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INTERSTATE COMMERCE COMMISSION

AGREEMENT TO LEASE RAILROAD EQUIPMENT

DATED AS OF JULY 1, 1974

Between

THE BUNCHER COMPANY  
Lessor,

and

ANDREW I. LEWIS, JR. AND JOSEPH L. CASTLE,  
Trustees of the property of Reading Company, Debtor,  
Lessee.

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Covering 100 rehabilitated 52-foot 6-inch Gondola Cars.

This AGREEMENT TO LEASE RAILROAD EQUIPMENT (hereinafter the "Agreement") is dated as of July 1, 1974, and made between THE BUNCHER COMPANY, a Pennsylvania corporation (hereinafter "Lessor"), and ANDREW L. LEWIS, JR. and JOSEPH L. CASTLE, Trustees of the property of Reading Company, Debtor, (hereinafter "Debtor") (such Trustees being hereinafter called "Lessee" or "Trustees"); WITNESSETH:

WHEREAS, on the 23rd day of November, 1971, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings), and the Trustees have been duly qualified as trustees of the property of the Debtor;

WHEREAS, Lessee desires to lease from Lessor no later than December 31, 1974, 100 52-foot 6-inch gondola cars bearing Debtor's road numbers 36750-36824 and 29175-29199, both inclusive (hereinafter "Car" or "Cars"), at the rentals and for the terms and upon the conditions hereinafter provided, subject to the approval of said Court.

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 Lessee, Lessor hereby undertakes to lease the Cars to Lessee, and Lessee hereby agrees to lease the Cars from Lessor, upon the following terms and conditions:

Section 1. Delivery of Cars. Lessor will cause the Cars to be delivered to Lessee at Reading, Pennsylvania.

Section 2. Acceptance of Cars. Lessee will cause its authorized representative to accept delivery of the Cars and to execute and deliver to Lessor a certificate of acceptance therefor (hereinafter the "Certificate of Acceptance") in the form of Exhibit "A" hereto; whereupon each such Car shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all terms and conditions of this Agreement.

Section 3. Title. At all times while this Agreement is in force no title or other right of ownership in the Cars shall be vested in Lessee, and delivery of possession of the Cars to Lessee, and Lessee's possession of the Cars shall constitute only a bailment.

Section 4. Rentals. During the Initial Term (as hereinafter defined) Lessee will pay Lessor, as rental for the

Cars, quarterly in advance, an amount equal to 5.9309% of the total cost to Lessor to acquire the Cars, which total cost is estimated to be \$680,000. The Initial Term shall commence on the date on which Lessor makes its final payment for the acquisition of the Cars (hereinafter the "Settlement Date"), which shall not be later than December 31, 1974. The foregoing rental rate is based on Lessor borrowing 80% of the total cost of the Cars from The Philadelphia National Bank (hereinafter the "Bank"), at an annual interest rate of 12.25%, which latter rate is 1% above the Prime rate of said Bank in effect on May 15, 1974, and will increase or decrease as said Prime rate increases or decreases. The amount of rental payable hereunder will increase or decrease by the amount of increase or decrease in the interest paid by Lessor to the Bank, as aforesaid.

All payments to Lessor provided for in this Agreement shall be made to Lessor care of The Philadelphia National Bank, Broad and Chestnut Streets, Philadelphia, Pa., 19107, or at such other place as Lessor shall specify in writing.

The lease embodied in this Agreement is a net lease and Lessee shall not be entitled to any abatement of rent or reduction thereof, including but not limited to, abatements or reductions due to any present or future claims of Lessee against

Lessor or any assignee or Lessor under this Agreement or otherwise, nor, except as otherwise expressly provided herein, shall this Agreement terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Cars or damage to or loss or destruction of all or any of the Cars from whatever cause, the taking or requisition of the Cars by condemnation or otherwise, the prohibition of Lessee's use of the Cars, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization of this Agreement, or lack of right, power or authority of Lessor to enter into this Agreement, 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 Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Agreement.

The obligations to make rental and other payments under this Agreement will constitute expenses of administration of the Lessee, and will rank equally and ratably in priority of payment with all other expenses of administration of the Lessee, except the obligations of the Lessee under that certain Refinancing Agreement between it and the United States of America dated as of October 1, 1973 with respect to 57 diesel locomotives,

and except trustees' certificates heretofore or hereafter issued by the Lessee.

If any amounts payable pursuant to the terms of this Agreement, including, but not limited to rentals due hereunder, remain unpaid after the same shall become due and payable, Lessee shall pay interest on such overdue amounts for the period of time during which they are overdue at the rate of interest payable by Lessor as set forth in the first paragraph of this Section 4 (hereinafter the "penalty interest rate"), it being expressly understood that this provision shall be in addition to any other rights which Lessor may have under this Agreement in the event Lessee fails to make payments required hereunder when the same shall have become due and payable.

Section 5. Term of Lease; Purchase Options; Renewal Terms; Rentals for First and Second Renewal Terms. The Initial Term of this Lease (herein the "Initial Term") shall begin on the Settlement Date, and, subject to the provisions of this Section and Section 10 hereof, shall terminate at the expiration of five (5) years from the commencement of the Initial Term.

At the end of the Initial Term Lessee may either purchase the Cars at their then fair market value, lease the Cars for an additional one (1) year term (the "First Renewal Term")

for a fair rental value payable quarterly in advance, or return the Cars to the Lessor.

At the end of the First Renewal Term Lessee may either purchase the Cars at their then fair market value, lease the Cars for an additional one (1) year term (the "Second Renewal Term") for a fair rental value payable quarterly in advance, or return the Cars to the Lessor.

At the end of the Second Renewal Term Lessee may purchase the Cars at their then fair market value, or return the Cars to Lessor.

When and as necessary, the terms "fair market value" and "fair rental value" shall be determined by an independent appraiser satisfactory to both Lessor and Lessee unless they can agree upon such values.

Notwithstanding anything to the contrary contained in this Section 5, Lessee may exercise any of the options described in this Section 5 only if (i) at the time of such exercise Lessee is not in default hereunder and (ii) Lessee shall have given Lessor 90 days' prior written notice of its election to exercise any such option.

Section 6. Identification Marks. Lessee will cause each Car to be numbered with the new road numbers hereinabove set forth, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Car, in letters not less than one inch in height, "The Buncher Company, Pittsburgh, Pa., Owner and Lessor, The Philadelphia National Bank,

Secured Party", or other appropriate words designated by Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to the Cars and its rights under this Agreement. Lessee will not place any Car in operation until such words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Lessee will not change the road number of any Car except with Lessor's consent and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with Lessor by Lessee and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

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

Section 7. Taxes. Lessee agrees that, during the continuance of this Agreement, in addition to the rentals and other

payments herein provided, it will promptly pay all taxes, assessments, fees, charges, fines, penalties, and other governmental charges, including but not limited to sales or use taxes, levied or assessed upon the Cars or the interest of Lessee in the Cars subject to this Agreement or any thereof or upon the use or operation thereof or the earnings of Lessee arising therefrom; and will promptly pay or reimburse Lessor for all such taxes, assessments, fees, charges, fines, penalties and other governmental charges levied or assessed against Lessor on account of its acquisition or ownership of the Cars or any thereof or on account of the use or operation thereof or on account of the earnings arising therefrom (exclusive, however, of income taxes on the rentals herein provided except any such tax on rentals which is in substitution for, or relieves Lessee from, the payment of taxes which it would otherwise be obligated to pay or reimburse as hereinbefore provided), including but not limited to any sales or use, general business and mercantile license taxes payable on account of the acquisition or ownership of the Cars or any thereof by Lessor or on account of the leasing of the Cars hereunder (all such taxes, assessments, fees, charges, fines, penalties and other governmental charges being hereinafter called "Impositions") and will keep at all times all and every part of such Cars free and clear of all Impositions which might

in any way affect Lessor's title or result in a lien upon any such Car; provided, however, that Lessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof unless thereby, in Lessor's judgment, the rights or interests of Lessor will be materially endangered. In the event any tax reports are required to be made on the basis of individual Cars, Lessee will either make such reports in such manner as to show the ownership of such Cars by Lessor or will notify Lessor of such requirement and will make such report in such manner as shall be satisfactory to Lessor.

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

Section 8. Payment for Casualty Occurrence or for Cars Unserviceable for Use. In the event a Car shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or, in the opinion of Lessor and Lessee, obsolete or economically unserviceable for use from any cause whatsoever, or shall be

requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (such occurrences being hereinafter called a "Casualty Occurrence") during the Initial, First Renewal or Second Renewal Terms of this Lease, Lessee shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform Lessor in regard thereto. On the next rental payment date hereunder following the happening of a Casualty Occurrence Lessee will pay Lessor on account of the affected Cars the stipulated loss value thereof (hereinafter the "Stipulated Loss Value"), calculated as of such next rental date pursuant to the Schedule of Stipulated Loss Values which is attached hereto, made a part hereof and marked Exhibit "B". Upon paying the Stipulated Loss Value of the Car or Cars which shall have suffered a Casualty Occurrence, rental for such Car or Cars shall cease to accrue after that rental payment date, the total cost (referred to in Section 4 hereof) of such Car or Cars being subtracted from the total cost of all of the Cars and Lessee shall thereupon automatically take title to such Car or Cars as-is, where-is, without warranty by Lessor express or implied with respect to any matter whatsoever. Lessor will remit to Lessee as received any net insurance proceeds payable as the result of insurance carried by Lessee or proceeds of an award in eminent domain or condemnation proceedings received by Lessor in respect

of Cars suffering Casualty Occurrences.

Lessee shall bear the risk of, and, except as herein provided, shall not be released from its obligations hereunder in the event of, any Casualty Occurrence to any Car after Lessee's acceptance thereof.

Section 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Insurance and Indemnification.

LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE CARS, AND LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE or as to title to the Cars or any component thereof, it being agreed that all such risks, as between Lessor and Lessee, are to be borne by Lessee; but Lessor hereby irrevocably appoints and constitutes Lessee its agent and attorney-in-fact during the term of the lease embodied in this Agreement, to assert and enforce from time to time, in the name of and for account of Lessor and Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have against the seller, manufacturer or any other third party with respect to the Cars or any of them. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as

between Lessee and Lessor that the Cars described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Lessor based on any of the foregoing matters.

Lessee agrees to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Car) with all Governmental laws, including all laws of the jurisdictions in which its operations involving the Cars may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Federal Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars, to the extent that such laws and rules affect the title, operation or use of the Cars, and in the event that such laws or rules require any alteration of any Car, or in the event that any equipment or appliance on any such Car 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 Car in order to comply with such laws or rules, Lessee will make such alterations, changes, replacements and additions promptly and at its own expense; provided, however, that Lessee may, in good faith, contest the validity or application of any

such law or rule in any reasonable manner which does not, in the opinion of Lessor, adversely affect Lessor's property or rights under this Agreement.

Lessee agrees that, at its own cost and expense, it will maintain and keep each Car in good order and repair.

Any and all additions to any Car and any and all parts installed on and additions and replacements made to any Car shall constitute accessions to such Car and, at the cost and expense of Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance shall immediately be vested in Lessor.

Lessee agrees to indemnify, protect and hold harmless Lessor and its successors and assigns from and against (a) any and all loss or damage of or to the Cars, usual wear and tear excepted, and (b) any and all losses, expenses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, patent liabilities, penalties and interest, arising in any way out of or as the result of the entering into or the performance of this Agreement, the ownership of any Car, the transportation, leasing, use, operation, condition, purchase, rehabilitating, delivery, rejection, or storage of any Car or any accident in connection with the transportation, leasing, operation, use, condition, possession, or storage of any Car resulting in damage to property or injury or death to any person, or arising by reason

or as a result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for Lessor hereunder. The indemnities arising hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under the lease embodied in this Agreement or the termination of that lease.

Lessee will, at all times while the lease included in this Agreement is in effect, at its own expense, cause to be carried and maintained, in respect of the Cars at the time subject hereto, public liability and casualty insurance in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by Lessee on equipment owned by it. Such insurance shall include Lessee and Lessor as additional named insureds as their interests may appear.

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

Section 10. Default. If, during the continuance of

the lease embodied in this Agreement, one or more of the following events (herein sometimes called "Events of Default") shall occur:

A. default shall be made in the payment of any part of the rental provided in Sections 4 and 5 hereof and such default shall continue for 5 days after receipt by Lessee of written notice from the Lessor of such default;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Agreement or of possession of the Cars, or any thereof (it being understood that any transfer contemplated in E below shall be deemed authorized), and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Cars within 30 days after written notice from Lessor to Lessee demanding such cancellation and recovery of possession;

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

D. a decree or order is entered in the Reorganization Proceedings preventing or disabling the Trustees from performing any of their obligations under this Agreement; or

E. if the obligations of the Trustees hereunder are assumed by a corporation or by the Debtor's successor under the provisions of the Regional Rail Reorganization Act of 1973 or pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings (such corporation or successor being hereinafter called the "Successor") and either

(i) 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 Successor and all the assumed obligations of the Successor 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 or otherwise given a status comparable to obligations incurred by such a 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

(ii) any other proceedings shall be commenced by or against the Successor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the Successor's obligations hereunder) and all the obligations of the Successor 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 Successor or for the Successor's property in connection with any such proceedings or otherwise given a status comparable to 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;

F. if all or substantially all of the railroad property of the Debtor is conveyed to a government corporation, agency or other public entity and such successor does

not, within 30 days after such conveyance, give public or private notice of its intention to assume this lease in particular or lease obligations of the Lessee in general; then, in any such case, Lessor, at its option may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce Lessee's performance of the applicable covenants of this Agreement or to recover damages for the breach thereof; or

(b) by notice in writing to Lessee, terminate this Agreement and the lease embodied herein forthwith, whereupon all right of Lessee to the use and possession of the Cars shall absolutely cease and determine as though this Agreement had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Cars for any purposes whatever; but Lessor shall, nevertheless, have

a right to recover from Lessee any and all amounts which under the terms of this Agreement 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 Lessee the following amounts as a part of Lessor's damages:

(i) the Stipulated Loss Value of the Cars as of the date of default, as that value is set forth in the Schedule of Stipulated Loss Values, Exhibit "B" hereto, subject to credit or reimbursement by Lessor to Lessee for any rentals Lessor may earn on the Cars from the date of default to the end of the Second Renewal Term, net of Lessor's expenses incurred in connection with such re-  
leasing, the amount of such credit or reimbursement to be limited to the sum of all rentals for the Cars which would otherwise have accrued here-  
under during that period, such net rentals or

credit to be paid to or credited to Lessee's account within a reasonable time after their receipt by Lessor, or, alternatively, subject to such credit or reimbursement for the net proceeds of any sale of the Cars by Lessor (the parties hereto expressly agreeing that such sale shall be deemed to have been made in a commercially reasonable manner) concluded prior to the end of the Second Renewal Term, net of Lessor's expenses incurred in connection with such sale, the amount of such credit or reimbursement to be limited to the amount of the Stipulated Loss Value charged Lessee pursuant to this Section; and (ii) a reasonable provision for expenses incidental to the Lessor's enforcement of its rights hereunder including, but not limited to, expenses of taking possession of the Cars if the Cars have not been delivered to Lessor by Lessee as provided under Section 11 hereof; and (iii) any damage which the Lessor shall have sustained by reason of the breach of any covenants of this Agreement; and (iv) interest on any of the above amounts at the penalty interest rate from the date of default until the

date of payment; and (v) reasonable attorneys' fees and costs of suit incurred in connection with the enforcement of the provisions of this Agreement.

The remedies of this Agreement provided in favor of Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessor's failure to enforce any provision hereof or its failure to avail itself of any remedy afforded hereunder shall not be deemed a waiver thereof. Lessee hereby waives any provision of any law now or hereafter in effect which might limit or modify any of the remedies of Lessor provided hereunder or exempt any property of Lessee, except insofar as such waiver would conflict with the Bankruptcy Act or with any action taken pursuant to the Regional Rail Reorganization Act of 1973.

Notwithstanding the foregoing provisions of this Section 10, in the event there should be a cessation of railroad operations of the Lessee (which is defined herein as meaning a cessation or suspension of all or a major part of the business of Lessee for a period not to exceed ninety (90) days) Lessor will not declare an event of default as defined herein during such period or within thirty (30) days thereafter or for ninety

(90) days after the commencement of the cessation, whichever is less, by reason of such cessation or by reason of non-payment of rents during the said time in which a default may not be declared, and shall refrain from exercising any remedies or assessing any penalties to which Lessor would be entitled by reason of such cessation or such failure to pay rent.

All rents applicable to the Cars shall continue to accrue despite the said limitation on declaring a default; provided, however, that any rents deferred as aforesaid shall not be required to be paid by Lessee until sixty (60) days after the termination of the period of cessation; and provided further that penalty interest shall be payable on deferred rents, as set forth in Section 4 hereof.

Lessee may sublease the Cars, or any of them, without the consent of Lessor, during the time in which a default may not be declared; provided, however, that, without the consent of the Lessor any such sublease shall not extend for more than ninety (90) days from the date of the commencement of the cessation.

Section 11. Return of Cars Upon Termination. Upon termination of the lease embodied in this Agreement for any reason, Lessee shall forthwith deliver possession of the Cars

to Lessor in their original condition, reasonable wear and tear excepted. For the purpose of delivery of possession of the Cars to Lessor as above required, Lessee shall at its own cost, expense and risk:

(a) forthwith place the Cars upon such storage tracks of Lessee as Lessor may reasonably designate;

(b) permit Lessor to store the Cars on such tracks at Lessee's risk for a period not to exceed six (6) months; and

(c) transport the same to any place on the lines of railroad operated by Lessee or to any connecting carrier for shipment, as directed by Lessor.

The assembling, delivery, storage and transporting of the Cars as herein provided shall be at Lessee's expense and risk and are of the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Cars. During any storage period, Lessee

will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any Car, to inspect the same. If the termination of this Lease is a direct result of a conveyance of Debtor's property and this Lease is not assumed in full by a successor defined in Section 10 F, or if the Court in the Reorganization Proceedings has ordered the liquidation of Debtor's railroad property and such order is not rescinded within 30 days of such order, the assembly, storing and transporting as provided herein will be performed by the Lessee to the best of its ability; provided that, in any event, the assembling, storing and transportation of the Cars as aforesaid shall be at the expense of the Lessee. If this lease has been assumed by such a successor, then the preceding lessee shall be relieved of the obligation to assemble and store the Cars on its tracks and to transport them over its lines.

Without in any way limiting Lessee's obligation hereunder, Lessee hereby irrevocably appoints Lessor as Lessee's agent and attorney, with full power and authority, at any time while Lessee is obligated to deliver possession of any Car to Lessor, to demand and take possession of such Car, in the name and on behalf of Lessee, from whoever shall be in possession of such Car at the time.

Section 12. Assignment; Possession and Use. This Agreement may be assigned in whole or in part by Lessor without Lessee's consent, but Lessee shall be under no obligation to any assignee of Lessor except upon written notice of such assignment from Lessor. In the event of Lessor's assignment Lessor's transferee or assignee shall have, to the extent transferred or assigned to it, all rights, powers, privileges and remedies of Lessor hereunder. Lessee agrees that no such transferee or assignee shall assume any obligation of Lessor hereunder, and that the obligations of Lessee hereunder shall not be subject, as against any such transferee or assignee, to any defense, set-off or counterclaim available to Lessee against Lessor and that the same may be asserted only against Lessor. It is under-

stood and agreed, however, that Lessee may separately claim against Lessor as to any matters which Lessee may be entitled to assert against Lessor. All the rights of Lessor hereunder (including, but not limited to, the rights to receive the rentals payable under this Agreement) shall inure to the benefit of Lessor's assigns (including the partners or any beneficiary or any such assignee if such assignee is a partnership or a trust, respectively). Whenever the term Lessor is used in this Agreement it shall apply and refer to each such assignee of Lessor.

So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Agreement. Lessee shall not assign or transfer its leasehold interest under this Agreement other than pursuant to the provisions of the Regional Rail Reorganization Act of 1973, except, however, for any rights in and to the Lessee's interest in the lease embodied in this Agreement which may accrue to the Manufacturers Hanover Trust Company (hereinafter called the "Mortgagee"), as successor to the Central Union Trust Company as mortgagee under a Mortgage and Deed of Trust dated January 2, 1924, between the Debtor and the Mortgagee, as amended and supplemented, and except

that, with the prior written consent of the Lessor (which consent shall not be unreasonably withheld), the Lessee may assign all of its rights under this Agreement to a third party of reliable standing with the financial community which shall have duly assumed Lessee's obligations hereunder provided that the obligations of the Lessee hereunder shall thereupon terminate except as to obligations arising prior to the assignment.

Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Cars and other than the lien of the said Mortgage and Deed of Trust) upon or with respect to any Car, including any accession thereto, or the interest of Lessor, or Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. Lessee shall not, without Lessor's prior written consent, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except as permitted herein.

So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession of the

Cars and to the use of the Cars upon lines of railroad owned or operated by it or upon lines of railroad over which Lessee has trackage or other operating rights or over which Lessee's railroad equipment is regularly operated pursuant to contract, and also to permit the use of the Cars upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that Lessee shall not assign or permit the assignment of any Car to service involving the regular operation and maintenance thereof outside the United States of America. Lessee may receive and retain compensation for such use from other railroads so using any of the Cars.

Nothing herein shall be deemed to restrict Lessee's right to assign or transfer its interest under this Agreement or possession of the Cars under the provisions of the Regional Rail Reorganization Act of 1973, or 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 Lessee's obligations hereunder) into or with which Debtor's property shall have become merged or consolidated or which shall have acquired the property of Debtor 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 Agreement.

The Reorganization Proceedings shall not be dismissed or terminated nor shall the property of the Debtor be surrendered by the Trustees or their successor or successors, unless (a) as a condition of such dismissal or termination or such surrender, all of the obligations then existing or to accrue of the Trustee under this Agreement shall be assumed as a general obligation by the Debtor's successor pursuant to a plan of reorganization approved in the Reorganization Proceedings or by any other railroad corporation acquiring all or substantially all of the lines (not proposed for abandonment) of railroad of the Debtor or as an obligation, having the same status and priorities as those of the Trustees under this Agreement, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Trustees, or (b) payment in full in cash (or provision therefor satisfactory to the Lessor) is made to the Lessor of the Stipulated Loss Value of the Equipment and all damages, claims, or any other moneys payable to or in favor of the Lessor pursuant to this Agreement, together with interest thereon as herein provided to the date of payment thereof.

Except as otherwise provided in the Regional Rail Reorganization Act of 1973, in case of any sale or conveyance of all or substantially all of the lines (not proposed for abandonment) of railroad of the Debtor, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Agreement or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Trustees hereunder, unless provision is made for the payment to the Lessor as provided above in clause (b) of the next preceding paragraph.

Whenever used in this Agreement, the term "Trustees" shall be deemed to mean any corporation (including the Debtor), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

Section 13. Notices. Any notice required or permitted to be given by or to either party hereto shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid.

Section 14. Law Governing. This Agreement shall be construed in accordance with the laws of Pennsylvania; provided, however, that the parties shall be entitled to all rights con-

ferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording, or depositing hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement shall be filed, recorded or deposited.

Section 15. Modification of Agreement. Except as specifically provided for under the terms of this Agreement, no modification, extension, waiver, renewal or termination of this Agreement, or any of its provisions, shall be binding on either party hereto unless made in writing on its behalf by the duly authorized representative of said party.

Section 16. Annual Reports. On or before August 31 in each year, commencing with the year 1975, Lessee will furnish to Lessor an accurate statement, as of the preceding June 30, (a) showing the amount, description and numbers of the Cars then leased hereunder, the amount, description and numbers of all Cars that may have suffered a Casualty Occurrence during the preceding 12 months (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 Cars as Lessor may reasonably request, and (b) stating that, in the case of all Cars repainted during the period covered by

such statement, the markings required by Section 6 hereof shall have been preserved or replaced.

Lessor shall have the right, by its authorized representatives but shall be under no obligation, to inspect the Cars and Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to Lessor the existence and proper maintenance thereof during the continuance of the lease embodied in this Agreement. Lessee's obligations respecting the Cars shall not be diminished in any manner by any failure of Lessor to so inspect.

Section 17. Opinion of Counsel. At the time this Agreement is executed, Lessee will deliver to Lessor two counterparts of the written opinion of counsel for Lessee, addressed to Lessor in scope and substance satisfactory to counsel for Lessor, to the effect that:

A. this Agreement has been duly authorized by the Court upon due notice and duly executed and delivered by the Trustees and constitutes a valid, legal and binding agreement of the Trustees, enforceable in accordance with its terms;

B. this Agreement 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 Lessor's interest in and to the Cars 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 Lessor in and to the Cars;

C. no approval is required from any public regulatory body with respect to the Lessee entering into or performing this Agreement.

D. the entering into and performance of this Agreement 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 Lessee is a party or by which it may be bound; and

E. no existing 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 Lessee, hereafter will attach to the Cars or in any manner will affect adversely Lessor's right, title and interest therein, so long as the Cars remain subject to this Agreement; provided, however, that such liens (including without limitation the Mortgage and Deed of Trust referred to in the second paragraph of Section 12) may attach to the rights of Lessee hereunder in and to the Cars.

Section 18. Recording; Expenses. Lessee will cause, at its expense, this Agreement and any assignment thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. Lessee will undertake the filing, registering, deposit and recording required of Lessor hereunder and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will file, reregister, deposit and redeposit and re-record whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to its satisfaction, of Lessor's interests in the Cars, or for the purpose of carrying out the intention of this Agreement; and Lessee will promptly furnish to Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Lessor.

Section 19. Federal Income Taxes. The Lessor, as the owner of the Cars, 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 or subsequently (hereinafter called the "Code"), to an owner of property, including (without limitation) any investment tax credit with respect to the Cars.

Lessee agrees that neither it nor the Debtor will at any time take any action or file any returns or other documents inconsistent with the foregoing. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the benefit of any amortization or depreciation deduction or tax credit which may be available from time to time with respect to the Cars.

If, by reason of an act or omission of Lessee (including any assignee of Trustees' interest herein), the Lessor shall lose, or shall not have or shall lose the right to claim, or if (for such reasons) there shall be disallowed with respect to the Lessor, all or any portion of such tax credits or amortization or depreciation deductions with respect to any Car, the rental rate set forth in Section 4 and the Stipulated Loss Values set forth in Section 8 of this Agreement applicable to such Car shall, on and after the next succeeding rental payment date after written notice to the Lessee by the

Lessor that such credits or amortization or depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Cars which, in the reasonable opinion of the Lessor, will cause the Lessor's net return ((after all income taxes, calculated on the assumption that the Lessor's federal, state and local taxes computed by reference to net income or excess profits are based on a 48% effective federal tax rate and the highest effective state and local income tax and/or excess profit tax rates generally applicable to the Lessor, including therein the effect of any applicable surtax, surcharge and/or other tax or charge related thereto, and deducting (to the extent at that time permitted by federal law) from any such federal tax the maximum deductible amount of any such state and local tax (such rates as so calculated being hereinafter in this Agreement called the "Assumed Rates"), including any penalties thereon)) in respect of such Cars under this Agreement to equal the net return (after all income taxes at the Assumed Rates, including any penalties thereon) that would have been available if the Lessor had been entitled to utilization of all or such portion of such credits or amortization or depreciation

deductions which were not claimed or were disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of such credits or amortization or depreciation deductions.

"Lessor's net return", as used herein, shall be determined on the basis of, and consistent with, the after-tax yield calculations in fact utilized by the Lessor in determining the acceptability to it of the rental rate set forth in Section 4 hereof.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as "Counsel"), a bona fide claim to all or a portion of such credits or amortization or depreciation deductions on any Car exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, the Lessee shall advance to the Lessor, without interest, sufficient funds to

make such payment. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section 19 shall survive the expiration or other termination of this Lease, and there shall be made all necessary retroactive adjustments in the rentals and Stipulated Loss Values theretofore paid in order to carry out the intent of this Section 19, which adjustments shall, forthwith following the determination of the amounts thereof, be paid by the Lessee by means of one lump sum payment.

Section 20. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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.

Section 21. Other Obligations. Lessee agrees that, during the term of this Agreement, Lessee will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, other than that certain Refinancing Agreement between it and the United States of America, dated October 1, 1973, with respect to 57 diesel locomotives, (i) if such liabilities or obligations would be entitled, directly or indirectly, to any priority in right of payment over the obligations of the Lessee under this Agreement, or (ii) if such liabilities or obligations would be secured, directly or indirectly, by any mortgage, lien or other security interest in property of the Debtor or Lessee (except the equipment or other property involved in the particular transaction) unless the obligations of the Lessee under this Agreement are equally and ratably secured thereby, provided that nothing herein shall restrict the right of the Trustees to issue and sell trustees' certificates for any proper purpose.

Section 22. Miscellaneous. Any other provision contained in this Agreement to the contrary notwithstanding, it is hereby agreed that, unless clearly inappropriate by its terms,

the termination of the leasing of the Cars under the terms of the lease embodied in this Agreement, shall not cut off or otherwise in any way adversely affect any accrued rights of either party hereunder.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereof and their respective successors and assigns.

The parties hereto agree that, in connection with the performance of all acts and duties required hereunder, time is of the essence of this Agreement.

IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND HEREBY, Lessor and Lessee, each pursuant to due authority, have caused these presents to be signed in their respective names and their respective seals to be hereunto affixed as of the date first above written.

ATTEST:

*Richard K. ...*  
Secretary

(SEAL)

WITNESS:

*Graham ...*

THE BUNCHER COMPANY

By *[Signature]*  
President

*[Signature]* (SEAL)  
Andrew L. Lewis, Jr.

*[Signature]* (SEAL)  
Joseph L. Castle  
Trustees of the property of  
Reading Company, Debtor

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF *Allegheny* : ss.  
:

On this *4th* day of *September*, 1974, before me personally appeared *Jack G. Buncher*, to me personally known, who, being by me duly sworn, says that he is President of THE BUNCHER COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Ruth Carol Hoffman*  
\_\_\_\_\_  
Notary Public

My commission expires:

RUTH CAROL HOFFMAN, Notary Public  
PITTSBURGH, ALLEGHENY COUNTY, PA.  
MY COMMISSION EXPIRES MAY 10th, 1975

(Notarial Seal)



COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF PHILADELPHIA

: ss.  
:

On this 7<sup>th</sup> day of August, 1974, before me personally appeared ANDREW L. LEWIS, JR. and JOSEPH L. CASTLE, Trustees of the property of Reading Company, Debtor, signers and sealers of the foregoing instrument, and each of them acknowledged the same to be his free act and deed, as such Trustee, before me.

*Richard Williams*  
Notary Public

Notary Public, Philadelphia, Philadelphia Co.  
My Commission Expires January 17, 1978

(Notarial Seal)

## CERTIFICATE OF ACCEPTANCE

Under Lease of Railroad Equipment dated as of July 1, 1974.

The undersigned, being the duly authorized representative of Andrew L. Lewis, Jr. and Joseph L. Castle, Trustees of the property of Reading Company, Debtor (Trustees), hereby certifies that the following rehabilitated railroad gondola cars referred to in the Lease of Railroad Equipment (Lease) between The Buncher Company and the Trustees, dated as of July 1, 1974:

Quantity	Reading Company's Identifying Numbers	Date
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have been duly delivered in good order by The Buncher Company to the Trustees as lessee under the Lease and have been duly inspected and accepted by the undersigned on the said date on behalf of the Trustees as lessee as conforming in all respects to the requirements and provisions of the Lease.

The undersigned further certifies that at the time of its delivery to the Trustees each car covered by this Certificate was properly marked on each side thereof with the legend provided in Section 6 of the Lease.

\_\_\_\_\_  
 Authorized Representative of  
 Andrew L. Lewis, Jr. and  
 Joseph L. Castle, Trustees of the  
 property of Reading Company, Debtor

SCHEDULE OF STIPULATED LOSS VALUES

Percentage of Lessor's purchase costs of the cars and rehabilitation costs to be paid pursuant to Sections 8 and 10 of that certain agreement to lease made between The Buncher Company and Andrew L. Lewis, Jr. and Joseph L. Castle, Trustees of the property of Reading Company, Debtor.

<u>Prior to Payment No.</u>			
1	104.0%	11	74.4%
2	102.7	12	71.2
3	101.0	13	64.9
4	100.3	14	60.5
5	99.2	15	55.9
6	94.3	16	52.6
7	89.0	17	49.2
8	86.6	18	44.6
9	84.0	19	40.0
10	79.3	20	36.0
		Thereafter	29.0