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REGISTRATION NO. _____
DEC 30 1971 - 8 42 AM
INTERSTATE COMMERCE COMMISSION

Lease of Equipment

between

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Dated as of December 1, 1971

LEASE OF EQUIPMENT, dated as of December 1, 1971, between THE BANKERS' TRUST COMPANY, a trust company incorporated under the laws of the Province of Quebec and duly qualified under the laws of the Province of Ontario, as Owner-Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of December 1, 1971, with Procor Limited and The Royal Trust Company, and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter sometimes called the Manufacturer or Lessee).

WHEREAS, the Lessor and the Manufacturer have entered into a Manufacturing Agreement dated as of December 1, 1971 (hereinafter called the Manufacturing Agreement), wherein the Manufacturer has agreed to construct, sell and deliver the railroad equipment described in Schedule I hereto; and

WHEREAS, the Lessor has entered into an Equipment Trust Agreement dated as of December 1, 1971 (hereinafter called the Equipment Trust Agreement) with Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee), under which the Lessor has agreed to cause the Manufacturer to sell, assign and transfer to the Trustee title to all the Units and under which the Trustee has agreed to lease all the Units to the Lessor;

WHEREAS, the Lessee desires to lease from the Lessor all the Units, or such lesser number as are delivered and accepted and settled for under the Manufacturing Agreement on or prior to March 1, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but upon default of

the Lessee hereunder, subject and subordinate to all the rights and remedies of the Trustee under the Equipment Trust Agreement.

§ 1. *Delivery and Acceptance of Units.* Contemporaneously with each unit tendered to the Lessor pursuant to Article 2 of the Manufacturing Agreement, the Lessor will cause each such Unit to be tendered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such tender, the Lessee will cause its authorized inspectors or representatives to inspect the same, and if such Unit is found to be in good operating order and repair, to accept delivery of such Unit and to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance) certifying as to the actual date or acceptance of delivery by the Lessee; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease and such Certificate of Acceptance shall be absolutely binding upon the Lessee. Any Unit or Units excluded from the Equipment Trust Agreement pursuant to Section 3.01 of the Equipment Trust Agreement shall likewise be excluded from this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor, in lawful money of Canada, as rental for each Unit subject to this Lease, 41 consecutive semiannual payments payable on the Business Day (as defined in the Equipment Trust Agreement) next preceding March 1 and September 1 of each year commencing March 1, 1972. The first such semiannual payment shall be made in respect of each Unit subject to this Lease which shall have been settled for on or prior to March 1, 1972, under the Manufacturing Agreement and the Equipment Trust Agreement and such payment shall be in an amount equal to .01889% of the Cost (as such term is defined in the Equipment Trust Agreement) of each such Unit for each day elapsed from and including the date such Unit is so settled for to and including March 1, 1972; the next 12 such semiannual payments shall each be in an amount equal to 3.4000% of the Cost of each Unit subject to this Lease; and the final 28 of such semiannual payments shall be (i) for each Unit delivered on



or prior to December ³⁰~~29~~, 1971, an amount equal to 5.19039% of the Cost of each Unit subject to this lease and (ii) for each Unit delivered after December ³⁰~~29~~, 1971, if any, an amount equal to 5.37489% of the Cost of such Unit subject to this Lease.

All rental and other payments provided for in this Lease to be made to the Lessor shall be made by the deposit of the funds to the account of the Lessor at the branch of such bank or trust company as shall be from time to time specified in writing by the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Trustee; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease, the breach by the Lessor of the representations and warranties of the Lessor contained in the second paragraph of § 8 hereof, or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. The Lessee shall have a right of action against the Lessor for any such breach of such representations and warranties or any such failure to perform such obligations, but without any right

of set-off of such rents and other amounts payable by the Lessee hereunder.

§ 3. *Terms of Lease.* The term of this Lease as to each Unit shall begin upon acceptance thereof by the Lessee pursuant to § 1 hereof and, subject to the provisions of §§ 1, 6, 9, 17 and 19 hereof, shall terminate on March 1, 1992.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Trustee under the Equipment Trust Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than three-eighths inch in height, the following words: "OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, CANADA, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT", or other appropriate words designated by the Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the interests of the Lessor and the Trustee in and to such Unit and the rights of the Lessor under this Lease and the Equipment Trust Agreement and of the Trustee under the Equipment Trust Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change or permit the identifying number of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Trustee and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

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

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Trustee for collection or other charges and will be free of expense to the Lessor and the Trustee with respect to the amount of any local, state, provincial or federal Canadian, United States or Mexican taxes (other than any local, state, provincial or federal Canadian, United States or Mexican income taxes [to the extent that the Lessor receives credit for such United States or Mexican taxes against its Canadian income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein, and other than the aggregate of all local, provincial or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties of any kind in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by, this Lease, the Equipment Trust Agreement or any of the instruments or agreements referred to herein or therein or contemplated hereby or thereby, or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, the Equipment Trust Agreement or any such instruments or agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon

the Lessor solely by reason of its interest therein or upon the Trustee solely by reason of its title thereto and any and all impositions upon or on account of the trust created by the Equipment Trust Agreement or upon or on account of the Equipment Trust Agreement, or the transactions contemplated thereby (whether or not such transactions shall actually be consummated) or the instruments or agreements referred to therein or contemplated thereby, and will keep at all times all and every part of such Unit free and clear of all such impositions which might in any way affect the interests of the Lessor or the Trustee or result in a claim, lien, security interest or other encumbrance upon any such Unit and will supply the Lessor and the Trustee with a receipt or other evidence of such payment satisfactory to the Lessor and the Trustee; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement and the Lessee shall have furnished the Trustee with an opinion of counsel to such effect. If any such impositions shall have been charged or levied against the Lessor or the Trustee directly and paid by the Lessor or the Trustee, the Lessee shall reimburse the Lessor or the Trustee, as the case may be, on presentation of invoice therefor; *provided, however*, that the Lessee shall not be obligated to reimburse the Lessor or the Trustee for any such imposition so paid unless the Lessor or the Trustee shall have been, in the opinion of its counsel legally liable with respect thereto, or unless the Lessee shall have approved the payment thereof.

In the event any reports with respect to impositions are required to be made on the basis of individual Units the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Trustee in such Units, if such is necessary or appropriate, or will notify the Lessor and the Trustee of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Trustee.

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

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, completely destroyed or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease, or until such Unit shall have been returned to the Lessor in the manner provided in § 12 hereof, the Lessee shall, within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Trustee with respect thereto. On the rental payment date next succeeding such notice (or, at the option of the Lessee, in the event such rental date shall occur within 15 days after such notice, on the next succeeding rental payment date) the Lessee shall pay to the Lessor an amount equal to the accrued unpaid rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of such rental payment date in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment and the term of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Casualty Value of any such Unit, execute and deliver to or upon the order of the Lessee a legally valid bill of sale (without warranties) for such Unit such as will transfer to the Lessee such title to such Unit as is derived from the Manufacturer free and clear of all liens, security interests and other encumbrances arising through the Lessor or the Trustee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Cost of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

Lease, the rights and obligations hereunder of the parties hereto shall cease and determine as if this Lease had never been made.

§ 18. *Additional Payments by Lessee.*

In addition to the rentals specified in § 2 hereof:

(a) the Lessee agrees to pay to the Lessor on the Business Day (as defined in the Equipment Trust Agreement) next preceding March 1, 1972, an amount equal to (x) the rental payment payable by the Lessor to the Trustee on or before March 1, 1972, under Section 4.04(3) of the Equipment Trust Agreement in respect of interest payable on the Equipment Trust Certificates issued under the Equipment Trust Agreement, less (y) the amount of the first semi-annual rental payment payable by the Lessee to the Lessor under § 2 hereof.

(b) the Lessee agrees to pay to the Lessor promptly amounts equal to any rental payments which may become payable by the Lessor to the Trustee on or before March 1, 1972, under Section 4.04(1) of the Equipment Trust Agreement in respect of (i) any expenses incurred in connection with any purchase, sale or redemption by the Trustee of Investments (as defined in the Equipment Trust Agreement), which are made by the Trustee on the written or telegraphic request of the Lessee or otherwise required by the provisions of the third paragraph of Section 8.04 of the Equipment Trust Agreement if such request is not made by the Lessee, and (ii) any loss of principal (including interest accrued thereon at the time of purchase) incurred in connection therewith.

(c) it is understood and agreed that the Trustee is obligated under the last paragraph of Section 8.04 of the Equipment Trust Agreement to pay to the Lessee on March 1, 1972, or on such earlier date as may be agreed upon by the Trustee and the Lessor, any interest (in excess of accrued interest paid from Deposited Cash [as defined in the Equipment Trust Agreement] at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

§ 19. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default here-

sion in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada and cause notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 86 of the Railway Act of Canada. The Company will promptly after receipt of each bill of sale delivered pursuant to Section 3.04(c) of the Equipment Trust Agreement register such bill of sale in the office of the clerk of the county court of the county of Storemont in the Province of Ontario. The Lessor will, at its own expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments reasonably requested by the Trustee, for the purpose of proper protection, to the satisfaction of the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Assignment, the Consent and the Equipment Trust Agreement. The Lessor will promptly furnish to the Trustee evidence of all such filing, registering, recording, depositing, refile, reregistering, rerecording and/or re-depositing and an opinion or opinions of counsel with respect thereto satisfactory to the Lessor and the Trustee.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease and the fees and disbursements of any counsel which it may retain, unless such costs, expenses, fees and disbursements are paid by some other person. The Lessee will bear the fees and disbursements of any counsel which it may retain.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 8½% per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Termination.* In the event that all of the Units shall have been excluded from this Lease as provided in § 1 hereof, this Lease shall terminate and, except as otherwise expressly provided in this

its or their income tax return for the appropriate year or the failure of the Lessor or the Beneficiaries to follow proper procedures in claiming the same; or

(v) the failure of the Lessor or the Beneficiaries to have sufficient income to benefit from such capital cost allowance, deductions, credits or other benefits.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such capital cost allowance deductions, credit or other benefits on any Unit 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, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to such depreciation deductions disallowed, computed at the rate of $8\frac{1}{2}\%$ per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 14. 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 § 14 shall survive the expiration or other termination of this Lease.

§ 15. *Recording; Expenses.* Prior to the delivery and acceptance of any Unit, the Lessor will, at its own expense, cause the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) to be filed and recorded with the Interstate Commerce Commis-

benefits, the Lessee shall forthwith pay to the Lessor for the respective accounts of the Beneficiaries, as additional rental, an amount with respect to each such taxation year equivalent to the amount derived by multiplying the additional tax paid or payable due to such disallowance by a fraction the numerator of which is 100 and the denominator of which is the difference between 100 and the number which is equal to such Beneficiary's corporate tax rate^{*} for such taxation year expressed in percentage points. Such additional rental, together with any amount of interest or penalty which may be assessed against the Beneficiaries or either of them under the ~~Act~~ ^{Statute} by reason of any disallowance shall be paid by the Lessee forthwith after written notice to the Lessee by the Lessor and/or the Beneficiaries (or either of them) of such disallowance and setting forth the amount of the additional rental calculated as aforesaid; provided, however, that such additional rental shall not be payable if the Beneficiary claiming such additional rental shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to such Beneficiary, all or any portion of such capital cost allowance or such deductions, credits or other benefits with respect to any Unit as a direct result of the occurrence of any of the following events:

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(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor or the Beneficiaries (other than as contemplated by the Equipment Trust Agreement) of any interest in such Unit, the disposition by the Lessor or the Beneficiaries of interest in such Unit or the reduction by the Lessor or the Beneficiaries of its or their interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Equipment Trust Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor or the Beneficiaries to claim such capital cost allowance, deductions, credits or other benefits in

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**[Such corporate tax rate for such year shall be the rate expressed as a percentage that such Beneficiary's taxes payable under the Act and the Statute for such year bears to such Beneficiary's taxable income as defined in the Act]*

from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Equipment Trust Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor or the Beneficiaries to claim such capital cost allowance, deductions, credits or other benefits in its or their income tax return for the appropriate year or the failure of the Lessor or the Beneficiaries to follow proper procedures in claiming the same; or

(v) the failure of the Lessor or the Beneficiaries to have sufficient income to benefit from such capital cost allowance, deductions, credits or other benefits.

(b) The Lease, the Equipment Trust Agreement, the Manufacturing Agreement and the Owner Trust Agreement have been entered into on the basis that the beneficiaries of the Lessor, namely Procor Limited and The Royal Trust Company (hereinafter called "Beneficiaries") shall be entitled in each of their respective taxation years to such deductions, credits and other benefits ^{*}as are provided by income tax statutes and regulations ~~for the Province of Quebec~~ (all hereinafter called the "Statute"), ^{Statute} all as amended to the date hereof as if for the purposes of the ~~Act~~ ^{Statute} the Beneficiaires were the owners of the Units, including without limitation, the right to deduct interest paid on the Trust Certificates from and the right to claim capital cost allowance with respect to the Units computed at a rate of not less than 20% per annum on a declining balance against all their respective incomes from whatever source. If, for any reason including without limitation, changes to the ~~Act~~ ^{Statute} (but other than for the reasons set forth below), the Beneficiaries or either of them shall, in any of their respective taxation years, lose or shall not have or shall have lost the right to claim, or if, for any reason including without limitation, changes to the ~~Act~~ ^{Statute} (but other than for the reasons set forth below) there shall be disallowed with respect to the Beneficiaries or either of them all or any portion of the said capital cost allowance or any such deductions, credits or other

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* under any provincial

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Act in whole or in part (but other than for the reasons set forth below), the Beneficiaries or either of them shall, in any of their respective taxation years, lose or shall not have or shall have lost the right to claim, or if, due to any amendments, changes or repeal of the Act in whole or in part (but other than for the reasons set forth below), there shall be disallowed with respect to the Beneficiaries or either of them all or any portion of the said capital cost allowance or any such deduction, credits or other benefits, the Lessee shall forthwith pay to the Lessor for the respective accounts of the Beneficiaries, as additional rental, an amount with respect to each such taxation year equivalent to the amount derived by multiplying the additional tax paid or payable due to such disallowance by a fraction the numerator of which is 100 and the denominator of which is the difference between 100 and the number which is equal to such Beneficiary's corporate tax rate^{*} for such taxation year expressed in percentage points. Such additional rental, together with any amount of interest or penalty which may be assessed against the Beneficiaries or either of them under the Act by reason of any disallowance shall be paid by the Lessee forthwith after written notice to the Lessee by the Lessor and/or the Beneficiaries (or either of them) of such disallowance and setting forth the amount of the additional rental calculated as aforesaid; *provided, however*, that such additional rental shall not be payable if the Beneficiary claiming such additional rental shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to such Beneficiary, all or any portion of such capital cost allowance or such deductions, credits or other benefits with respect to any Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor or the Beneficiaries (other than as contemplated by the Equipment Trust Agreement) of any interest in such Unit, the disposition by the Lessor or the Beneficiaries of any interest in such Unit or the reduction by the Lessor or the Beneficiaries of its or their interest in the rentals

* [such corporate tax rate for each year shall be the rate expressed as a percentage that such Beneficiary's taxes payable under the Act and the Statute for such year bears to such Beneficiary's taxable income as defined in the Act]

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E. the entering into and performance of this Lease and the Consent will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee.

The Lessee also agrees to furnish to the Lessor and the Trustee a copy, certified by the Secretary or an Assistant Secretary of the Lessee, of resolutions of the Board of Directors of the Lessee authorizing the Lessee to enter into this Lease and the Consent.

The Lessor agrees to furnish to the Lessee signed copies, addressed to the Lessee, of the opinion of counsel referred to in Paragraph 5(b) of the Purchase Agreement, which opinion shall in addition state that the Lessor is a corporation legally incorporated and validly existing, in good standing, under the laws of the Province of Quebec with full corporate power to enter into this Lease, the Manufacturing Agreement, the Equipment Trust Agreement and the Assignment.

§ 14. *Indemnity in Respect of Tax Matters.* (a) The Lease, the Equipment Trust Agreement, the Manufacturing Agreement and the Owner Trust Agreement have been entered into on the basis that the beneficiaries of the Lessor, namely Procor Limited and The Royal Trust Company (hereinafter called "Beneficiaries") shall be entitled in each of their respective taxation years to such deductions, credits and other benefits as are provided by the Income Tax Act (Canada) and Regulations thereunder, and/or any local, ^{and} state ~~and provincial~~ income tax statutes and regulations other than the ~~Province of Quebec~~ (all hereinafter called the "Act"), all as amended to the date hereof, as if for the purposes of the Act the Beneficiaries were the owners of the Units, including without limitation, the right to deduct interest paid on the Trust Certificates from and the right to claim capital cost allowance with respect to the Units computed at a rate of not less than 20% per annum on a declining balance against all their respective incomes from whatsoever source. If, due to any amendments, changes or repeal of the

* as provided for under subsection (b) hereof

** in this section 14

Lease, the rights and obligations hereunder of the parties hereto shall cease and determine as if this Lease had never been made.

§ 18. *Additional Payments by Lessee.*

In addition to the rentals specified in § 2 hereof:

(a) the Lessee agrees to pay to the Lessor on the Business Day (as defined in the Equipment Trust Agreement) next preceding March 1, 1972, an amount equal to (x) the rental payment payable by the Lessor to the Trustee on or before March 1, 1972, under Section 4.04(3) of the Equipment Trust Agreement in respect of interest payable on the Equipment Trust Certificates issued under the Equipment Trust Agreement, less (y) the amount of the first semi-annual rental payment payable by the Lessee to the Lessor under § 2 hereof.

(b) the Lessee agrees to pay to the Lessor promptly amounts equal to any rental payments which may become payable by the Lessor to the Trustee on or before March 1, 1972, under Section 4.04(1) of the Equipment Trust Agreement in respect of (i) any expenses incurred in connection with any purchase, sale or redemption by the Trustee of Investments (as defined in the Equipment Trust Agreement), which are made by the Trustee on the written or telegraphic request of the Lessee or otherwise required by the provisions of the third paragraph of Section 8.04 of the Equipment Trust Agreement if such request is not made by the Lessee, and (ii) any loss of principal (including interest accrued thereon at the time of purchase) incurred in connection therewith.

(c) it is understood and agreed that the Trustee is obligated under the last paragraph of Section 8.04 of the Equipment Trust Agreement to pay to the Lessee on March 1, 1972, or on such earlier date as may be agreed upon by the Trustee and the Lessor, any interest (in excess of accrued interest paid from Deposited Cash [as defined in the Equipment Trust Agreement] at the time of purchase) or other profit which may be realized from any sale or redemption of Investments.

§ 19. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default here-

sion in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada and cause notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 86 of the Railway Act of Canada. The Company will promptly after receipt of each bill of sale delivered pursuant to Section 3.04(c) of the Equipment Trust Agreement register such bill of sale in the office of the clerk of the county court of the county of Storemont in the Province of Ontario. The Lessor will, at its own expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments reasonably requested by the Trustee, for the purpose of proper protection, to the satisfaction of the Trustee, of the Lessor's and the Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Assignment, the Consent and the Equipment Trust Agreement. The Lessor will promptly furnish to the Trustee evidence of all such filing, registering, recording, depositing, refile, reregistering, rerecording and/or re-depositing and an opinion or opinions of counsel with respect thereto satisfactory to the Lessor and the Trustee.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease and the fees and disbursements of any counsel which it may retain, unless such costs, expenses, fees and disbursements are paid by some other person. The Lessee will bear the fees and disbursements of any counsel which it may retain.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 8½% per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Termination.* In the event that all of the Units shall have been excluded from this Lease as provided in § 1 hereof, this Lease shall terminate and, except as otherwise expressly provided in this

its or their income tax return for the appropriate year or the failure of the Lessor or the Beneficiaries to follow proper procedures in claiming the same; or

(v) the failure of the Lessor or the Beneficiaries to have sufficient income to benefit from such capital cost allowance, deductions, credits or other benefits.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such capital cost allowance deductions, credit or other benefits on any Unit 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, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to such depreciation deductions disallowed, computed at the rate of $8\frac{1}{2}\%$ per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 14. 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 § 14 shall survive the expiration or other termination of this Lease.

§ 15. *Recording; Expenses.* Prior to the delivery and acceptance of any Unit, the Lessor will, at its own expense, cause the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) to be filed and recorded with the Interstate Commerce Commis-

benefits, the Lessee shall forthwith pay to the Lessor for the respective accounts of the Beneficiaries, as additional rental, an amount with respect to each such taxation year equivalent to the amount derived by multiplying the additional tax paid or payable due to such disallowance by a fraction the numerator of which is 100 and the denominator of which is the difference between 100 and the number which is equal to such Beneficiary's corporate tax rate^{*} for such taxation year expressed in percentage points. Such additional rental, together with any amount of interest or penalty which may be assessed against the Beneficiaries or either of them under the ~~Act~~ ^{Statute} by reason of any disallowance shall be paid by the Lessee forthwith after written notice to the Lessee by the Lessor and/or the Beneficiaries (or either of them) of such disallowance and setting forth the amount of the additional rental calculated as aforesaid; provided, however, that such additional rental shall not be payable if the Beneficiary claiming such additional rental shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to such Beneficiary, all or any portion of such capital cost allowance or such deductions, credits or other benefits with respect to any Unit as a direct result of the occurrence of any of the following events:

John
De *W*

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor or the Beneficiaries (other than as contemplated by the Equipment Trust Agreement) of any interest in such Unit, the disposition by the Lessor or the Beneficiaries of interest in such Unit or the reduction by the Lessor or the Beneficiaries of its or their interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Equipment Trust Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor or the Beneficiaries to claim such capital cost allowance, deductions, credits or other benefits in

**[Such corporate tax rate for such year shall be the rate expressed as a percentage that such Beneficiary's taxes payable under the Act and the Statute for such year bears to such Beneficiary's taxable income as defined in the Act]*

W
John
De

from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Equipment Trust Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor or the Beneficiaries to claim such capital cost allowance, deductions, credits or other benefits in its or their income tax return for the appropriate year or the failure of the Lessor or the Beneficiaries to follow proper procedures in claiming the same; or

(v) the failure of the Lessor or the Beneficiaries to have sufficient income to benefit from such capital cost allowance, deductions, credits or other benefits.

(b) The Lease, the Equipment Trust Agreement, the Manufacturing Agreement and the Owner Trust Agreement have been entered into on the basis that the beneficiaries of the Lessor, namely Procor Limited and The Royal Trust Company (hereinafter called "Beneficiaries") shall be entitled in each of their respective taxation years to such deductions, credits and other benefits ^{*}as are provided by income tax statutes and regulations ~~for the Province of Quebec~~ (all hereinafter called the "Statute"), ^{Statute} all as amended to the date hereof as if for the purposes of the ~~Act~~ ^{Statute} the Beneficiaires were the owners of the Units, including without limitation, the right to deduct interest paid on the Trust Certificates from and the right to claim capital cost allowance with respect to the Units computed at a rate of not less than 20% per annum on a declining balance against all their respective incomes from whatever source. If, for any reason including without limitation, changes to the ~~Act~~ ^{Statute} (but other than for the reasons set forth below), the Beneficiaries or either of them shall, in any of their respective taxation years, lose or shall not have or shall have lost the right to claim, or if, for any reason including without limitation, changes to the ~~Act~~ ^{Statute} (but other than for the reasons set forth below) there shall be disallowed with respect to the Beneficiaries or either of them all or any portion of the said capital cost allowance or any such deductions, credits or other

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* under any provincial

** in this section 14

Act in whole or in part (but other than for the reasons set forth below), the Beneficiaries or either of them shall, in any of their respective taxation years, lose or shall not have or shall have lost the right to claim, or if, due to any amendments, changes or repeal of the Act in whole or in part (but other than for the reasons set forth below), there shall be disallowed with respect to the Beneficiaries or either of them all or any portion of the said capital cost allowance or any such deduction, credits or other benefits, the Lessee shall forthwith pay to the Lessor for the respective accounts of the Beneficiaries, as additional rental, an amount with respect to each such taxation year equivalent to the amount derived by multiplying the additional tax paid or payable due to such disallowance by a fraction the numerator of which is 100 and the denominator of which is the difference between 100 and the number which is equal to such Beneficiary's corporate tax rate^{*} for such taxation year expressed in percentage points. Such additional rental, together with any amount of interest or penalty which may be assessed against the Beneficiaries or either of them under the Act by reason of any disallowance shall be paid by the Lessee forthwith after written notice to the Lessee by the Lessor and/or the Beneficiaries (or either of them) of such disallowance and setting forth the amount of the additional rental calculated as aforesaid; *provided, however*, that such additional rental shall not be payable if the Beneficiary claiming such additional rental shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to such Beneficiary, all or any portion of such capital cost allowance or such deductions, credits or other benefits with respect to any Unit as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer by the Lessor or the Beneficiaries (other than as contemplated by the Equipment Trust Agreement) of any interest in such Unit, the disposition by the Lessor or the Beneficiaries of any interest in such Unit or the reduction by the Lessor or the Beneficiaries of its or their interest in the rentals

* [such corporate tax rate for each year shall be the rate expressed as a percentage that such Beneficiary's taxes payable under the Act and the Statute for such year bears to such Beneficiary's taxable income as defined in the Act]

[Handwritten initials]

E. the entering into and performance of this Lease and the Consent will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound or contravene any provision of law, statute, rule or regulation to which the Lessee is subject or any judgment, decree, franchise, order or permit applicable to the Lessee.

The Lessee also agrees to furnish to the Lessor and the Trustee a copy, certified by the Secretary or an Assistant Secretary of the Lessee, of resolutions of the Board of Directors of the Lessee authorizing the Lessee to enter into this Lease and the Consent.

The Lessor agrees to furnish to the Lessee signed copies, addressed to the Lessee, of the opinion of counsel referred to in Paragraph 5(b) of the Purchase Agreement, which opinion shall in addition state that the Lessor is a corporation legally incorporated and validly existing, in good standing, under the laws of the Province of Quebec with full corporate power to enter into this Lease, the Manufacturing Agreement, the Equipment Trust Agreement and the Assignment.

§ 14. *Indemnity in Respect of Tax Matters.* (a) The Lease, the Equipment Trust Agreement, the Manufacturing Agreement and the Owner Trust Agreement have been entered into on the basis that the beneficiaries of the Lessor, namely Procor Limited and The Royal Trust Company (hereinafter called "Beneficiaries") shall be entitled in each of their respective taxation years to such deductions, credits and other benefits as are provided by the Income Tax Act (Canada) and Regulations thereunder, and/or any local, ^{and} state ~~and provincial~~ income tax statutes and regulations other than the ~~Province of Quebec~~ (all hereinafter called the "Act"), all as amended to the date hereof, as if for the purposes of the Act the Beneficiaries were the owners of the Units, including without limitation, the right to deduct interest paid on the Trust Certificates from and the right to claim capital cost allowance with respect to the Units computed at a rate of not less than 20% per annum on a declining balance against all their respective incomes from whatsoever source. If, due to any amendments, changes or repeal of the

* as provided for under subsection (b) hereof

** in this section 14

shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assignment in trust for the Trustee and to turn them to the Trustee forthwith in the same form in which they are

received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of $8\frac{1}{2}\%$ per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company

is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Equipment Trust Agreement) or any event which with notice and/or lapse of time could constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i)

to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee 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 obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the Province of Ontario, Canada, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units 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 or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 320 Bay Street, Toronto, Ontario, Canada, or at such other address as the Trustee shall designate.

13. Any provision of this Assignment 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. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL.]

by

[Signature]
~~AUTHORIZED OFFICER~~
~~Vice President.~~

Attest: *[Signature]*

[Signature]
AUTHORIZED OFFICER

Accepted:

CANADA PERMANENT TRUST
COMPANY, as Trustee.

by

[Signature]
~~Vice President.~~
Assistant General Manager

[Signature]

ASSISTANT GENERAL MANAGER

by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee. Upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Unit.

§ 20. *Mileage Allowance; Subrogation;* Further assurances, provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other moneys payable by reason of the use of the Units, and any such mileage allowances or other moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, up to an amount equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, paid by the Lessee to the Lessor or the actual expense of repair of a Unit not suffering a Casualty Occurrence paid by the Lessee, as set forth in a certificate of the Treasurer or Chief Accounting Officer of the Lessee, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in

respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

The Lessee covenants and agrees from time to time at its expense to do all acts and execute all such instruments of further assurance as it shall be reasonably requested by the Lessor to do or execute for the purpose of fully carrying out and effectuating this Lease and the intent hereof.

§ 21. *Execution.* Although this Lease is dated as of December 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario, Canada; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and of the Provinces or Territories thereof and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

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

If to the Lessor, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario, Canada;

If to the Lessee, P. O. Box 8100, Montreal 101, Quebec, Canada, attention of the Treasurer;

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

§ 24. *Definitions.* If this Lease is assigned to the Trustee (or any successor thereto) for collateral purposes, wherever the term “Lessor” is used in this Lease it shall also apply and refer to the Trustee and any successors thereto (with the exception of § 14 hereof) unless the context shall otherwise require and except that the Trustee shall not be subject to any liabilities or obligations under this Lease; and the fact that the Trustee is specifically named in certain provisions shall not be construed to mean that the Trustee (and any successors thereto) is not entitled to the benefits of other provisions where only the Lessor is named or where only the Trustee, as the case may be, is named.

§ 25. *Severability.* Any provision of this Lease 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.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 26. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Lessor or the Lessee, or against any principal or principals (disclosed or undisclosed) of the Lessor or assignee or assignees or transferee or transferees of the Lessor if the Lessor is acting in an agency or nominee capacity, or against any beneficiaries in respect of which the Company may be acting as trustee, whether by virtue of any con-

stitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, assignees, transferees or principals being forever released as a condition of and as consideration for the execution of this Lease.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused this instrument to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

by

[Signature]
Vice President. Authorized Officer

[CORPORATE SEAL]

Attest:

[Signature]
John P. Polica

[Signature]
Authorized Officer

CANADIAN NATIONAL RAILWAY
COMPANY,

by

[Signature]
Vice President.

[CORPORATE SEAL]

Attest:

[Signature]
Deputy Secretary.

[Signature]

Assistant General Solicitor

PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this 24th day of December, 1971, before me personally appeared Peter W. Carradus, to me personally known, who, being by me duly sworn, says that he is ~~a Vice President~~ ^{an authorized Officer} of THE BANKERS' TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

[Handwritten Signature]
Notary Public

My commission is for life.

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this 24th day of December, 1971, before me personally appeared W. R. Cooner, to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

[Handwritten Signature]
Notary Public

My commission is for life.

[NOTARIAL SEAL]

SCHEDULE I

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
200	52' gondola cars Lessee's specifications F-60-8 dated May, 1971	\$3,875,000 (Canadian) 3,772,000.00	CN 136400 to 136599



ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 1, 1971, by and between THE BANKERS' TRUST COMPANY, a trust company incorporated under the laws of the Province of Quebec and duly qualified to do business in the Province of Ontario, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 1, 1971 with Procor Limited and The Royal Trust Company, and Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of December 1, 1971 (hereinafter called the Equipment Trust Agreement), between the Trustee and the Company.

WHEREAS the Company, as Lessor, and Canadian National Railway Company, as Lessee (hereinafter called the Lessee), have entered into a Lease (as defined in the Equipment Trust Agreement), providing for the leasing by the Company to the Lessee of the Units (as defined in the Lease); and

WHEREAS, in order to provide security for the obligations of the Company under the Equipment Trust Agreement and as an inducement to the purchasers of the equipment trust certificates to be issued under the Equipment Trust Agreement to purchase said certificates, the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Trustee;

Now, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. As security for the payment and performance of its obligations under the Equipment Trust Agreement, the Company hereby assigns, transfers, and sets over unto the Trustee all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease (except for amounts due and payable pursuant to § 14 of the Lease) including, without limitation, the immediate right to receive

and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease.

The Company agrees to cause all the Payments to be made directly to the Trustee at 320 Bay Street, Toronto, Ontario, Canada. The Trustee will accept all Payments and all other payments pursuant to this Assignment and will apply the same as follows: *first*, to or toward the payment of all amounts then due and payable or which shall become due and payable on the next succeeding March 1 or September 1, as the case may be, under the Equipment Trust Agreement and the Trustee shall credit such Payments and such payments pursuant to this Assignment so applied to the amounts so due and payable or so to become due and payable on the next succeeding March 1 or September 1, as the case may be, by the Company under the Equipment Trust Agreement; and *second*, so long as, to the actual knowledge of the Trustee, no Event of Default (as defined in the Equipment Trust Agreement) or event known to the Trustee which, with notice or lapse of time or both, would constitute an Event of Default shall have occurred and then be continuing, any balance of such Payments and such payments pursuant to this Assignment remaining shall be paid over to the Company by the Trustee. So long as, to the actual knowledge of the Trustee, an Event of Default or event which with notice of lapse of time or both, would constitute an Event of Default shall then be continuing, the Trustee shall not pay over any of the Payments or such payments pursuant to this Assignment, but, during such continuance, shall apply all Payments and all such payments pursuant to this Assignment in a manner consistent with the provisions of the Equipment Trust Agreement. Anything in this Assignment to the contrary notwithstanding, no amounts

shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

2. The assignment made hereby is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Trustee to, or transfer, or pass, or in any way affect or modify any liability of the Company under the Lease, it being understood and agreed that notwithstanding such assignment or any subsequent assignment all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Trustee.

3. To protect the security afforded by this Assignment the Company agrees as follows:

(a) Faithfully to abide by, perform and discharge each and every obligation, covenant and agreement of the Lease by the Company to be performed; at the sole cost and expense of the Company (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to enforce or secure the performance of each and every obligation, covenant, condition and agreement contained in the Lease by the Lessee to be performed; without the written consent of the Trustee not to anticipate the rents under the Lease or to waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein; to hold any Payments received by the Company which are assigned and set over to the Trustee by this Assignment in trust for the Trustee and to turn them to the Trustee forthwith in the same form in which they are

received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense (except as otherwise provided herein or by any of the instruments or agreements referred to herein or in the Equipment Trust Agreement), to (i) appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the Lease or the obligations, duties or liabilities of the Company and the Lessee thereunder and (ii) pay all costs and expenses of the Trustee, including attorneys' fees in a reasonable sum, in any action or proceeding pertaining thereto in which the Trustee may appear.

(c) That should the Company fail to make any payment or to do any act as herein provided, then the Trustee, but without obligation so to do and without notice to or demand on the Company and without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Trustee may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Trustee, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers to pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of $8\frac{1}{2}\%$ per annum.

4. The Company does hereby constitute the Trustee the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company

is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Trustee may deem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Equipment Trust Agreement, the assignment made hereby and all rights herein assigned to the Trustee shall terminate, and all estate, right, title and interest of the Trustee in and to the Lease and the Payments shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Equipment Trust Agreement have each been duly authorized, and the Lease, this Assignment and the Equipment Trust Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Trustee's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances prior to or *pari passu* with the interests of the Trustee, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Equipment Trust Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Equipment Trust Agreement on or prior to the date hereof and (e) the Lease and the Equipment Trust Agreement are in full force and effect and have not been canceled and to the knowledge of the Company there has not occurred on or prior to the date hereof any Event of Default (as that term is defined in the Equipment Trust Agreement) or any event which with notice and/or lapse of time could constitute such an Event of Default.

If an Event of Default (as defined in the Equipment Trust Agreement) shall occur and be continuing, the Trustee shall be entitled (i)

to exercise all the rights, privileges and remedies available to the Lessor under the Lease and to the Trustee under the Equipment Trust Agreement and (ii) to do any acts which the Trustee deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or the Equipment Trust Agreement, or invalidate any act done hereunder.

7. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Trustee or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of the successive assignments or transfers.

8. The Company will from time to time execute all such financing statements and supplemental instruments and documents as the Trustee may from time to time reasonably request in order to confirm or further assure the assignment made hereby and the provisions hereof.

9. The Trustee may assign to any successor trustee appointed pursuant to Section 8.06 of the Equipment Trust Agreement or any co-trustee or separate trustee appointed pursuant to Section 8.09 thereof all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Lessee 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 obligations of the Trustee hereunder.

10. The Company agrees that it will not, without the prior written consent of the Trustee, enter into any agreement amending, modifying or terminating the Lease and that any amendment, modification or termination thereof without such consent shall be void.

11. This Assignment shall be governed by the laws of the Province of Ontario, Canada, *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recording laws of Canada and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the markings on the Units 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 or in which any Unit may be located.

12. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Trustee at 320 Bay Street, Toronto, Ontario, Canada, or at such other address as the Trustee shall designate.

13. Any provision of this Assignment 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. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed by an officer thereunto duly authorized, as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL.]

by

[Signature]
~~AUTHORIZED OFFICER~~
~~Vice President.~~

Attest:

[Signature]

[Signature]
AUTHORIZED OFFICER

Accepted:

CANADA PERMANENT TRUST
COMPANY, as Trustee.

by

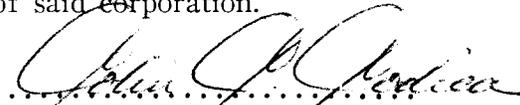
[Signature]
~~Vice President.~~
Assistant General Manager

[Signature]

ASSISTANT GENERAL MANAGER

PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this 24th day of December 1971, before me personally appeared Peter W. Carrocius to me personally known, who, being by me duly sworn, says that he is a ~~Vice President~~ in the Insurance Office of THE BANKERS' TRUST 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.


.....
Notary Public

My Commission is for life.
[NOTARIAL SEAL]

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of Canada, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of December 1, 1971, between Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee) and The Bankers' Trust Company, as Owner-Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities (except amounts payable under § 14 of the Lease) and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder directly to the Trustee, at 320 Bay Street, Toronto, Ontario, Canada (or at such other address as may be furnished in writing to the undersigned by the Trustee); and, if the undersigned fails for any reason whatsoever to pay to the Trustee any payments, it will pay to the Trustee, on the respective dates and times set forth in the Lease on which the Payments are specified to be due thereunder, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the Trustee; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be

performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor;

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

(4) the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(5) the Lease shall not, without the prior written consent of the Trustee, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in an alteration or impairment of the Lease, the Assignment or this Consent and Agreement or of any of the rights created by any thereof; and

(6) it will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Purchase Agreement (as defined in the Equipment Trust Agreement), the Assignment and/or the Equipment Trust Agreement and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

In consideration of the premises, the Lessee's covenants aforementioned and other good and valuable consideration, the Trustee agrees to pay to the Lessee in accordance with Section 8.04 of the Equipment Trust Agreement any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investments (as defined in the Equipment Trust Agreement) on March 1, 1972 or on such earlier date as may be agreed upon by the Trustee and the Lessor, provided that the Lessor is not in default under the Equipment Trust Agreement and the Lessee is not in default under the Lease.

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Province of Ontario and, for all purposes, shall be construed in accordance with the laws of said Province.

Dated as of December 1, 1971.

CANADIAN NATIONAL RAILWAY
COMPANY,

by


Vice President.



Assistant General Solicitor

[CORPORATE SEAL]

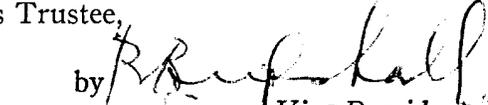
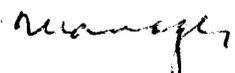
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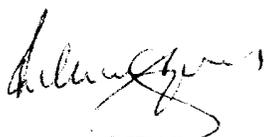

Deputy Secretary.

Accepted:

CANADA PERMANENT TRUST COMPANY,
as Trustee,

by


Vice President. 



ASSISTANT GENERAL MANAGER

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this 24th day of December, 1971, before me personally appeared *W. R. Corneil*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dania Whitney, notary
.....
Notary Public

My Commission is for life.

[NOTARIAL SEAL]