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INDUSTRIAL COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT dated as of February 15, 1974, between SEABOARD COAST LINE RAILROAD COMPANY, a Virginia corporation, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation, which two companies operate, among other lines of railroad, the line known as "Clinchfield Railroad Company", leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina (which first two named railroad companies are the joint lessors hereunder and are hereinafter collectively called the "Clinchfield") and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, the lessee hereunder (hereinafter called the "L&N").

WITNESSETH THAT:

WHEREAS, the Clinchfield has entered into a Conditional Sale Agreement, also dated as of February 15, 1974 (hereinafter called the "Security Document") with BETHLEHEM STEEL CORPORATION, a Delaware corporation (hereinafter called the "Builder"), in the form attached hereto marked Exhibit 1, wherein the Builder has agreed to manufacture, sell and deliver to the Clinchfield the railroad equipment described in Schedule B thereto;

WHEREAS, the Builder has assigned or will assign its interests in the Security Document to MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter, together with its successors and assigns, referred to as the "Agent"); and

WHEREAS, the L&N desires to lease 500 units of said equipment (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 L&N, the Clinchfield hereby leases the Units to the L&N upon the following terms and conditions subject, however, upon default of the Clinchfield under the Security Document, to all the rights and remedies of the Agent under the Security Document;

SECTION 1. Delivery and Acceptance of Units. The Clinchfield will cause each Unit to be delivered to the L&N at the point or points within the United States of America at which such Unit is delivered to the Clinchfield under the Security Document. Upon such delivery, the L&N will cause an inspector of the L&N to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and

deliver to the Clinchfield a certificate of acceptance and delivery (hereinafter called the "Certificate of Delivery"), stating that such Unit has been inspected and accepted on behalf of the L&N on the date of such Certificate of Delivery and is marked in accordance with Section 4 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the L&N and shall be subject thereafter to all the terms and conditions of this Lease.

SECTION 2. Rentals. The L&N agrees to pay to the Clinchfield as rental for each Unit subject to this Lease consecutive semiannual payments, payable on March 15 and September 15 in each year commencing with September 15, 1974 (or if any such date is not a business day, on the next succeeding business day). The first such payment shall be in an amount equal to 1/30th of the aggregate Purchase Price (as defined in the Security Document) of the Units subject to this Lease, plus interest at the rate of 8-3/8% on the aggregate Purchase Price from February 27, 1974 to September 15, 1974, and the next 29 semiannual payments shall each be in an amount equal to 1/30th of the aggregate Purchase Price of the Units, plus interest at the rate of 8-3/8% on the aggregate unpaid Purchase Price.

The Clinchfield instructs the L&N to make, and the L&N agrees to make, to the Agent, Two Hopkins Plaza, Baltimore, Maryland 21201, Attention Corporate Trust Department, all the payments provided for in this Lease (including but not limited to the payments required under Section 6 hereof) on or before 11:00 a. m., local time at the location of the Agent, on the date on which payments are due and payable in clearing house funds at the location of the Agent.

This Lease is a net lease and the L&N shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the L&N against the Clinchfield under this Lease; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Clinchfield or the L&N 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 L&N'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,

bankruptcy, reorganization or similar proceeding against the L&N, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the L&N 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 L&N 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 L&N hereunder shall be final and the L&N shall not seek to recover all or any part of such payment from the Clinchfield for any reason whatsoever.

SECTION 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date such Unit is accepted and delivered and, subject to the provisions of Sections 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Clinchfield under the Security Document, are subject to the rights of the Agent thereunder. If an event of default should occur under the Security Document, the Agent may terminate this Lease.

SECTION 4. Identification Marks. The L&N will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, 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 name of the Agent followed by the words "Agent - Security Owner" or other appropriate words designated by the Clinchfield, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Clinchfield's and Agent's title to and property in such Unit and the rights of the Clinchfield under this Lease and of the Agent under the Security Document. The L&N will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed,

defaced or destroyed. The L&N will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Clinchfield and filed, recorded and deposited by the L&N in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the L&N 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 L&N may allow the Units to be lettered with the names or initials or other insignia customarily used by the L&N or its subsidiaries or 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.

SECTION 5. Taxes. All payments to be made by the L&N hereunder will be free of expense to the Clinchfield for collection or other charges and will be free of expense to the Clinchfield 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 Clinchfield receives credit therefor against its United States federal income tax liability, any foreign income tax) payable by the Clinchfield in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Clinchfield has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the L&N 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") hereafter 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 Security Document, all of which Impositions the L&N assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The L&N 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 Clinchfield 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 Clinchfield or result in a lien upon any such Unit; provided, however, that the L&N 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 non-payment thereof does not, in the opinion of the Clinchfield, adversely affect the title, property or rights of the Clinchfield hereunder or under the Security Document. If any Impositions shall have been charged or levied against the Clinchfield directly and paid by the Clinchfield, the L&N shall reimburse the Clinchfield on presentation of an invoice therefor.

In the event that the Clinchfield shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 5 of the Security Document not covered by the foregoing paragraph of this Section 5, the L&N shall pay such additional amounts (which shall also be deemed Impositions thereunder) to the Clinchfield as will enable the Clinchfield to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with respect to Impositions are required to be made, the L&N will either make such reports in such manner as to show the interests of the Clinchfield and the Agent in such Units or notify the Clinchfield and the Agent of such requirement and make such reports in such manner as shall be satisfactory to the Clinchfield and the Agent.

In the event that, during the continuance of this Lease, the L&N becomes liable for the payment or reimbursement of any Imposition, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the L&N.

**SECTION 6. Payment for Casualty Occurrences: Insurance.** In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Clinchfield or the L&N, irreparably damaged, seized by the government or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the L&N shall promptly and fully notify the Clinchfield and the Agent with respect thereto. On the rental payment date next succeeding such notice, the L&N shall pay to the Clinchfield the rental payment due and

payable on such date plus a sum equal to the Casualty Value (as defined in the Security Document) of such Unit as of the date of such payment and any payment made by the Clinchfield in respect of such Unit under the provisions of subparagraph (b) of the third paragraph of Article 4 of the Security Document. Upon the making of such payment by the L&N 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, the remaining semiannual payments shall each be in an amount equal to 1/30th of the aggregate Purchase Price of the remaining Units plus interest at the rate of 8-3/8% on the aggregate unpaid Purchase Price of the remaining Units, and (except in the case of the loss, theft or complete destruction of such Unit) the Clinchfield shall be entitled to recover possession of such Unit. The Clinchfield hereby appoints the L&N 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 L&N has previously paid the Casualty Value to the Clinchfield, the L&N 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 Clinchfield.

Except as hereinabove in this Section 6 provided, the L&N 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 L&N hereunder.

The L&N will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the L&N on similar equipment owned by it. Any net insurance proceeds as the result of insurance carried by the L&N received by the Clinchfield in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the L&N to the Clinchfield in respect of Casualty Occurrences pursuant to this Section 6. If the Clinchfield shall receive any such net insurance proceeds or condemnation payments after the L&N shall have made payments pursuant to this Section 6 without deduction for such net insurance proceeds or such condemnation payments, the Clinchfield shall pay such proceeds to the L&N up to an amount equal to the Casualty Value with respect to a Unit paid by the L&N and any balance of such proceeds shall remain the property of the Clinchfield.

SECTION 7. Annual Reports. On or before March 31 in each year, commencing with the calendar year 1975, the L&N will furnish to the Clinchfield and the Agent an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Clinchfield or the Agent may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by Section 4 hereof and Article 7 of the Security Document have been preserved or replaced. The Clinchfield shall have the right by its agents, to inspect the Units and the L&N's records with respect thereto at such reasonable times as the Clinchfield may request during the continuance of this Lease.

SECTION 8. Disclaimer of Warranties, Compliance with Laws and Rules, Maintenance, and Indemnification. The Clinchfield 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 L&N hereunder, and the Clinchfield 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 Clinchfield and the L&N, are to be borne by the L&N, but the Clinchfield hereby irrevocably appoints and constitutes the L&N 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 Clinchfield and/or the L&N, as their interests may appear, at the L&N's sole cost and expense, whatever claims and rights the Clinchfield may have under the provisions of Article 10 of the Security Document. The Clinchfield's receipt of a Certificate of Delivery shall be conclusive evidence as between the L&N and the Clinchfield that all Units described therein are in all the foregoing respects satisfactory to the L&N, and the L&N will not assert any claim of any nature whatsoever against the Clinchfield based on any of the foregoing matters.

The L&N agrees, for the benefit of the Clinchfield and the Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all requirements of the Association of American Railroads mutually agreed by the parties

hereto as being applicable to the Units, with all laws of the jurisdictions in which its operations involving the Units may extend 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 of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the L&N will make such alterations, changes, replacements and additions at its own expense; provided, however, that the L&N 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 Clinchfield or the Agent, adversely affect the property or rights of the Clinchfield or the Agent under this Lease or under the Security Document.

The L&N agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

Any and all additions to any Unit and any and all parts installed on and replacements made to any Unit or additions thereto, shall constitute accessions to such Unit and, at the cost and expense of the L&N, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Document) shall immediately be vested in the Clinchfield and the Agent as their respective interests appear in the Unit itself; excepting, however, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the L&N, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Association of American Railroads, the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body.

The L&N agrees to indemnify, protect and hold harmless the Clinchfield and the Agent 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 Security Document 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 resulting in damage to property in connection with the operation, use, condition, possession, storage or return of any Unit. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

SECTION 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 payment of any part of the rental provided in Section 2 hereof and such default shall continue for five days;

B. the L&N 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 L&N contained herein or in the Security Document and such default shall continue for 30 days after written notice from the Clinchfield to the L&N specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the L&N for any relief which includes, or might result in, any modification of the obligations of the L&N under this Lease 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 L&N under this Lease), 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 L&N under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the L&N or for the property of the L&N 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 proceedings shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the L&N 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 L&N under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed 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;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the L&N of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the L&N terminate this Lease, whereupon all rights of the L&N to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the L&N shall remain liable as hereinafter provided, and thereupon the Clinchfield may by its agents enter upon the premises of the L&N 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 L&N, or its successors or assigns, to use the Units for any purpose whatever; but the Clinchfield shall, nevertheless, have a right to recover from the L&N 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 L&N (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 rental 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 of the rentals which the Clinchfield reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a  $8\frac{3}{8}\%$  per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Clinchfield shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Clinchfield 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 L&N 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 permitted by law. The L&N 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 L&N or on its behalf.

The failure of the Clinchfield 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.

SECTION 10. Return of Units Upon Default If this Lease shall terminate pursuant to Section 9 hereof, the L&N shall forthwith deliver possession of the Units to the Clinchfield. For the purpose of delivering possession of any Unit or Units to the Clinchfield as above required, the L&N shall at its own cost, expense and risk;

(a) forthwith place such Units upon such storage tracks of the L&N as the Clinchfield reasonably may designate;

(b) permit the Clinchfield to store such Units on such tracks at the risk of the L&N until such Units have been sold, leased or otherwise disposed of by the Clinchfield; and

(c) transport the same to any place on the lines of railroad operated by the L&N or any of its subsidiaries or affiliates or to any connecting carrier for shipment, all as directed by the Clinchfield.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the L&N and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Clinchfield shall be entitled to a decree against the L&N requiring specific performance of the covenants of the L&N so to assemble, deliver, store and transport the Units. During any storage period, the L&N will permit the Clinchfield or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

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

SECTION 11. Assignment, Possession and Use. This Lease shall be assignable in whole or in part by the Clinchfield without the consent of the L&N, but the L&N shall be under no obligation to any assignee of the Clinchfield except upon written notice of such assignment from the Clinchfield. All the rights of the Clinchfield hereunder (including, but not limited to, the rights under Sections 5, 6 and 9 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Clinchfield's assigns (including the partners or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Clinchfield is used in this Lease it shall apply and refer to each such assignee of the Clinchfield.

So long as the L&N shall not be in default under this Lease and so long as the Clinchfield shall not be in default under the Security Document, the L&N shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Document, but, without the prior written consent of the Clinchfield, the L&N shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. The L&N, at its own expense, will promptly pay or discharge any and all sums claimed by any part which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Clinchfield or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Clinchfield, the Agent or the L&N therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. The L&N shall not, without the prior written consent of the Clinchfield, 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 immediately succeeding paragraph.

So long as the L&N shall not be in default under this Lease and so long as the Clinchfield shall not be in default under the Security Document, the L&N shall be entitled to the possession of the Units and to the

use of the Units by it or any subsidiary or affiliate upon lines of railroad owned or operated by it or any such subsidiary or affiliate or upon lines of railroad over which the L&N or any such subsidiary or affiliate has trackage or other operating rights or over which railroad equipment of the L&N or any such subsidiary or affiliate is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Document; provided, however, that the L&N 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 L&N may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this Section 11 shall be deemed to restrict the right of the L&N 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 L&N hereunder) into or with which the L&N shall have become merged or consolidated or which shall have acquired the property of the L&N as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

SECTION 12. Purchase. Provided that this Lease has not been earlier terminated, and the L&N is not in default hereunder and subject, however, to satisfaction of the Security Document, the L&N may by written notice delivered to the Clinchfield not less than six months prior to the end of the term of this Lease elect to purchase all, but not fewer than all, the Units covered by this Lease at the end of the term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the

expiration of the term of this Lease, the Clinchfield and the L&N are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Clinchfield and the L&N may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Clinchfield, the second by the L&N and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Clinchfield and the L&N. The determination so made shall be conclusively binding upon both Clinchfield and L&N. The expenses and fee of the Appraiser shall be borne by the L&N.

Upon payment of the Purchase Price, the Clinchfield shall upon request of the L&N execute and deliver to the L&N, or to the L&N's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Clinchfield) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the L&N or such assignee or nominee, in such form as may reasonably be requested by the L&N, all at the L&N's expense.

SECTION 13. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the L&N will (unless the Unit is sold to the L&N), at its own cost and expense, at the request of the Clinchfield, deliver possession of such Unit to the Clinchfield upon such storage tracks of the L&N as the L&N may designate, or, in the absence of such designation, as the Clinchfield may select, and permit the Clinchfield to store such Unit on such tracks 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 L&N, or to any connecting carrier for shipment, all as directed by the Clinchfield; the movement and storage of such Unit to be at the expense and risk of the L&N. During any such storage period the L&N will permit the Clinchfield 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 L&N shall not be liable, except in the case of negligence of the L&N or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Clinchfield 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 Clinchfield shall be entitled to a decree against the L&N requiring specific performance of the covenants of the L&N so to assemble, deliver, store and transport the Units. If Clinchfield shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Clinchfield shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the L&N and the L&N shall thereupon assume and hold the Clinchfield harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Clinchfield shall execute and deliver to the L&N a bill of sale or bills of sale transferring to the L&N, or upon its order, the Clinchfield's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The L&N shall have no liability to the Clinchfield in respect of any Unit abandoned by the Clinchfield after termination of the Lease; provided, however, that the foregoing clause shall not in any way relieve the L&N of its obligations pursuant to Section 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

SECTION 14 Opinion of Counsel. Promptly after the filing provided for in Section 15 hereof, the L&N will deliver to the Clinchfield two counterparts of the written opinion of counsel for the L&N, addressed to the Clinchfield, in scope and substance satisfactory to the Clinchfield to the effect that:

A. the I.&N is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the L&N and constitutes a valid, legal and binding agreement of the I.&N, 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 Clinchfield's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Clinchfield in and to the Units;

D. no approval is required from any public regulatory body with respect to the 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 L&N is a party or by which it may be bound; and

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 L&N, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Clinchfield's right, title and interest therein; provided, however, that such liens may attach to the rights of the L&N hereunder in and to the Units.

SECTION 15. Recording, Expenses. The L&N will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The L&N will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Clinchfield for the purpose of proper protection, to

its satisfaction, of the Clinchfield's interests in the Units, or for the purpose of carrying out the intention of this Lease or any assignment thereof; and the L&N will promptly furnish to the Clinchfield evidences of all such filing, registering, depositing or recording, and opinion or opinions of counsel for the L&N with respect thereto satisfactory to the Clinchfield. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The L&N will pay the reasonable costs and expenses involved in the preparation, printing and filing of this Lease, the Security Document and any assignment thereof, amendment or supplement thereto. The Clinchfield and the L&N will each bear the respective fees and disbursements, if any, of their respective counsel.

SECTION 16. Federal Income Taxes. The Clinchfield, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the "Code"), to an owner of the property, including (without limitation) an allowance for the investment credit (hereinafter called the "Investment Credit") with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code and the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code utilizing the "class life" prescribed in accordance with Section 167(m) of the Code (hereinafter called the "ADR Deduction"). The Clinchfield agrees that it will claim the Investment Credit and ADR Deduction with respect to the Units to the extent permissible under the Code.

The L&N represents and warrants that (i) none of the Units constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Clinchfield becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Clinchfield becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Clinchfield and (iii) at all times during the term of this Lease, each Unit will constitute "Section 38 property" within the meaning of Section 48(a) of the Code.

SECTION 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 L&N promptly to pay, to the extent legally enforceable, an amount equal to 9-3/8% per annum of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

SECTION 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 mails, first-class postage prepaid, addressed as follows:

(a) if to the Clinchfield, at 3600 West Broad Street, Richmond, Virginia 23230, Attention: Treasurer; and

(b) if to the L&N, at 908 West Broadway, Louisville, Kentucky 40201, Attention: Vice President, Secretary and Treasurer,

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

SECTION 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 Clinchfield and the L&N with respect to the Units and supersedes all other agreements, oral or written, other than the Security Document, with respect to the Units. 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 parties hereto.

SECTION 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 this Lease is dated as of February 15, 1974 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 11. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

SEABOARD COAST LINE RAILROAD  
COMPANY, AS JOINT LESSOR

By *Samuel B. Anderson*  
Vice President and Treasurer

(CORPORATE SEAL)

Attest:

*J. H. Williams*  
Assistant Secretary

LOUISVILLE AND NASHVILLE RAILROAD  
COMPANY, AS LESSEE AND JOINT LESSOR

By *Robert J. Anderson*  
Vice President, Secretary and Treasurer

(CORPORATE SEAL)

Attest:

*J. H. Williams*  
Assistant Secretary

COMMONWEALTH OF VIRGINIA )  
( ss. :  
CITY OF RICHMOND )

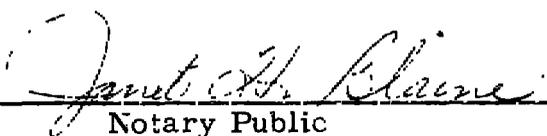
On this 26<sup>th</sup> day of February, 1974, before me personally appeared LEONARD G. ANDERSON, to me personally known, who, being by me duly sworn, says that he is Vice President and Treasurer of SEABOARD COAST LINE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the 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

My commission expires \_\_\_\_\_  
(NOTARIAL SEAL)

STATE OF KENTUCKY )  
( ss :  
COUNTY OF JEFFERSON )

On this 9<sup>th</sup> day of February, 1974, before me personally appeared C. HAYDEN EDWARDS, to me personally known, who, being by me duly sworn, says that he is Vice President, Secretary and Treasurer of LOUISVILLE AND NASHVILLE 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

My commission expires \_\_\_\_\_  
(NOTARIAL SEAL)

NOTARY PUBLIC, STATE AT LARGE  
My commission expires June 15, 1972

SCHEDULE A

<u>Description</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Number of Units</u>	<u>Identifying Numbers (Both Inc.)</u>	<u>Time and Place of Delivery</u>
100-ton open top quadruple hopper cars	X-300-170	Johnstown, Pennsylvania	500	I &N 193900-194399	February-April, 1974 at Johnstown, Pa.

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**Conditional Sale Agreement**

*Dated as of February 15, 1974*

**Between**

**BETHLEHEM STEEL CORPORATION**

**and**

**SEABOARD COAST LINE RAILROAD COMPANY AND  
LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

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**CONDITIONAL SALE AGREEMENT**, dated as of February 15, 1974, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Vendor or Builder, as more particularly set forth in Article 26 hereof), and SEABOARD COAST LINE RAILROAD COMPANY, a corporation of Virginia, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation of Kentucky, which two railroad companies operate, among other lines of railroad, the line known as "CLINCHFIELD RAILROAD COMPANY," leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina (which first two named railroad companies are hereinafter individually called SCL and L&N, respectively, and collectively called the Railroad);

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

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

**ARTICLE 1. *Incorporation of Model Provisions.*** Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Conditional Sale Provisions" annexed to this Agreement as Part I of Annex A hereto (hereinafter called the Model CSA Provisions), such provision of the Model CSA Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

**ARTICLE 2. *Construction and Sale.*** Article 2 of the Model CSA Provisions is herein incorporated as Article 2 hereof. The Builder shall have no obligation to deliver any unit of the Equipment at any time after the commencement of any proceedings specified in clauses (c) or (d) of Article 18 hereof or if the Railroad is in default under any of the provisions of this Agreement.

**ARTICLE 3. *Inspection and Delivery.*** Article 3 of the Model CSA Provisions is incorporated as Article 3 hereof.

**ARTICLE 4. Purchase Price and Payment.** The base price per unit of the Equipment is set forth in Schedule B hereto. The base price is subject to such increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, plus off-line freight charges, if any.

For the purpose of making settlement, the Equipment shall be divided into such number of Groups of units of the Equipment, delivered to and accepted by the Railroad (each such Group being hereinafter called a Group) as the Builder and the Railroad may agree to.

The Railroad 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 each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Conditional Sale Agreements referred to in Item 4 of Schedule A hereto (hereinafter called the Other Agreements) for which settlement has theretofore or is then being made, as stated in the invoice or invoices therefor (said invoiced prices being hereinafter called the Interim Invoiced Purchase Prices), exceeds (y) the sum of \$16,850,000 and any amount or amounts previously paid or payable with respect to the Interim Invoiced Purchase Prices pursuant to this subparagraph (a) and pursuant to subparagraph (a) of the third paragraph of Article 4 of the Other Agreements (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is being made on such Closing Date for units of railroad equipment under the Other Agreements, the amount payable pursuant to this subparagraph (a) shall be that proportion of the Excess Amount which the Interim Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Interim Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements;

(b) upon receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups delivered hereunder, the amount, if any, by which the final aggregate Purchase Prices of all Groups delivered hereunder, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price) shall exceed the aggregate of the Interim Invoiced Purchase Prices; and

(c) in 30 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 30, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Interim Invoiced Purchase Prices of all Groups less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraphs (b) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The first instalment of the Conditional Sale Indebtedness payable pursuant to subparagraph (c) of the third paragraph of this Article 4 shall be payable on September 15, 1974, and subsequent instalments shall be payable semiannually annually thereafter on March 15 and September 15 of each year to and including March 15, 1989. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates in respect of which such indebtedness was incurred at the rate of 8 $\frac{3}{4}$ % per annum. Such interest shall be payable to the extent accrued on March 15 and September 15, in each year, commencing September 15, 1974.

The Final Certificate shall be delivered on or before the date set forth in Item 2 of Schedule A hereto (hereinafter called the Cut-Off Date). The Builder agrees that the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (prior to September 13, 1974), not more than ten business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; *provided, however*, that the aggregate Purchase Price of all Groups settled for pursuant to this Agreement and the Other Agreements on any Closing Date occurring prior to March 14, 1974, and April 16, 1974, shall not exceed \$11,350,000 and \$15,350,000, respectively. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland or New York, New York are authorized to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9 $\frac{3}{4}$ % per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made 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 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 17 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make such payments to it at such address as shall be supplied to the Railroad by the assignee.

**ARTICLE 5. *Taxes.*** Article 5 of the Model CSA Provisions is herein incorporated as Article 5 hereof.

**ARTICLE 6. *Title to the Equipment.*** Article 6 of the Model CSA Provisions is herein incorporated as Article 6 hereof.

**ARTICLE 7. *Identification Marks.*** The Railroad will cause each accepted unit of the Equipment to be kept numbered with the identifying number as set forth in Schedule B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words set forth in Item 5 of Schedule A hereto 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 protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Railroad will not permit any such unit to be placed 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 or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on any units comprising the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Railroad or such affiliates therein.

**ARTICLE 8. *Casualty Occurrences.*** In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, seized by the government or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of units covered hereby (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have

been made to the Vendor pursuant to this Article 8) shall exceed \$100,000 (or such lesser amount as the Railroad from time to time may elect), the Railroad shall pay to the Vendor on the next instalment payment date for the payment of Conditional Sale Indebtedness a sum equal to the aggregate Casualty Value of such units covered hereby as of the date of such payment and shall file with the Vendor a certificate of a Vice President or the Treasurer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be applied, at the direction of the Railroad, to prepay, *pro rata*, instalments of Conditional Sale Indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 4 hereof then and thereafter falling due, or toward the cost of a unit or units of standard-gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than February 15, 1974, to replace such units suffering a Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service the Railroad shall deliver to the Vendor a certificate of a Vice President or the Treasurer of the Railroad that the cost of such equipment does not exceed the fair value thereof.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraphs (a) and (b) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness.

The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 14 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be warranted in like manner as is customary at the time for similar equipment. Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith executed counterparts of an opinion of counsel covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America or any political subdivision thereof or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, or open market commercial paper rated "A-1" or "A-2" or the equivalent of either by Standard & Poor's Corporation or a comparable national rating agency or in certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$40,000,000, in each case maturing in not more than one year from the date of such investment (hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof,

shall be held by the Vendor for application pursuant to this Article 8, and so long as no event of default specified in Article 18 hereof shall have occurred and be continuing any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

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

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

**ARTICLE 9. *Maintenance and Repair.*** The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

**ARTICLE 10. *Builder's Warranty of Material and Workmanship.*** The agreement of the parties relating to the Builder's warranty of material and workmanship set forth in Item 3 of Schedule A hereto is herein incorporated in this Article 10 with the same effect as if herein set forth.

**ARTICLE 11. *Compliance with Laws and Rules.*** Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

**ARTICLE 12. *Reports and Inspections.*** Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.

**ARTICLE 13. *Possession and Use.*** Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.

ARTICLE 14. *Prohibition Against Liens.* Article 14 of the Model CSA Provisions is herein incorporated as Article 14 hereof.

ARTICLE 15. *Railroad's Indemnities.* Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof.

ARTICLE 16. *Patent Indemnities.* Article 16 of the Model CSA Provisions is herein incorporated as Article 16 hereof.

ARTICLE 17. *Assignments.* Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof except that the words "If Necessary," shall be inserted before the words "whenever requested" in the first sentence of the fifth paragraph thereof.

ARTICLE 18. *Defaults.* Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.

ARTICLE 19. *Remedies.* Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. *Applicable State Laws.* Article 20 of the Model CSA Provisions is herein incorporated as Article 20 hereof.

ARTICLE 21. *Recording.* Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. *Payment of Expenses.* Article 22 of the Model CSA Provisions is herein incorporated as Article 22 hereof except, however, that Messrs. Cravath, Swaine & Moore shall be counsel for the first Assignee of this Agreement and for any party acquiring an interest in such first assignment and this Article 22 shall not include fees and expenses of additional counsel for said parties.

ARTICLE 23. *Notice.* Any notice hereunder to each 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 Railroad, at 3600 West Broad Street, Richmond, Virginia 23230, attention: L. G. Anderson, Vice President and Treasurer, for the SCL and at 908 West Broadway, Louisville, Kentucky 40201, attention: C. Hayden Edwards, Esq., Vice President, Secretary and Treasurer for the L&N,

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

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

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

ARTICLE 24. *Article Headings; Effect and Modification of Agreement.* Article 24 of the Model CSA Provisions is herein incorporated as Article 24 hereof.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; *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, recording 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 or deposited.

ARTICLE 26. *Definitions.* Article 26 of the Model CSA Provisions is herein incorporated as Article 26 hereof.

ARTICLE 27. *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 counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of February 15, 1974, the actual date or dates of execution hereof by the parties hereto is or are, respectively, that date or dates stated in the acknowledgments hereto annexed.

ARTICLE 28. *Joint and Several Obligations.* SCL and L&N hereby agree that they are jointly and severally liable for all obligations of the Railroad hereunder.

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 their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first written.

**BETHLEHEM STEEL CORPORATION**

By.....  
Vice President

[ CORPORATE SEAL ]

ATTEST:

.....  
Assistant Secretary

**SEABOARD COAST LINE RAILROAD  
COMPANY,**

By.....  
Vice President and Treasurer

[ CORPORATE SEAL ]

ATTEST:

.....  
Assistant Secretary

**LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY**

By.....  
Vice President, Secretary  
and Treasurer

ATTEST:

.....  
Assistant Secretary



STATE OF KENTUCKY }  
COUNTY OF JEFFERSON } ss.:

On this        day of        , 1974, before me personally appeared C. HAYDEN EDWARDS, to me personally known, who, being by me duly sworn, says that he is Vice President, Secretary and Treasurer of LOUISVILLE AND NASHVILLE RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, and 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

**SCHEDULE A—Bethlehem**

- Item 1:** Bethlehem Steel Corporation, a Delaware corporation, Bethlehem, Pennsylvania 18016.
- Item 2:** September 13, 1974.
- Item 3:** The Builder warrants that the Equipment will be built in accordance with the Specifications and standards set forth or referred to in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder), workmanship or design (except as to designs specified by the Railroad and not developed by the Builder) under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after delivery thereof, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind. **The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose and all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 2, 3, 4 and 16 of the Agreement, and the Builder neither makes nor authorizes any other person to make for it any other such warranty in connection with the construction and delivery of the Equipment, except as aforesaid.**
- The Builder further agrees with the Railroad and that neither the inspection as provided in Article 3 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver by the Railroad of any of its rights hereunder.
- Item 4:** The Conditional Sale Agreements dated as of February 15, 1974, between the Railroad and ACF Industries, Incorporated and Ortner Freight Car Company, respectively.
- Item 5:** "Mercantile-Safe Deposit and Trust Company, Agent—Security Owner".

**SCHEDULE B—Bethlehem**

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Time and Place of Delivery</u>
100-ton open top quadruple hopper cars	3400-361 dated December 10, 1973	Johnstown, Pennsylvania	500 266	L&N 193900 thru 194399; CRR 56700 thru 56925	\$18,750	\$13,612,500	Prior to September 13, 1974, at Johnstown, Pennsylvania

**Form 1-1-70**

**ANNEX A**

**Part 1**

## **MODEL CONDITIONAL SALE PROVISIONS**

**ARTICLE 2. *Construction and Sale.*** Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Schedule B hereto, and will sell and deliver to the Railroad, and the Railroad 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 Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (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 of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Article 8 hereof) will be new railroad equipment.

**ARTICLE 3. *Inspection and Delivery.*** The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, 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 date set forth in Item 2 of Schedule A hereto shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad 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 inspector of the Railroad 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 Railroad 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 Railroad and are marked in accordance with Article 7 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranty set forth or referred to in Article 10 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume with respect thereto the responsibility 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; *provided, however*, that the Builder shall not thereby be relieved of its warranty set forth or referred to in Article 10 hereof.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad 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 or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], excess profits and similar taxes) or license fees, fines or penalties hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees, fines

and penalties the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad 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 taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad 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; *provided, however,* that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor), or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property

in the Equipment until the Railroad 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 Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the 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 Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, 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 Railroad at its address referred to in Article 23 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 Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad 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 Railroad.

*ARTICLE 7. Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule 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 name of the Vendor followed by the words "Agent, Owner" 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 protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such name and words shall have been so marked on each side thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment 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 by the Railroad and filed and recorded by the Railroad in all public offices where this Agreement shall have been filed and recorded.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its 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, 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 of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad 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 12. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 180 days from the date of this Agreement, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 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 7

hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 13. *Possession and Use.* The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 14. *Prohibition Against Liens.* The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest upon the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein, 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 property or rights 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 15. *Railroad's Indemnities.*** The Railroad 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 counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad 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. 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 the Equipment or the termination of this Agreement in any manner whatsoever.

**ARTICLE 16. *Patent Indemnities*** Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, 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 Railroad 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 Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad 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 Railroad 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 Railroad 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 Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the

Railroad 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.

**ARTICLE 17. *Assignments.*** The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

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 Railroad, 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 with this Agreement or to respond to any of its warranties and indemnities under Articles 10 and 16 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 10, 15 and 16 hereof and this Article 17 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, 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 Agreement, 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 Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, 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 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 Railroad by the

**Builder.** Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of some of or all the Vendor's rights under this Agreement with respect thereto, the Railroad will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be such as shall be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad. 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 Railroad and, in the event of any assignment of less than all such Equipment, such cost shall be borne by such assignee.

In the event of any such assignment prior to settlement for all the Equipment, the Railroad will (a) in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, 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 copies or counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of the Equipment as provided

in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect on the date such payment was due.

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

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any 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 or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed 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

(d) any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad 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: or

(f) an event of default shall occur under the Other Agreement or Agreements, if any, referred to and defined in Article 4 hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad 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 such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

**ARTICLE 19. Remedies.** At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises 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 Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any

point or points selected by the Vendor reasonably convenient to the Railroad. 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 against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives 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 after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Rail-

road, 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 Railroad; *provided, further*, that if the Railroad or 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 be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad 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 Railroad 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 Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling 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 Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 23 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad 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 or the Railroad 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 Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), 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 from the Railroad 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 Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad'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 Railroad'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 Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. 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 Railroad.

The Railroad 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 attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 19 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 20. *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 Railroad 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 Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit 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 21. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded

with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Railroad 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 (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 22, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 24. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules and Annexes hereto, exclusively and completely states the rights of the

Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

*ARTICLE 26. Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business.

**ANNEX A**

***Part II***

**MODEL ASSIGNMENT PROVISIONS**

**SECTION 3.** 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 Railroad 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 Railroad 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 Railroad under 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 Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 21 of the Conditional Sale Agreement have been effected.

**SECTION 4.** The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of 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 of the Railroad 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 under Article 10 or 16 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad 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 17 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad 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 Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees 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 Builder agrees that any amounts payable to it by the Railroad 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 6.** The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days 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 title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad 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

Railroad under the Conditional Sale Agreement, 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;

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

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, 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 Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the

time of delivery thereof to the Railroad 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), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, 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, 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 or such Investors;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) of this Section 6 and stating that the Railroad 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;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, 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 is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad 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

(g) 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 6) 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 Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a 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 laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), 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 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 or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting 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.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

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

**SECTION 8. 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 Railroad, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad 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.