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INTERSTATE COMMERCE COMMISSION

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# Lease of Equipment

between

THE BANK OF NEW YORK

and

CANADIAN NATIONAL RAILWAY COMPANY

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Dated as of April 1, 1972

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**LEASE OF EQUIPMENT**, dated as of April 1, 1972, between

THE BANK OF NEW YORK, a New York banking corporation  
(hereinafter called the Lessor),

~~National Association~~, and CANADIAN NATIONAL RAILWAY COMPANY,  
a corporation duly incorporated under the laws of Canada (hereinafter  
called the Lessee).

WHEREAS, the Lessor and Bethlehem Steel Corporation (here-  
after called the Manufacturer) have entered into a Manufacturing  
Agreement dated as of April 1, 1972 (hereinafter called the Manu-  
facturing Agreement), wherein the Manufacturer has agreed to con-  
struct, sell and deliver to the Lessor the railroad equipment described  
in Schedule I hereto; and

WHEREAS, the Lessor has entered into an Equipment Trust Agree-  
ment dated as of April 1, 1972 (hereinafter called the Equipment  
Trust Agreement) with First Security Bank of Utah, N.A.,  
as Trustee (hereinafter called the Trustee), under which the Lessor  
has agreed to sell, assign and transfer to the Trustee security title to  
all the Units and under which such security title will be reserved to the  
Trustee until the Lessor fulfills all its obligations under the Equipment  
Trust Agreement;

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 July 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.

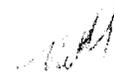
§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit accepted pursuant to the Manufacturing Agreement to be tendered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such tender, the Lessee will cause its authorized 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 of 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 such coin or currency of the United States of America as, at the time payable, shall be legal tender for the payment of public and private debts, as rental for each Unit subject to this Lease **61 consecutive quarterly payments** payable on the Business Day (as defined in the Equipment Trust Agreement) next preceding January 1, April 1, July 1 and October 1 of each year commencing July 1, 1972. The first such quarterly payment shall be made in respect of each Unit subject to this Lease which shall have been settled for on or prior to July 1, 1972, under the Manufacturing Agreement and the Equipment Trust Agreement and such payment shall be in an amount equal to **.021875%** 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 July 1, 1972; **the next 20 such quarterly payments** shall each be in an amount equal to **1.4766%** of the Cost of each Unit subject to this Lease; and the final **40** of such quarterly payments shall each be in an amount equal to **2.75675%** of the Cost of each Unit subject to this Lease.



All rental and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor in immediately available funds in Salt Lake City by depositing such funds to the account of the Lessor at First Security Bank of Utah, N.A., 79 South Main Street, Salt Lake City, Utah 84111, or at such other place as the Lessor shall specify in writing.

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 the date on which the final quarterly payment of rent in respect thereof is due hereunder.**

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the 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 FIRST SECURITY BANK OF UTAH, N.A. 79 SOUTH MAIN STREET, SALT LAKE CITY, UTAH, 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 title of the Lessor and the security title of the Trustee 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 U.S., Canadian or Mexican taxes (other than any local, state, provincial or federal/Canadian or Mexican income taxes [to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein, and other than the aggregate of all local, state, 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 or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, 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 acquisition and/or ownership thereof or upon the Trustee solely by reason of the security title thereto, and will keep at all times

all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or the security title of the Trustee or result in a lien or security interest 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 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 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,

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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 (such occurrences being hereinafter called Casualty Occurrences) 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 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, 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 bill of sale (without warranties) for such Unit 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:



## CASUALTY VALUE

| Rental<br>Payment<br>Date No. | Percentage | Rental<br>Payment<br>Date No. | Percentage |
|-------------------------------|------------|-------------------------------|------------|
| 1                             | 110.1723%  | 31                            | 79.8211%   |
| 2                             | 111.2881   | 32                            | 77.9888    |
| 3                             | 108.6124   | 33                            | 76.1285    |
| 4                             | 109.4158   | 34                            | 74.2387    |
| 5                             | 110.0933   | 35                            | 72.3189    |
| 6                             | 110.6777   | 36                            | 70.3677    |
| 7                             | 111.1671   | 37                            | 68.3992    |
| 8                             | 111.5948   | 38                            | 66.4088    |
| 9                             | 111.9093   | 39                            | 64.3961    |
| 10                            | 112.1383   | 40                            | 62.3563    |
| 11                            | 112.2802   | 41                            | 60.3043    |
| 12                            | 107.2285   | 42                            | 58.2339    |
| 13                            | 107.2664   | 43                            | 56.1443    |
| 14                            | 107.2747   | 44                            | 54.0292    |
| 15                            | 107.2529   | 45                            | 51.9017    |
| 16                            | 107.2113   | 46                            | 49.7549    |
| 17                            | 107.1339   | 47                            | 47.5883    |
| 18                            | 107.0296   | 48                            | 45.3948    |
| 19                            | 106.8981   | 49                            | 43.1886    |
| 20                            | 101.6133   | 50                            | 40.9624    |
| 21                            | 101.4360   | 51                            | 38.7154    |
| 22                            | 99.9576    | 52                            | 36.4402    |
| 23                            | 98.4330    | 53                            | 34.1521    |
| 24                            | 96.8683    | 54                            | 31.8431    |
| 25                            | 95.2675    | 55                            | 29.5125    |
| 26                            | 93.6324    | 56                            | 27.1521    |
| 27                            | 91.9622    | 57                            | 24.7787    |
| 28                            | 85.1239    | 58                            | 22.3834    |
| 29                            | 83.3885    | 59                            | 19.9656    |
| 30                            | 81.6210    | 60                            | 17.5164    |
|                               |            | 61                            | 15.0000    |

and thereafter the lesser of 15% or the Fair Market Value thereof immediately prior to the Casualty Occurrence, such Fair Market Value to be calculated in the manner provided in § 19 hereof.

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

**§7. Annual Reports.** On or before April 1 in each year, commencing with the year 1973, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested, an accurate statement signed by an authorized representative, (i) showing as of the preceding December 31, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding calendar year (or since the date of this Lease in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the markings required by § 4 hereof and Section 4.06 of the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right, by its agents, but shall be under no obligation, to inspect the Units and the records of the Lessee with respect thereto at any reasonable time during the continuance of this Lease.

*§ 8. Disclaimer of Warranties; Compliance With Laws and Rules; Maintenance; Indemnification; and Insurance.* The Lessor makes no warranty or representation, either express or implied, as to the design, compliance with specifications, or condition of, or as to the quality of the material, equipment or workmanship in, or as to the suitability, adequacy, operation, use or performance of, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee as their interests may appear, whatever claims and rights the Lessor may have against the Manufacturer of the Units or of the components thereof. Lessor shall have no responsibility or liability under this Lease

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to the Lessee or any other person with respect to any of the following:

- (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith;
- (ii) the use, operation or performance of any Units or any risks relating thereto;
- (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or
- (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units.

The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee, the Lessor and the Trustee, that all Units described in a Certificate of Acceptance are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Trustee based on any of the foregoing matters.

The Lessor represents and warrants as follows:

(i) At the time of delivery of each Unit under this Lease, the Lessor shall have such title to such Unit as is derived from the Manufacturer, unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be **free and clear of all claims, liens, security interests and encumbrances which may** result from claims against the Lessor not arising out of the ownership thereof which will prevent the performance of this Lease in accordance with its terms; and

(ii) So long as the Lessee shall not be in default under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease.

The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be

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expressly subject to the terms and provisions of this Lease; *provided, however,* that this Lease shall be subordinated to the rights of the Trustee under the Equipment Trust Agreement but neither the Lessor nor the Trustee shall have the right to terminate or impair the Lessee's possession or use of the property subject to this Lease so long as the Lessee shall not be in default under this Lease; and, subject to the foregoing, covenants that the Lessor has not done and will not do (or suffer to be done by any person claiming through or against the Lessor) any act which interferes with or impairs (x) the Lessee's possession and use in accordance with the terms of this Lease of the Units or (y) the title to the Units which may be transferred or conveyed to the Lessee under the provisions of §§ 6 and 19 of this Lease and that any title so conveyed shall then be free of any lien, claim, security interest or other encumbrance by or in favor of any person claiming by, through or under the Lessor.

The Lessor covenants and agrees not to alter, amend or modify the Equipment Trust Agreement without the prior written consent of the Lessee.

The Lessee agrees, for the benefit of the Lessor and the Trustee, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of any legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and the Trustee and agrees to hold the Lessor and the Trustee harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by **Lessor, the Lessee, or their employees, or any other person.** In

the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees,



at its own expense, to make such alterations, changes, additions and replacements and to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as such Unit is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair, reasonable wear and tear excepted.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit (except such as can be removed without damage to, and without impairing the originally intended function or use of such Unit, including without limitation racks or partitions [hereinafter called Temporary Alterations]) and, without cost or expense to the Lessor, there shall be immediately vested in the Lessor and the Trustee the same interest in such accessions as the interests of the Lessor and the Trustee in such Unit. The Lessee may make alteration or modifications in any Unit so long as it does not affect the value of such Unit adversely.

The Lessee agrees to indemnify and save harmless the Lessor and the Trustee against any charge or claim made against the Lessor or the Trustee and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason of the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of

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any Unit resulting in damage to property or injury or death to any person; *provided, however*, that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph for negligence on the part of the Lessor or the Trustee. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which shall have been returned to the Lessor pursuant to §§ 10 or 12 hereof or after this Lease with respect to such Unit has otherwise terminated, *provided* that such charge, claim, expense, loss or liability is attributable to an event occurring after such Unit was so returned or this Lease with respect to such Unit terminated, and *provided, further*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent **permissible, file on behalf of, the Lessor**) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units, the security title of the Trustee to the Units or the leasing of the Units to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days; or

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease;



C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent (as hereinafter defined) and such default shall continue (and the Lessee shall not make effective provisions for curing such default) for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied; or

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such effectiveness shall continue), and all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

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

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

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(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to each Unit then subject to this Lease, which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on the basis of 7-7/8% per annum discount compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal

to any portion of the 7% investment credit (hereinafter called the Investment Credit) allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended, which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 14 or any other provision of the Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion

of the maximum depreciation deduction (hereinafter called the ADR Deduction) authorized with respect to a Unit under Section 167 of the Internal Revenue Code utilizing the "class lives" prescribed in accordance with Section 167(m) of said Code which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 14 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of

*W. J. [Signature]*

the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor may reasonably designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the day the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the tracks of the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from

whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

§ 11. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of **the Lessor's assigns.**

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.



So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or by any affiliated or subsidiary corporation on their lines of railroad or upon lines of railroad over which the Lessee or such other corporation has trackage or other operating rights or over which railroad equipment of the Lessee or any such other corporation is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Equipment Trust Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that all of the capital stock of such assignee or transferee shall be owned by the Canadian government; or (ii) to sublease any Unit to any subsidiary or affiliated corporations of the Lessee; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Trustee under the Equipment Trust Agreement and the Lessor under this Lease.

The Lessor shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the lease.

§ 12. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of the term of this Lease as to any or all of the Units, the Lessee will (unless the Units are lost, stolen or completely destroyed within the meaning of § 6 hereof), at its own cost and expense, at the request of the Lessor, assemble such Units and deliver possession of such Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store

such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

Each Unit returned to Lessor pursuant to this Section (other than a Unit which has suffered a Casualty Occurrence) shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable.

§ 13. Opinion of Counsel for the Lessee. On each Closing Date as defined in the Manufacturing Agreement the Lessee will deliver



to the Lessor and the Trustee the written opinion of counsel for the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of Canada, with full corporate power to enter into the Manufacturing Agreement, this Lease and the consent and agreement executed by the Lessee (hereinafter called the Consent) to the assignment of this Lease to the Trustee as of the date hereof (hereinafter called the Assignment);

B. the Manufacturing Agreement, this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements, enforceable in accordance with their terms;

C. upon deposit of the Equipment Trust Agreement, this Lease and the Assignment (including the Consent) in the office of the Registrar General of Canada and publication of notice of such deposit in the *Canada Gazette* in accordance with Section 86 of the Railway Act of Canada, no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect in Canada or any Province or Territory thereof the rights of the Lessor under this Lease against any and all subsequent purchasers or mortgagees from the Lessee and/or from creditors of the Lessee;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Manufacturing Agreement, this Lease or the Consent, or all such approvals (which shall be specifically described) have been obtained; and

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, the Consent and the Manufacturing Agreement.

The Lessor agrees to furnish to the Lessee signed copies, addressed to the Lessee, of the opinion of counsel for the Company referred to in Paragraph 5(b) of the Purchase Agreement, and of the opinion of counsel for the Manufacturer referred to in Section 3.04(e) of the Equipment Trust Equipment.

**§ 14. Indemnity in Respect of Tax Matters:** The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit and the ADR Deduction (each as defined in § 9 of this Lease) with respect to the Units to the extent so provided. If (other than for the reasons set forth below) the Lessor shall lose or shall not have or shall lose the right to claim, or if (other than for the reasons set forth below) there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit or ADR Deduction the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Investment Credit or ADR Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit



under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit or ADR Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Investment Credit or ADR Deduction; provided, however, that such rental rate shall not be so increased if the Lessor 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 the Lessor, all or any portion of the Investment Credit or ADR Deduction with respect to such 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 (other than as contemplated by the Equipment Trust Agreement) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its 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 to claim the Investment Credit or ADR Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit or ADR Deduction; or

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction, as applicable.

The Lessor agrees that if, in the opinion of its or Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Investment Credit or the ADR Deduction 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 Investment Credit or ADR Deduction disallowed, computed at the rate of 7-7/8% 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 agreed in writing to indemnify 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.

If any Canadian governmental authority, Dominion or Provincial, shall withhold or cause to be withheld from any rental payment made under § 2 of this Lease or any additional rental payment under this § 14 any amounts in respect of taxes, the Lessee will, on the rental payment date when such rental payment is made, pay to the Lessor as additional rental a sum equal to any such amounts withheld.

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.

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

§ 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 Commission in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada and for notice of such deposit to be forthwith thereafter given in the *Canada Gazette*, pursuant to Section 86 of the Railway Act of Canada. 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 required by law or 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 redepositing 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  $8-7/8\%$  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 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.*

(a) The Lessee agrees to pay to the Lessor on the Business Day (as defined in the Equipment Trust Agreement) next preceding July 1, 1972, an amount equal to (x) the rental payment payable by the Lessor to the Trustee on or before July 1, 1972, under Section 4.04(4) (a) of the Equipment Trust Agreement in respect of interest payable on the Equipment Trust Certificates issued under the Equipment Trust Agreement, less (y) **75% of the amount of the first quarterly 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 July 1, 1972, under Section 4.04(2) 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 to be made by the Trustee on the written or telegraphic request of 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 July 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 hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the term (whether original or extended) of this Lease, elect (a) to extend the term of this Lease in respect of all but not less than all of such Units then covered by this Lease for a period of five years commencing on the scheduled expiration of the original term or the first extended term of this Lease (provided that no such extended term shall extend beyond July 1, 1997) at a rental equal to the "Fair Rental Value" of such Units payable in 20 quarterly payments on January 1, April 1, July 1 and October 1 in each year of such extended term or (b) to purchase all but not less than all of such Units then covered by this Lease at the end of the term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs or removal from the location of current use shall not be a deduction from such value.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with



the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected 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 mutually by the Lessor and 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 warrants) for such Unit.**

§ 20. *Mileage Allowance; Subrogation.* 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.

§ 21. *Execution.* Although this Lease is dated as of **April 1, 1972**, 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 State of **New York**; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, 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, 48 Wall Street, New York,  
N.Y. 10015, attention of Peter O'Connor, Vice President.

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 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.

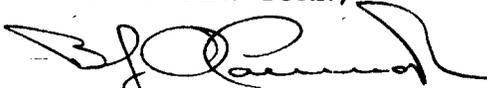
§ 26. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Lessor or the Lessee, or against any principal or principals (disclosed or undisclosed) of 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, solely by reason of the fact that such person is an incorporator, stockholder, director, officer, principal, assignee, transferee or beneficiary, whether by virtue of any constitutional 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, principals or beneficiaries 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 BANK OF NEW YORK,

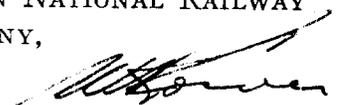
by   
Vice President

[CORPORATE SEAL]

Attest:

  
~~Assistant Secretary.~~ ASSISTANT  
TREASURER

CANADIAN NATIONAL RAILWAY  
COMPANY,

by   
Vice President.

Approved  
as to form only  
  
Attorney

[CORPORATE SEAL]

Attest:

  
Assistant Secretary.

state of New York }  
City of New York } ss.:

On this 28 day of April 1972, before me personally appeared B.J. O'Connor, to me personally known, who, being by me duly sworn, says that he is a Vice President of The Bank of New York, 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.

*James A. McKay (Notary)*  
Notary Public  
State of New York  
City of New York

PROVINCE OF QUEBEC }  
CITY OF MONTREAL } ss.:

On this 28<sup>th</sup> day of April 1972, before me personally appeared *R. Cairns*, to me personally known, who, being by me duly sworn, says that he is the 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.

*R. J. [Signature]*  
Notary Public  
*[Signature]*

My commission is for life.

[NOTARIAL SEAL]

## SCHEDULE I

| <u>Quantity</u> | <u>Type and Specifications</u>        | <u>Cost</u>      | <u>Identifying Numbers<br/>(both inclusive)</u> |
|-----------------|---------------------------------------|------------------|---|
| 43              | 70-ton 89' 4" flush<br>deck flat cars | \$760,799 (U.S.) | CNA 753000 to<br>753042                         |

