsburg & Shawmut Railroad Company, as Vendee, dated as of the first day of March, 1976, for the sale by the Assignor of one hundred (100) Open Top 100-Ton Triple Hopper Cars (hereinafter collectively sometimes called the "Cars") and for delivery thereof to The Pittsburg & Shawmut Railroad Company by the Assignor f.o.b. at the place of delivery therein specified, all in accordance with and subject to the terms and conditions set forth therein, a counterpart of the Agreement of Conditional Sale being prefixed hereto and made a part hereof, for an aggregate purchase price of Two Million Seven Hundred Ninety Thousand (\$2,790,000) Dollars, payable with interest as provided in subdivisions (a) and (b) of Section 2 of the Agreement of Conditional Sale; and

WHEREAS, Assignee has offered to purchase from the Assignor and the Assignor has agreed to assign and transfer to the Assignee all of its right, title and interest in, to and under the Agreement of Conditional Sale (except as otherwise provided in paragraph 1 of this assignment);

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT:

1. Subject to payment by Assignee to Assignor of the amount specified in paragraph 4 of this assignment and subject to payment by The Pittsburg & Shawmut Railroad Company to Assignor of the down payment in the sum of \$290,000 specified in clause (i) of subdivision (a) of Section 2 of the Agreement of Conditional Sale, Assignor does hereby bargain, sell, assign, transfer and set over unto Assignee, its successors and assigns, all its right, title and interest in, to and under the Agreement of Conditional Sale (except rights of the Assignor against The Pittsburg & Shawmut Railroad Company in respect of the latter's obligations (i) to indemnify the Assignor for patent infringement pursuant to Section 5 of the Agreement of Conditional Sale and (ii) to pay taxes assessed against Assignor pursuant to Section 6 of the Agreement of Conditional Sale), and all right, title and interest of Assignor in and to the Cars, together with all Assignor's rights, powers, privileges and remedies in respect of the Cars under the Agreement of Conditional Sale, provided, however, that this assignment is without any recourse against Assignor for or on account of the failure of The Pittsburg & Shawmut Railroad Company to make any payments on account of the balance of the purchase price of the Cars or interest

Assignor and the successor or successors to its business, and shall not be enforceable against Assignee or any party or parties in whom title to the Cars or any of them or the rights of Assignor under the Agreement of Conditional Sale shall vest by reason of this assignment or of successive sales, assignments or transfers.

3. Assignor covenants and agrees that it will deliver the Cars to The Pittsburg & Shawmut Railroad Company free of all liens and encumbrances arising from, through or under Assignor, except the Agreement of Conditional Sale and this assignment, and in accordance with the provisions of the Agreement of Conditional Sale and that, notwithstanding this assignment, it will perform and fully comply with the provisions of Sections 4, 5 and 12 of the Agreement of Conditional Sale. Assignor further covenants and agrees that it has good and lawful right to sell the Cars as aforesaid and that it will warrant and defend the same against the lawful demands of all persons whomsoever claiming by, through or under Assignor based on claims originating prior to the delivery of the Cars by Assignor to The Pittsburg & Shawmut Railroad Company; all subject, however, to the provisions of the Agreement of Conditional Sale and the rights of The Pittsburg & Shawmut Railroad Company thereunder.

4. Assignor, upon payment for the Cars as provided in this paragraph 4, shall execute and deliver to Assignee a bill of sale transferring to Assignee the security interest of Assignor in the Cars, together with an opinion of counsel for Assignor to the effect that the

security interest of Assignor in the Cars is validly vested in Assignee subject to no liens or encumbrances arising from, through or under the Assignor, and shall forward to Assignee, with such executed bill of sale and opinion of counsel, documents evidencing acceptance of the Cars by The Pittsburgh & Shawmut Railroad Company in accordance with the Agreement of Conditional Sale.

Upon receipt of such bill of sale, opinion of counsel and documents evidencing acceptance of the Cars, Assignee shall pay to the Assignor the sum of Two Million Five Hundred Thousand (\$2,500,000) Dollars.

5. Assignor hereby represents and warrants to Assignee and its successors and assigns:

(a) That the Agreement of Conditional Sale was lawfully executed for a valid consideration and that, insofar as Assignor is concerned, it is a valid existing contract, and, according to its terms, binding upon the parties thereto, except as the enforceability of the remedies therein provided may be limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights;

(b) That the Cars therein provided for will be delivered at the time and in the manner provided in the Agreement of Conditional Sale;

(c) That no payments have been made by The Pittsburgh &

Shawmut Railroad Company to Assignor under the Agreement of Conditional Sale.

6. Without hereby limiting the generality of the foregoing provisions of this assignment, Assignor hereby authorizes and empowers Assignee to sue for, collect, receive and enforce, in respect of the Cars, in the name of Assignee, at the expense and liability and for the sole benefit of Assignee, with full power to Assignee to substitute any one or more persons with like power, the payment of any and all sums to which Assignee is or may become entitled under this assignment and to enforce compliance by The Pittsburg & Shawmut Railroad Company with the terms and agreements on its part to be performed under the Agreement of Conditional Sale.

7. Assignor covenants and agrees with Assignee that in any suit or action brought by Assignee for the recovery of any sum or sums provided in the Agreement of Conditional Sale to be paid by The Pittsburg & Shawmut Railroad Company, Assignor will indemnify and keep harmless Assignee from any and all expenses, losses and damages suffered by reason of any defense, setoff, counterclaim or recoupment of The Pittsburg & Shawmut Railroad Company arising out of the breach by Assignor of Assignor's obligations under Sections 5 and 12 of the Agreement of Conditional Sale. Assignor agrees to indemnify, save and keep harmless Assignee from and against any and all royalties, damages, claims, suits, judgments and costs that may arise because of the claim that the use of any article in the construction of the Cars and thereon

at the time of their delivery (except any design or articles specified or required by The Pittsburg & Shawmut Railroad Company and not manufactured by Assignor) infringes any patent.

8. It is mutually agreed that Assignee may assign its rights under the Agreement of Conditional Sale in respect of all or any designated number of Cars, including the right to receive any payments due or to become due to it from The Pittsburg & Shawmut Railroad Company thereunder in respect to such Cars. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all of the obligations of Assignee hereunder.

9. Assignor covenants and agrees that it will, from time to time and at all times, at the request of 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 herein set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to Assignee or intended so to be.

10. This Agreement and Assignment may be simultaneously 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 which shall be severally evidenced by any such original counterpart.

11. It is agreed that this Agreement and Assignment and all rights and obligations hereunder of the parties hereto shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, Assignor and Assignee, respectively, pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names and their respective corporate seals to be hereunto affixed and duly attested, as of the day and year first above written.

Attest:

R. J. Masters
Title Assistant Secretary
[Corporate Seal]

Attest:

Chas. W. Broderick
Title Assistant Manager
[Corporate Seal]

BETHLEHEM STEEL CORPORATION

By A. M. Reed
Title Vice President

MELLON BANK, N.A.

By J. W. Bevier
Title Vice President

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF Allegheny) ss:

On this, the 27th day of April, 1976, before me, a Notary Public in and for said county and state, personally appeared John W. Beiler Jr., to me personally known, who being by me duly sworn, says that he is a Vice President of MELLON BANK, N.A., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Grace H. Linhart
Notary Public

My Commission expires:

June 3, 1978

GRACE H. LINHART, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires
June 3, 1978

ACKNOWLEDGMENT OF NOTICE

Agreement and Assignment between
Bethlehem Steel Corporation and
Mellon Bank, N.A.

The Pittsburgh & Shawmut Railroad Company hereby acknowledges receipt and accepts notice of the foregoing Agreement and Assignment between Bethlehem Steel Corporation and Mellon Bank, N.A., dated as of the first day of March, 1976, relating to Agreement of Conditional Sale between Bethlehem Steel Corporation and The Pittsburgh & Shawmut Railroad Company, dated as of the first day of March, 1976, covering the sale and purchase of 100 Open Top 100-Ton Triple Hopper Cars.

THE PITTSBURG & SHAWMUT RAILROAD COMPANY

By



Title President

Dated as of March 1, 1976