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INTERSTATE COMMERCE COMMISSION

JUN 1 '60 629419

Conditional Sale Agreement

Dated as of June 1, 1960

AMONG

G. H. ATKINSON and E. F. LORMAN

AND

WHEELING CAR LEASING COMPANY

AND

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

RECEIVED JUN 1 1960 MAILS & FILES I. C. C.

Assignment

Dated as of June 1, 1960

G. H. ATKINSON and E. F. LORMAN

TO

THE CENTRAL NATIONAL BANK OF CLEVELAND

CONDITIONAL SALE AGREEMENT dated as of June 1, 1960, among G. H. ATKINSON and E. F. LORMAN, both of Terminal Tower, Cleveland 1, Ohio (hereinafter called the Sellers), parties of the first part, WHEELING CAR LEASING COMPANY, a corporation duly organized and existing under the laws of the State of Ohio, with an office in Cleveland, Ohio (hereinafter called the Buyer), party of the second part, and THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY, a consolidated railroad corporation duly organized and existing under the laws of the several States of New York, Pennsylvania, Ohio, Indiana and Illinois, with an office in Cleveland, Ohio (hereinafter called the Railroad), party of the third part.

WHEREAS, the Sellers are the owners of 2,000 70-ton hopper cars described in Schedule A hereto (hereinafter called the Equipment) and have entered into an agreement dated as of June 1, 1960 with the Railroad for the repair of the Equipment (hereinafter called the Repair Agreement); and the Sellers desire to sell and deliver to the Buyer, and the Buyer desires to purchase from the Sellers, the Equipment on the terms and conditions hereinafter set forth; and

WHEREAS, the Equipment was formerly the property of The Wheeling and Lake Erie Railway Company, an Ohio corporation, hereinafter called Wheeling; and

WHEREAS, Wheeling heretofore leased certain of its properties, including rolling stock and interests therein, then owned by Wheeling and thereafter to be acquired by it, to the Railroad under and pursuant to a lease dated as of December 1, 1949, hereinafter called the 1949 Lease; and

WHEREAS, the Railroad agreed under the 1949 Lease to pay certain of Wheeling's obligations, including rentals on leased rolling stock; and

WHEREAS, the Buyer has agreed to lease the Equipment to Wheeling, upon which the same will become subject to the 1949 Lease; and

WHEREAS, the Buyer has requested the Railroad to aid the Buyer in obtaining credit in connection with the purchase and repair of the Equip-

ment, and the Railroad, in confirmation of its obligations under the 1949 Lease, has agreed unconditionally to guarantee payment of all sums payable by the Buyer under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty; and

WHEREAS, the Buyer, concurrently with the execution and delivery hereof, is executing and delivering said lease of the Equipment to Wheeling, subject to this Agreement;

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

SECTION 1. *Repair and Sale.* The Sellers will cause the Equipment to be repaired under the Repair Agreement, and will sell and deliver to the Buyer and the Buyer will purchase from the Sellers and accept delivery of and pay for the Equipment as so repaired, as hereinafter provided. It is contemplated that all of the Equipment will have been repaired and accepted on or before May 31, 1961, but if any one or more units thereof shall not have been so repaired or accepted prior to that date, and unless an appropriate extension of such date shall have been agreed upon between the parties hereto and/or their respective successors and assigns, title to said unrepaired and/or unaccepted units shall on such date immediately pass to and vest in the Buyer, free of all further claims of the Sellers, their successors and assigns, hereunder and that portion of the down payment provided for in Section 3 of this Agreement applicable to said units shall be and constitute full payment of the purchase price of said units. If and to the extent that any of the units of the Equipment pass to the Buyer before being repaired and accepted, such units shall cease to be a part of the Equipment for the purpose of this Agreement, and the Sellers and the Buyer shall execute an agreement supplemental hereto excluding said units and releasing them herefrom.

SECTION 2. *Delivery.* The Sellers will deliver the units of the Equipment to the Buyer on the tracks of the Railroad at Brewster, Ohio and/or Ironville, Ohio, as rapidly as practicable during the period beginning with

the date hereof and ending May 31, 1961 unless an appropriate extension of such date shall have been agreed upon between the Sellers and the Buyer. The Sellers' obligation as to time of delivery is subject, however, to delays due to causes beyond the Sellers' control.

From time to time upon the repair of each unit or of a number of units of the Equipment as required by the Repair Agreement, such unit or units shall be presented to an inspector or other authorized representative of the Buyer for inspection at the place designated herein for delivery of such unit or units, and if such unit or units conform to the requirements applicable thereto, such inspector or representative shall execute and deliver to the Sellers, in three counterparts, a certificate of acceptance stating that such unit or units have been inspected on behalf of the Buyer and are marked in accordance with Section 7 hereof.

On delivery of each of such units hereunder, the Buyer will assume with respect thereto the responsibility and risk of loss.

SECTION 3. *Purchase Price and Payment.* The purchase price of each unit of the Equipment repaired and accepted as herein provided shall be $6,242. The purchase price of each unit not repaired and accepted on or before May 31, 1961, or such extended date, if any, as may be agreed upon as permitted by Section 1 of this Agreement, shall be $2,392, being the amount of the down payment attributable to such unit.

The Buyer hereby acknowledges itself to be indebted to the Sellers in the amount of, and hereby promises to pay to the Sellers at such place in the City of Cleveland, State of Ohio as the Sellers may designate, the aggregate purchase price of the Equipment, as follows:

(a) Concurrently with the execution and delivery hereof the Buyer, as a down payment, shall enter into a lease agreement with Wheeling, leasing the Equipment to Wheeling for a period of approximately ten years at rentals sufficient to put the Buyer in funds to pay all amounts, including interest and expenses, payable in money by the Buyer hereunder. Said lease is agreed to have for the purposes hereof a value of $4,784,000.

(b) Upon the acceptance by the Buyer of each unit of the Equipment and the delivery of the certificate of acceptance for such unit, the Buyer shall pay to, or in accordance with the instructions of, the Sellers in cash the sum of $850 in respect of such unit.

(c) The remaining $3,000 of the purchase price of each unit of Equipment so repaired and accepted, said payments being hereinafter sometimes collectively referred to as the Deferred Balance, will be paid in twenty equal semi-annual installments payable on the first days of June and December in each year, beginning December 1, 1960, together with interest, computed in respect of each unit from the date of its acceptance, payable on said semi-annual dates, at the rate of 5½% per annum on said Deferred Balance as from time to time outstanding, provided, however, that if the Sellers assign and transfer their rights in the Deferred Balance to one or more financial institutions, as contemplated, said interest shall not begin to accrue until and except to the extent that said financial institutions make payment to the Sellers for said Deferred Balance.

During the period or extended periods for the repair and acceptance of the Equipment provided for in Section 1 hereof, installment payments on account of the Deferred Balance required to be made pursuant to subparagraph (c) of this Section 3 shall be made as though all of the Equipment had been repaired and accepted prior to such installment payment date, whether or not that be true. If any such payment shall be made in respect of any unit or units which shall not thereafter be repaired and accepted during such period or extended periods, the amount so paid shall be credited against future payments becoming due from the Buyer to the Sellers under said subparagraph (c) in the inverse order of the due dates thereof.

The Buyer will also from time to time on demand reimburse the Sellers for, or put the Sellers in funds to pay, commitment commission to said financial institutions which are expected to purchase the Sellers' rights to the Deferred Balance and certain other rights of the Sellers hereunder, said commitment commission to be at the rate of one half of one per cent (½%) per annum from January 1, 1960.

The Buyer will also pay, to the extent legally enforceable, interest at the rate of 6% per annum upon all such amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months. All payments (other than the down payment) shall be made by the Buyer in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Buyer shall have the privilege, exercisable after June 1, 1962, of prepaying any installment of the indebtedness prior to the date it becomes due hereunder.

SECTION 4. *Guaranty*. The Railroad, for value received and in confirmation of its obligations under the 1949 Lease hereinbefore mentioned, hereby unconditionally guarantees to the Sellers that all sums payable by the Buyer under this Agreement will be promptly paid when due in accordance with the provisions of this Agreement, whether at stated maturity or by declaration or otherwise, and in case of default by the Buyer in any such payment the Railroad agrees punctually to pay the same. The Railroad hereby agrees that its obligation hereunder shall be unconditional, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the 1949 Lease or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor. The Railroad hereby waives diligence, presentment, demand of payment, protest, all notices with respect to this Agreement or of the 1949 Lease and all demands whatsoever. Upon the payment in full to the Sellers as aforesaid of all sums payable by the Buyer under this Agreement, the Railroad shall be subrogated to the rights of the Sellers under this Agreement to the extent of any and all sums paid by the Railroad pursuant to the foregoing guaranty, but this provision shall not be construed to affect or diminish the liability of the Railroad as guarantor to the Sellers in respect of any sums payable by the Buyer under this Agreement which have not been paid in full, or to entitle the Railroad in respect of any sums paid by it as guarantor to any payment except after payment in full to the Sellers as aforesaid of all sums payable by the Buyer under this Agreement.

SECTION 5. *Taxes.* All payments to be made by the Buyer hereunder will be free of expense to the Sellers for collection or other charges and will be free of expense to the Sellers in respect of the amount of any local, state or federal taxes (other than income, gross receipts, excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Buyer assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the Equipment. The Buyer will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Buyer or upon the earnings arising therefrom or upon the Sellers solely by reason of their 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 Sellers or result in a lien upon any unit of the Equipment; provided, however, that the Buyer shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Sellers, adversely affect the property or rights of the Sellers hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Sellers directly and paid by the Sellers, the Buyer shall reimburse the Sellers on presentation of invoice therefor; provided, however, that the Buyer shall not be obligated to reimburse the Sellers for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Sellers shall have been legally liable in respect thereof, or unless the Buyer shall have approved the payment thereof.

SECTION 6. *Title to the Equipment.* The Sellers shall and hereby do retain the full legal title to the property in the Equipment until the Buyer shall have made all of the payments hereunder, and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer as herein provided.

When and only when the Sellers 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 Buyer's obligations herein contained shall have been performed by the Buyer, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Buyer without further transfer or action on the part of the Sellers, except that the Sellers, if requested by the Buyer, will execute a bill or bills of sale of the Equipment transferring their title thereto and property therein to the Buyer or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Buyer at its address specified in Section 23 hereof, and will execute in the same manner 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 Buyer to the Equipment, and will pay to the Buyer any money paid to the Sellers pursuant to Section 8 hereof and not theretofore applied as therein provided. The Buyer hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Buyer.

SECTION 7. *Marking of Equipment.* The Buyer will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule A hereto or otherwise indicated to the Sellers and, subject to the provisions of Section 16 hereof, will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each such unit, in letters not less than one-half inch in height, the names of the Sellers followed by the word "Owners" or other appropriate words designated by the Sellers, 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 Sellers to the

Equipment and their rights under this Agreement. The Buyer will not place any such unit in operation or exercise any control or dominion over any part thereof until such names and word or 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. The Buyer will not change the numbers of any such units except with the consent of the Sellers and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Sellers by the Buyer and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Buyer may cause the Equipment to be lettered in an appropriate manner for convenience of identification of the interest of the Buyer therein, and if the Buyer shall lease the Equipment to Wheeling as herein permitted Wheeling or the Railroad may cause the Equipment to be lettered "NYC & St L" or "W & LE" or in some other appropriate manner for convenience of identification of the interest of Wheeling and the Railroad therein.

SECTION 8. *Replacement of Equipment.* The provisions of this Section 8 shall not apply to such units of the Equipment which first become worn out, lost, destroyed or irreparably damaged aggregating in number 2½% of all the Equipment, excluding in such computations for all purposes items never repaired, delivered and accepted in accordance with Sections 1 and 2 hereof. Subject to the foregoing, in the event that any unit of the Equipment shall be worn out, lost, destroyed or irreparably damaged from any cause whatsoever 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 Buyer shall promptly and fully inform the Sellers in regard thereto and shall promptly pay to the Sellers a sum equal to the then value of such unit determined as hereinafter provided. For all purposes of this Section 8 the value of any unit worn out, lost,

destroyed or irreparably damaged shall be the higher of (*a*) the purchase price of such unit, or (*b*) the cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, less in each case depreciation (but not any accelerated amortization) at the rate approved by the Interstate Commerce Commission for such unit from the date of delivery and acceptance of such unit. The cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, and the applicable rate of depreciation, shall be conclusively determined by a certificate of any Vice President or the Treasurer of the Buyer filed with the Sellers at the time of the aforesaid payment.

Any money paid to the Sellers pursuant to the preceding paragraph of this Section 8 shall, as the Buyer may direct in a written instrument filed with the Sellers, be applied, in whole or in part, to or toward the cost of a unit or units of standard-gauge railroad equipment (other than work or passenger equipment) to replace such unit worn out, lost, destroyed or irreparably damaged; provided that if at any time the total amount of such moneys on deposit with the Sellers shall exceed the total amount of the remaining unpaid installments hereunder, the Sellers shall on request of the Buyer pay the amount of such excess to the Buyer. If such replacing equipment shall not be new equipment the Buyer shall deliver to the Sellers a certificate of any Vice President or the Treasurer of the Buyer that the cost of such equipment does not exceed the fair value thereof. On request of the Buyer at any time the Sellers shall invest any such moneys so on deposit in United States Government obligations maturing in not more than one year from the date of purchase.

The Buyer will cause any replacing Equipment to be marked as provided in Section 7 hereof. Any or all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Sellers subject to the provisions hereof, and the Buyer 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 replacements to come under and be subject to this Agreement.

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

SECTION 10. *Compliance with Laws and Rules.* During the term of this Agreement the Buyer will comply and cause Wheeling and the Railroad to 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 Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Buyer 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 Buyer 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 Sellers, adversely affect the property or rights of the Sellers hereunder.

SECTION 11. *Reports and Inspections.* On or before the first day of September in each year, commencing with the year 1962, the Buyer will furnish to the Sellers an accurate statement, as of the preceding June 1, showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed or irreparably damaged, whether by accident or otherwise, during the preceding year ending May 31, the numbers of the units then undergoing repairs and awaiting repairs, and such other information regarding the condition and state of repair of the Equipment as the Sellers may reasonably request. Together with such statement

the Buyer will also furnish to the Sellers a statement that, in the case of all Equipment repainted during such preceding year, the names and word or words required by Section 7 hereof have been preserved or replaced. The Sellers shall have the right, by their agents, to inspect the Equipment and the Buyer's records with respect thereto once in every year.

SECTION 12. *Possession and Use.* The Buyer, so long as it shall not be in default under this Agreement, or its lessee or the Railroad (as herein permitted), shall be entitled to the possession of the Equipment and the use thereof, including in the case of such lessee or the Railroad use upon the lines of railroad owned or operated by it or over which it has trackage rights and upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Sellers to the Buyer, but only upon and subject to all the terms and conditions of this Agreement.

SECTION 13. *Prohibition Against Liens.* The Buyer will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Buyer or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Sellers thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Sellers, adversely affect the property or rights of the Sellers hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies 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 not delinquent (such liens being herein called permitted liens).

SECTION 14. *Buyer's Indemnities.* The Buyer agrees to indemnify and save harmless the Sellers 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 Sellers of title to the Equipment, or out of the use and oper-

ation thereof by the Buyer during the period when title thereto remains in the Sellers. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price and the conveyance of the Equipment, as provided in Section 6 hereof, or the termination of this Agreement in any manner whatsoever.

The Buyer will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

SECTION 15. *Patent Indemnity.* The Buyer agrees to indemnify, protect and hold harmless the Sellers from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Sellers because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 16. *Assignments.* The Buyer will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Section 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Sellers; provided that nothing in this Agreement shall prevent the Buyer from leasing or transferring possession of the Equipment or any units thereof to Wheeling or to a subsidiary, affiliated or controlled company of the Railroad or, with the consent of the Sellers or their assignee, to any other corporation. Any lease permitted by this paragraph may confer rights upon the lessee to acquire title to the Equipment subject to the paramount rights of the Sellers hereunder.

All or any of the rights, benefits and advantages of the Sellers under this Agreement, including the right to receive the payments herein provided to be made by the Buyer, may be assigned by the Sellers and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Buyer from, the obligations of the Buyer to the Sellers under Sections 14 and 15 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

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

The Buyer and the Railroad recognize that it is the custom of railroad equipment manufacturers or sellers to transfer or assign agreements of this character and understand that the transfer or assignment of this Agreement, or of some or all of the rights of the Sellers hereunder, is contemplated. The Buyer and the Railroad expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Sellers hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Sellers as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the purchase price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Sellers in respect of the Equipment or the repair, delivery, guaranty or warranty thereof, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer or to the Railroad by the Sellers. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer or the Railroad against and only against the Sellers.

In the event of any such transfer or assignment, or successive transfers or assignments by the Sellers, of title to the Equipment and of the Sellers' rights hereunder in respect thereof, the Buyer will, whenever requested by

such transferee or assignee, change the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, with such names and word or words as shall be specified by such transferee or assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Buyer or its lessee or the Railroad relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement shall be borne by the Buyer. The cost of marking such names and word or words in connection with any subsequent assignment will be borne by the subsequent transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Buyer will, in connection with the settlement for the Equipment subsequent to such transfer or assignment, deliver to the assignee or transferee, on or before the closing date with respect to such Equipment, all documents required by the terms of such transfer or assignment to be delivered to the assignee or transferee in connection with such settlement except for any opinion of counsel for the assignee or transferee.

SECTION 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(*a*) The Buyer shall fail to pay in full any sum payable by the Buyer when payment thereof shall be due hereunder; or

(*b*) The Buyer shall, for more than 30 days after the Sellers shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Sellers for such compliance; or

(*c*) A petition for reorganization under the Bankruptcy Act shall be filed by or against the Buyer or the Railroad, and all the obligations of the Buyer or the Railroad (as the case may be) under this Agreement shall not have been duly assumed by a trustee or

trustees appointed in such proceedings or otherwise given the same status as obligations assumed 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

(*d*) Any proceedings shall be commenced by or against the Buyer or the Railroad 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 indebtedness payable hereunder), and all the obligations of the Buyer or the Railroad (as the case may be) under this Agreement shall not have been duly assumed by a trustee or trustees or receiver or receivers appointed for the Buyer or the Railroad for its property in connection with any such proceedings or otherwise given the same status as obligations assumed 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*) The Buyer shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Sellers may, upon written notice to the Buyer and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Sellers, declare the entire indebtedness in respect of the aggregate 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 of 6% per annum, to the extent legally enforceable, and the Sellers shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the aggregate purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Buyer or the Railroad wherever situated.

The Sellers may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Buyer and 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 default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Buyer 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.

SECTION 18. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the aggregate purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Sellers may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law applicable to the action to be taken by the Sellers, take or cause to be taken by their agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Buyer any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 18 expressly provided, and may remove the same from possession and use of the Buyer or its lessee or the Railroad and for such purpose may enter upon the premises of the Buyer or its lessee or the Railroad 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 Buyer or of such lessee, or the Railroad with or without process of law.

In case the Sellers shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Sellers, the Buyer shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on such lines as shall be designated by the Sellers and shall there deliver the Equipment or cause it

to be delivered to the Sellers; and, at the option of the Sellers, the Sellers may keep the Equipment on any of the lines or premises of the Railroad until the Sellers shall have leased, sold or otherwise disposed of the same, and for such purpose the Buyer agrees to furnish, or cause to be furnished, without charge for rent or storage, the necessary facilities at any point or points selected by the Sellers reasonably convenient to the Railroad. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Sellers shall be entitled to a decree against the Buyer requiring specific performance hereof. The Buyer hereby expressly waives any and all claims against the Sellers and their agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner. The Railroad hereby consents to the provisions of this paragraph.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Sellers (after retaking possession of the Equipment as hereinbefore in this Section 18 provided) may at their election retain the Equipment as their own and make such disposition thereof as the Sellers shall deem fit, and in such event all the Buyer's rights in the Equipment will thereupon terminate and all payments made by the Buyer may be retained by the Sellers as compensation for the use of the Equipment by the Buyer; provided, however, that, if the Buyer, within 20 days of receipt of notice of the Sellers' election to retain the Equipment for their own use, as hereinafter provided, shall pay or cause to be paid to the Sellers 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 Buyer; or the Sellers with or without the retaking of possession thereof, may at their election,

sell the Equipment, or any unit thereof, free from any and all claims of the Buyer, or of any other party claiming by, through or under the Buyer at law or in equity, at public or private sale and with or without advertisement as the Sellers may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Sellers in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Sellers under the provisions of this Agreement. Written notice of the Sellers' election to retain the Equipment for their own use may be given to the Buyer and the Railroad, either in person or by telegram or registered mail addressed to the Buyer and the Railroad as provided in Section 23 hereof, at any time during a period of 30 days after the entire indebtedness in respect of the aggregate purchase price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Sellers shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 18.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Sellers 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 Sellers may determine in compliance with any such requirements of law, provided that the Buyer and the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, either in person or by telegram or registered mail addressed to the Buyer and the Railroad as provided in Section 23 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Buyer to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Sellers may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability

to the Buyer (except to the extent of surplus money received as hereinafter provided in this Section 18), and in payment of the purchase price therefor the Sellers shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Sellers from the Buyer hereunder.

Each and every power and remedy hereby specifically given to the Sellers 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 Sellers. 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 Sellers 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.

If, after applying all sums of money realized by the Sellers under the remedies herein provided, there shall remain any amount due to them under the provisions of this Agreement, the Buyer shall pay the amount of such deficiency to the Sellers upon demand, and, if the Buyer shall fail to pay such deficiency, the Sellers may bring suit therefor and shall be entitled to recover a judgment therefor against the Buyer. If, after applying as aforesaid all sums realized by the Sellers, there shall remain a surplus in the possession of the Sellers, such surplus shall be paid to the Buyer.

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

SECTION 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable

law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Buyer and the Railroad to the fullest extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Buyer and the Railroad, to the fullest extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Sellers' rights hereunder and any and all rights of redemption.

SECTION 20. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Sellers shall impair or affect the Sellers' right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Buyer shall not otherwise alter or affect the Sellers' rights or the Buyer's or the Railroad's obligations hereunder. The Sellers' acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Buyer's or the Railroad's obligations or the Sellers' rights hereunder with respect to any subsequent payments or defaults therein.

SECTION 21. *Recording.* The Buyer will cause this Agreement and any supplements hereto and the first assignment hereof (a counterpart of such assignment being attached hereto) to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Sellers for the purpose of proper protection, to the satisfaction of counsel for the Sellers, of their title to the Equipment and their rights under this Agreement or for the purpose of carrying out the intention of this Agree-

ment; and the Buyer will promptly furnish to the Sellers certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Buyer with respect thereto, satisfactory to the Sellers.

SECTION 22. *Payment of Expenses.* The Buyer will pay all reasonable costs, charges and expenses incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, recording or depositing of this Agreement, and of the first assignment of this Agreement by the Sellers, and of any instrument supplemental hereto or amendatory hereof, including the fees and expenses of counsel for the first assignee of this Agreement and including stamp and other taxes.

SECTION 23. *Notices.* Any notice hereunder to the Buyer or to the Railroad shall be deemed to be properly served if delivered or mailed to it at Terminal Tower, Cleveland 1, Ohio, or at such other address as may have been furnished in writing to the Sellers by the Buyer or the Railroad, as the case may be. Any notice hereunder to the Sellers shall be deemed to be properly served if delivered or mailed to the Sellers c/o The Wheeling and Lake Erie Railway Company, Terminal Tower, Cleveland 1, Ohio, or at such other address as may have been furnished in writing to the Buyer and the Railroad by the Sellers. Any notice hereunder to any assignee of the Sellers or of the Buyer shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Buyer or the Sellers, as the case may be, by such assignee.

SECTION 24. *Section Headings.* All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

SECTION 25. *Modification of Agreement.* No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Sellers, the Buyer and the Railroad.

SECTION 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio, but the Sellers shall be entitled to 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.

SECTION 27. *Definitions.* The term "Sellers", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, collectively G. H. Atkinson and E. F. Lorman, and the survivor of them, 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 or assignors as regards any rights hereunder that are retained and excluded from any such assignment.

SECTION 28. *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.

IN WITNESS WHEREOF, G. H. Atkinson and E. F. Lorman have hereunto set their hands and seals, and Wheeling Car Leasing Company and The New York, Chicago and St. Louis Railroad Company have caused this instrument to be executed in their respective names by their officers, thereunto duly authorized, and their corporate seals to be hereunto affixed, duly attested, all as of the day, month and year first above written, and have caused this instrument to be delivered in the City of Cleveland, State of Ohio as of the 1st day of June, 1960.

..... [SEAL]
(G. H. ATKINSON)

..... [SEAL]
(E. F. LORMAN)

WHEELING CAR LEASING COMPANY

By M. Dillon
President

(CORPORATE SEAL)

Attest: E. N. Teeters
Secretary

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY

By C. B. Campbell
Vice President

(CORPORATE SEAL)

Attest: McAtee
Assistant Secretary

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.:

On this 19TH day of MAY, 1960, before me personally appeared G. H. ATKINSON and E. F. LORMAN, to me known to be the persons described in and who executed the foregoing instrument, and they acknowledged the same as their free act and deed.

(SEAL)

W. J. Bettcher
W. J. BETTCHER, NOTARY PUBLIC

My commission expires FEB. 22, 1961.

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.:

On this 25TH day of MAY, 1960, before me personally appeared J. N. DILLEN, to me personally known, who being by me duly sworn says that he is President of Wheeling Car Leasing 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.

(SEAL)

W. J. Bettcher
W. J. BETTCHER, NOTARY PUBLIC

My commission expires FEB. 22, 1961.

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.:

On this 19TH day of MAY, 1960, before me personally appeared C. B. Campbell, to me personally known, who being by me duly sworn says that he is a Vice President of The New York, Chicago and St. Louis 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.

(SEAL)

W. J. Bettcher

W. J. BETTCHER, NOTARY PUBLIC

My commission expires FEB. 22, 1961.

SCHEDULE A

Quantity	Type
2,000	70-ton Hopper Cars, lettered "NYC & St L" or "W & LE".

Said Hopper Cars were formerly the property of The Wheeling and Lake Erie Railway Company and were units in its series numbered 78,000 through 80,999. The identifying numbers of the units will be determined from time to time at or before their delivery for repair and notice thereof will be given by the Sellers to the Buyer. The numbers heretofore determined are:

78000	78081	78178	78259	78349	78434	78530
78007	78082	78179	78261	78351	78435	78534
78010	78084	78184	78266	78352	78442	78539
78016	78087	78189	78268	78359	78447	78541
78017	78090	78193	78274	78361	78456	78543
78018	78091	78194	78275	78363	78459	78544
78022	78093	78195	78276	78365	78461	78545
78023	78100	78196	78281	78367	78463	78548
78024	78104	78198	78283	78370	78466	78549
78026	78107	78199	78285	78373	78467	78551
78027	78111	78201	78286	78375	78469	78552
78029	78112	78205	78289	78376	78471	78556
78034	78113	78207	78292	78379	78479	78559
78035	78115	78208	78293	78382	78481	78563
78039	78123	78210	78299	78386	78483	78565
78050	78125	78212	78300	78390	78484	78568
78051	78128	78214	78304	78393	78485	78572
78052	78132	78226	78306	78398	78490	78573
78053	78135	78228	78308	78409	78491	78574
78056	78147	78231	78311	78411	78493	78581
78057	78151	78234	78315	78414	78503	78594
78059	78152	78239	78316	78417	78505	78596
78062	78153	78240	78326	78419	78506	78597
78065	78154	78244	78328	78421	78509	78598
78067	78159	78246	78334	78423	78511	78599
78071	78160	78249	78337	78426	78521	78610
78075	78163	78252	78340	78431	78524	78617
78078	78167	78253	78342	78432	78525	78630
78079	78172	78256	78345	78433	78528	78631

78635	78858	79074	79267	79820	80481	80824
78640	78862	79078	79270	79842	80489	80830
78643	78869	79084	79297	79850	80500	80835
78650	78870	79086	79316	79859	80509	80838
78652	78876	79087	79333	79862	80513	80839
78654	78878	79091	79338	79871	80520	80844
78672	78879	79092	79341	79898	80526	80849
78678	78881	79094	79345	79902	80541	80853
78679	78884	79095	79354	79908	80561	80856
78685	78885	79099	79357	79923	80563	80857
78688	78887	79102	79367	79929	80572	80871
78693	78891	79104	79375	79931	80573	80873
78696	78893	79106	79379	79976	80608	80878
78717	78894	79109	79400	79990	80610	80883
78718	78900	79111	79406	80002	80625	80885
78723	78907	79114	79437	80037	80642	80886
78724	78910	79115	79454	80104	80648	80888
78726	78918	79118	79467	80111	80660	80890
78741	78929	79119	79471	80113	80665	80895
78751	78930	79124	79492	80145	80679	80898
78774	78932	79131	79523	80162	80694	80910
78781	78936	79135	79534	80175	80696	80911
78784	78957	79139	79537	80190	80699	80913
78787	78963	79151	79563	80197	80705	80916
78788	78967	79164	79572	80200	80715	80917
78792	78968	79170	79595	80201	80723	80918
78794	78970	79173	79614	80213	80724	80923
78800	78973	79178	79633	80217	80725	80925
78801	78978	79183	79636	80254	80726	80931
78802	78980	79194	79648	80257	80736	80935
78806	78995	79198	79688	80281	80760	80936
78809	78999	79205	79689	80311	80763	80938
78813	79005	79218	79746	80312	80775	80944
78814	79007	79222	79748	80321	80776	80952
78819	79010	79233	79753	80341	80787	80953
78822	79018	79248	79757	80349	80789	80954
78823	79029	79249	79766	80370	80790	80957
78826	79030	79250	79778	80381	80802	80961
78828	79035	79251	79782	80425	80803	80963
78830	79043	79256	79784	80427	80807	80964
78851	79059	79262	79794	80442	80808	80967
78855	79073	79263	79818	80475	80822	80969
				80477	80823	80984

ASSIGNMENT dated as of June 1, 1960, between G. H. ATKINSON and E. F. LORMAN, both of Terminal Tower, Cleveland 1, Ohio (hereinafter called the Sellers) and THE CENTRAL NATIONAL BANK OF CLEVELAND, a national banking association, with an office at 123 West Prospect Avenue, Cleveland 1, Ohio, as Agent under the Financing Agreement hereinafter referred to (hereinafter called the Assignee).

WHEREAS, the Sellers and Wheeling Car Leasing Company, a corporation duly organized and existing under the laws of the State of Ohio, with an office in Cleveland, Ohio (hereinafter called the Buyer) have entered into a Conditional Sale Agreement dated as of June 1, 1960 (hereinafter called the Conditional Sale Agreement), covering the sale and delivery, on the conditions therein set forth, by the Sellers and the purchase by the Buyer of certain railroad equipment (hereinafter called the Equipment) belonging to the Sellers described in Schedule A of the Conditional Sale Agreement, which Equipment is to be repaired pursuant to an agreement (hereinafter called the Repair Agreement) dated as of June 1, 1960 between the Sellers and The New York, Chicago and St. Louis Railroad Company, a consolidated railroad corporation duly organized and existing under the laws of the several States of New York, Pennsylvania, Ohio, Indiana and Illinois, with an office in Cleveland, Ohio (hereinafter called the Railroad); and

WHEREAS, concurrently herewith the Buyer, by an instrument dated as of the date hereof, hereinafter called the Lease, is leasing the Equipment, subject to the Conditional Sale Agreement and this Assignment, to The Wheeling and Lake Erie Railway Company, an Ohio corporation, which heretofore, pursuant to a lease dated as of December 1, 1949, hereinafter called the 1949 Lease, leased certain of its properties, including rolling stock and interests in rolling stock, then owned or thereafter acquired, to the Railroad; and

WHEREAS, the Railroad, in confirmation of its obligations under the 1949 Lease, has unconditionally guaranteed the payment of all sums payable by the Buyer under the Conditional Sale Agreement and has joined in the Conditional Sale Agreement as a party for the purpose of setting forth the terms and conditions of its guaranty; and

WHEREAS, in order to finance the cost of the repair of the Equipment to the extent of $3,000 per car, the Sellers have entered into an Agreement dated as of June 1, 1960 with The Central National Bank of Cleveland as Agent and certain other parties (hereinafter called the Financing Agreement) which provides, among other things and upon the terms and conditions therein stated, for the payment by the Assignee to or upon the instructions of the Sellers of $3,000 for each unit of the Equipment repaired, delivered and accepted pursuant to the Conditional Sale Agreement;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That in consideration of the sum of One Dollar ($1) and other good and valuable consideration paid by the Assignee to the Sellers, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Sellers hereby assign, transfer and set over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Sellers in and to the Equipment and each unit thereof to the extent that the same shall be repaired, delivered and accepted pursuant to the Conditional Sale Agreement;

(b) All the right, title and interest of the Sellers in and to the Conditional Sale Agreement (except the rights to the down payment and the payment in cash in the amount of $850 per unit of the Equipment when accepted by the Buyer, as provided in subparagraphs (a) and (b) of Section 3 of the Conditional Sale Agreement and except also the rights to cause to be repaired and to deliver the Equipment and to be reimbursed for taxes paid or incurred by the Sellers as provided in Section 5 thereof), and, except as aforesaid, in and to all amounts which may be or become due or owing by the Buyer to the Sellers under the Conditional Sale Agreement on account of its indebtedness in respect of the purchase price of the Equipment and interest thereon and by the Railroad by reason of its guaranty under the Conditional Sale Agreement, or otherwise becoming due under the Conditional Sale Agreement; and

(c) All the Sellers' rights, powers, privileges and remedies under the Conditional Sale Agreement;

provided, however, that notwithstanding the foregoing, such assignment shall not in any way affect or modify the obligations of the Sellers to cause to be repaired and to deliver the Equipment or to relieve the Buyer from its obligations to the Sellers under Sections 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 16 of the Conditional Sale Agreement, all obligations of the Sellers to the Buyer in respect of the Equipment shall be and remain enforceable by the Buyer, its successors and assigns, against and only against the Sellers. In furtherance of the foregoing assignment and transfer, the Sellers hereby authorize and empower the Assignee in the Assignee's own name, in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Sellers, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Buyer with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Sellers covenant and agree that they will deliver the Equipment upon completion of repairs to the Buyer in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, they will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Sellers. The Sellers further covenant and agree that they will warrant to the Assignee and the Buyer that at the time of delivery of each unit of the Equipment they had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all prior claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement and permitted liens as therein defined; and the Sellers further covenant and agree that they 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 Sellers to the Buyer; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Buyer thereunder.

SECTION 3. The Sellers will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Buyer, in letters not less than one-half inch in height, the following legend:

"THE CENTRAL NATIONAL BANK OF CLEVELAND, OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Sellers 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 Sellers therein or in the Equipment.

SECTION 5. The Assignee shall, from time to time but not after May 31, 1961 (or such later date as shall be agreed upon in writing between the Buyer, the Sellers, the Railroad and the Assignee) pay to or upon the instructions of the Seller the sum of $3,000 for each unit of the Equipment repaired, delivered to the Buyer and accepted by the Buyer, but only upon delivery to the Assignee of the following:

(a) Two counterparts of a certificate signed by the Sellers that a stated number of units of the Equipment (giving car numbers) have been repaired and accepted as required by the Repair Agreement and have become subject to the Lease.

(b) Two counterparts of a certificate signed by an inspector or other authorized representative of the Buyer with reference to the same units of the Equipment covered by the certificate of the Sellers in clause (a) of this Section 5, stating that such units have been inspected and accepted by him on behalf of the Buyer and that there was plainly, distinctly, permanently and conspicuously marked on each side of each such unit at the time of its acceptance, in letters not less than one-half inch in height, the following legend:

"THE CENTRAL NATIONAL BANK OF CLEVELAND, OWNER";

(c) Two counterparts of a bill of sale from the Sellers to the Assignee, transferring to the Assignee title to the units of the Equip-

ment referred to in the certificates delivered to the Sellers pursuant to clauses (a) and (b) of this Section 5 and warranting to the Assignee that at the time of delivery to the Buyer the Sellers 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 and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement and permitted liens as defined in the Conditional Sale Agreement;

(d) Two counterparts of an opinion of counsel for the Buyer (who may also be counsel for the Railroad) in form and substance satisfactory to the Assignee, stating that (i) the Buyer is a corporation duly organized and validly existing in good standing under the laws of the State of Ohio and has corporate power to enter into the Conditional Sale Agreement and the Lease and to carry out the obligations to be performed by it thereunder; (ii) the Railroad is a consolidated railroad corporation duly organized and validly existing in good standing under the laws of the several States of New York, Pennsylvania, Ohio, Indiana and Illinois and has corporate power to enter into the Conditional Sale Agreement and to carry out the obligations to be performed by it thereunder; (iii) the Conditional Sale Agreement and this Assignment and the Lease have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms; (iv) the Conditional Sale Agreement and this Assignment have been duly filed, recorded or deposited in accordance with Section 21 of the Conditional Sale Agreement; (v) title to the units of the Equipment referred to in the certificates delivered to the Assignee pursuant to clauses (a) and (b) of this Section 5 is validly vested in the Assignee, free of all prior claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement and permitted liens as defined in the Conditional Sale Agreement; (vi) such units of the Equipment have been marked in accordance with the provisions of the Conditional Sale Agreement and of this Assignment; and (vii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or of this Assignment or of the Lease, or if any authority is necessary that it has been obtained. Such opinion shall also cover any other matters deemed material by the Assignee.

Nothing herein contained shall be deemed to require the Assignee to make any payments to or upon the instructions of the Sellers except to the extent that funds therefor shall be made available to the Assignee by the parties to the Financing Agreement as therein provided.

The Sellers hereby instruct the Assignee to make the payments provided for by this Section 5 directly to the Railroad.

The opinions required pursuant to clause (d) of this Section 5 may, in so far as they involve questions of fact, be based upon certificates or other written communications of representatives of the Buyer, the Sellers or the Railroad.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyer thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Sellers hereby:

(*a*) represent and warrant to the Assignee, its successors and assigns, that the Conditional Sale Agreement and the Lease are now in force without amendment thereto;

(*b*) covenant and agree that they 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*) represent and warrant to the Assignee, its successors and assigns, that, after this Assignment has become effective, the Sellers will retain no interest in the Equipment or any unit thereof or the title thereto or any rights with respect thereto under the Conditional Sale Agreement except as herein expressly provided.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Ohio.

SECTION 9. This Assignment 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 instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a copy thereof, to the Buyer and to the Railroad.

IN WITNESS WHEREOF, the Sellers have hereunto set their hands and seals, and the Assignee has caused this instrument to be executed in its name by its officers, thereunto duly authorized, and its corporate seal to be hereunto affixed, duly attested, all as of the day, month and year first above written, and have caused this instrument to be delivered in the City of Cleveland and State of Ohio as of the 1st day of June, 1960.

G. H. Atkinson [SEAL]
(G. H. ATKINSON)

E. F. Lorman [SEAL]
(E. F. LORMAN)

THE CENTRAL NATIONAL BANK OF CLEVELAND

By R. K. Hickman
Vice-President

(CORPORATE SEAL)

Attest: R. W. Ballantine

Assistant ~~Secretary~~
Cashier

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.:

On this 19TH day of MAY, 1960, before me personally appeared G. H. ATKINSON and E. F. LORMAN, to be known to be the persons described in and who executed the foregoing instrument, and they acknowledged the same as their free act and deed.

(SEAL)

W. J. Bettcher
W. J. BETTCHER, Notary Public
My commission expires FEB. 22, 1961.

STATE OF OHIO
COUNTY OF CUYAHOGA } ss.:

On this 20th day of May, 1960, before me personally appeared R. H. Eichman, to me personally known, who being by me duly sworn says that he is a Vice President of The Central National Bank of Cleveland, 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.

(SEAL)

Walter J. Heddesheimer
, Notary Public
My Commission expires Walter J. Heddesheimer, Notary Public
My Commission Expires Dec. 15, 1960

Receipt of a copy of the foregoing Assignment is hereby acknowledged, as of June 1, 1960.

WHEELING CAR LEASING COMPANY
By
President

THE NEW YORK, CHICAGO AND ST. LOUIS RAILROAD COMPANY
By C. B. Campbell
Vice President

(5377)