

RECORDATION NO. 8953 Filed & Recorded

AUG 29 1977 - 1 25 PM GRAVATH, SWAINE & MOORE 7-2411059

ONE CHASE MANHATTAN PLAZA

MAURICE T. MOORE  
 BRUCE BROMBERG  
 ROSWELL L. GILPATRICK  
 ALBERT R. CONNELLY  
 FRANK H. DETWEILER  
 GEORGE G. TYLER  
 CHARLES R. LINTON  
 WILLIAM B. MARSHALL  
 RALPH L. MCAFEE  
 ROYALL VICTOR  
 ALLEN H. MERRILL  
 HENRY W. DEKOSMIAN  
 ALLEN F. MAULSBY  
 STEWARD R. BROSS, JR.  
 HENRY P. RIORDAN  
 JOHN R. HUPPER  
 SAMUEL C. BUTLER  
 WILLIAM J. SCHRENK, JR.  
 BENJAMIN F. CRANE  
 FRANCIS F. RANDOLPH, JR.  
 JOHN F. HUNT, JR.  
 GEORGE J. GILLESPIE, III  
 RICHARD S. SIMMONS  
 WAYNE E. CHAPMAN  
 THOMAS D. BARR

INTERSTATE COMMERCE COMMISSION  
 ROBERT ROSENMAN  
 JAMES H. DUFFY  
 ALAN J. HRUSKA  
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NEW YORK, N.Y. 10005

RECORDATION NO. 8953 Filed & Recorded  
 AUG 29 1977 - 1 25 PM  
 INTERNATIONAL TELETYPE: 820976  
 TELETYPE: 710-581-0338

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8953, b Filed & Recorded

AUG 29 1977 - 1 25 PM

INTERSTATE COMMERCE COMMISSION

CARLYLE E. MAW  
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RECORDATION NO. 8953 Filed & Recorded  
 GRAVATH, N. Y.  
 GRAVATH, PARIS  
 GRAVATH, LONDON S.W.1

AUG 29 1977  
 CC Washington, D. C.  
 RECORDATION NO. 8953 Filed & Recorded

AUG 29 1977 - 1 25 PM

INTERSTATE COMMERCE COMMISSION  
 August 29, 1977

Dear Sir:

Herewith for recordation pursuant to Section 20c of the Interstate Commerce Act, on behalf of Peterson, Howell & Heather (Canada) Limited and Canadian National Railway Company, are counterparts of the following:

(1) Equipment Purchase Agreement dated as of August 16, 1977, between Canadian National Railway Company, as Seller, and Peterson, Howell & Heather (Canada) Limited, as Purchaser.

(2) Lease of Railroad Equipment dated as of June 1, 1977, between Peterson, Howell & Heather (Canada) Limited, as Lessor, and Canadian National Railway Company, as Lessee.

(3) Trust Indenture dated as of June 1, 1977, between Peterson, Howell & Heather (Canada) Limited, as Company, and The Royal Trust Company, as Trustee.

(4) First Supplemental Trust Indenture dated as of June 1, 1977, between Peterson, Howell & Heather (Canada) Limited, as Company, and The Royal Trust Company, as Trustee.

The addresses of the parties to the aforementioned agreements are:

Seller-Lessee:

Canadian National Railway Company  
 935 La Gauchetiere West  
 Montreal, Quebec H3C 3N4  
 Canada.

RECEIVED  
 AUG 29 1 21 PM '77  
 T.C.C.  
 FEE OPERATION BR.

*Carlyle E. Maw*  
*Joseph P. Berman*

Purchaser-Lessor-Company:

Peterson, Howell & Heather  
3 Place due Commerce  
Ile des Sours  
Montreal, Quebec H3E 1H7  
Canada.

Trustee:

The Royal Trust Company  
630 Dorchester Boulevard West  
Montreal, Quebec,  
Canada.

The equipment covered by the aforementioned agreements consists of 55 70-ton Flat Cars--Bulkhead bearing the road numbers of the Canadian National Railway Company CN-620443; 620446-620499, 9 70-ton Long Steel Hopper Cars bearing the road numbers of the Canadian National Railway Company CN-302591-302599; 7 Ohio Model DE-400 Locomotive Cranes 40/50 ton capacity bearing the road numbers of the Canadian National Railway Company CN-50470-50476, 1 Model 40 Ser. #40-400 Standard Burro Crane bearing the road number of the Canadian National Railway Company CN-50477, 1 Model 40 Burro Crane 12-1/2 ton capacity bearing the road number of the Canadian National Railway Company CN-50478 and 1 Model 4-100 Jordan Spreader Ditcher Snow Plow bearing the road number of the Canadian National Railway Company CN-50938, and also bearing the legend "Ownership subject to a security agreement filed under the Interstate Commerce Act, Section 20c".

Enclosed is our check for \$160 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Kris F. Heinzelman

Robert L. Oswald, Esq., Secretary,  
Interstate Commerce Commission,  
Washington, D. C. 20423

Encls.

G

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/29/77

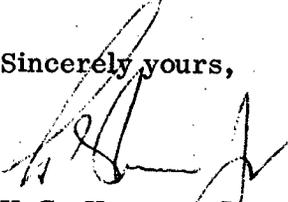
OFFICE OF THE SECRETARY

Kris F. Heinzelman  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 8/29/77 at 1:25pm, and assigned recordation number(s) 8953, 8953-A, 8953-B & 8953-C

Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

8953-B

Filmy copy

REGISTRATION NO. .... Filed & Recorded

AUG 29 1977 - 1 22 PM

INTERSTATE COMMERCE COMMISSION

THIS TRUST INDENTURE dated as of June 1, 1977, by and between PETERSON, HOWELL & HEATHER (CANADA) LIMITED, a company duly incorporated under the laws of Canada, having its head office at the City of Verdun, in the Province of Quebec (hereinafter called the Company) and THE ROYAL TRUST COMPANY, a trust company duly incorporated under the laws of the Province of Quebec having its head office in the City of Montreal, in the Province of Quebec, as trustee (hereinafter called the Trustee).

WHEREAS the Company is desirous of creating and issuing its Notes (as hereinafter defined) to be constituted and secured in the manner hereinafter appearing; and

WHEREAS the Company under its charter and under the laws relating thereto is duly authorized to create and issue the said Notes as hereinafter provided and to secure the same by this Indenture and by Trust Deed of Hypothec, Mortgage and Pledge; and

WHEREAS all things necessary have been done and performed to make the said Notes, when certified by the Trustee and issued as in this Indenture provided, valid, binding and legal obligations of the Company and to constitute this Indenture a valid security for the payment of the principal of and interest on all Notes issued hereunder to the extent and in the manner herein provided; and

WHEREAS the creation and execution of this Indenture and the creation, execution and issue of the Notes subject to the terms hereof have in all respects been duly authorized.

NOW, THEREFORE, the parties hereto have agreed with each other as follows:

ARTICLE I

Interpretation

SECTION 1.1. Definitions. The following words and phrases, wherever used in this Indenture, shall, unless there be something in the context inconsistent therewith, have the following meanings:

"Assigned Rentals" means all rentals and payments of Casualty Value payable to the Company pursuant to the CN Lease.

"Casualty Occurrence" with respect to any unit of Equipment shall have the meaning ascribed thereto in article 6 of the CN Lease.

"Casualty Value" of each unit of the Equipment as at any rental payment date under the CN Lease means the Casualty Value of such unit as of such date determined as provided in article 6 of the CN Lease.

"Certified resolution" means a copy of a resolution certified by the Secretary or an Assistant Secretary or other officer of the Company, under its corporate seal, to have been duly adopted by the Directors of the Company.

"CN" means Canadian National Railway Company, a Canadian railway company, and its successors and assigns under the CN Lease.

"CN Lease" means that certain Lease Agreement dated as of June 1, 1977, being entered into between the Company, as lessor, and CN, as lessee, providing for the lease by the Company to CN of the railway equipment therein described or referred to, as the said Lease Agreement may be amended or supplemented from time to time with the consent of the Trustee.

"Company" means Peterson, Howell & Heather (Canada) Limited and any successor corporation.

"Counsel" means counsel (who may be of counsel to the Company) appointed by the Company and acceptable to the Trustee and also means counsel for the Trustee where the context so states.

"Directors" means the Board of Directors of the Company for the time being and reference without more to action by the Directors shall mean action by the Directors as a board or by any authorized committee thereof.

"Equipment" means all the equipment of the Company leased to CN under the CN Lease and described or referred to in Article XXI hereof, including repairs and replacements thereof.

"Mortgaged Property" means and includes all property, rights and assets of the Company subjected or intended to be subjected to the hypothec, mortgage, pledge and charge, cession, transfer, assignment and security created hereby.

"Notes" means any Note or all the Notes of the Company, as the case may be, issued and certified hereunder and entitled to the benefit of the security hereof and for the time being outstanding.

"Noteholder" or "holder" means any person for the time being entered in the register herein mentioned as a holder of the Notes.

"Noteholders' Instrument" means a document signed in one or more counterparts by the holder or holders of not less than sixty-six percent (66%) in principal amount of the Notes at the time outstanding requesting or directing the Trustee to take or refrain from taking some action or proceeding specified therein.

"Permitted Encumbrances" means at any particular time any of the following encumbrances:

(a) all rights and interest of CN as lessee under the CN Lease;

(b) any lien, claim, charge or other encumbrance created by, through or under CN which would not constitute a default under the CN Lease;

(c) liens or privileges for taxes, rates, assessments or governmental charges or levies not yet subject to penalties (other than interest on any overdue taxes) for nonpayment, or the validity of which is being at the time contested in good faith by the Company or CN, unless thereby, in the judgment of the Trustee, the security constituted by this Indenture will be materially endangered;

(d) the excess of the amount of any taxes, rates, assessments or governmental charges or levies for which final assessments have not been received over and above the amount thereof as estimated by a responsible officer of the Company, provided the Company shall have set aside on its books adequate reserves with respect thereto; and

(e) mechanic's and similar liens and privileges in respect of which the Company is not delinquent.

"Officers' Certificate" means a certificate signed by the Chairman of the Board of Directors or the President or a Vice President and a Director or the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Company containing information as of a date not more than thirty (30) days prior to the date of delivery of the certificate.

"Original Cost" as applied to any unit of Equipment, means the original cost thereof to the Company as set forth in Article XXI hereof, or in the case of a replacement unit, the original cost of the unit replaced.

"This Trust Indenture", "this Indenture", "these presents", "herein", "hereby", "hereunder", and similar expressions refer to this Trust Indenture and the said Trust Deed of Hypothec, Mortgage and Pledge and include any and every deed of assignment, transfer, hypothec, pledge or other instrument or charge which is supplementary or ancillary hereto or in implement hereof, and "lien hereof", "lien hereunder", "lien or charge hereof", "charge hereof", and similar expressions mean the security constituted hereby or by any such instrument.

"Trustee" means The Royal Trust Company, as trustee, and its successors in the trusts hereby created.

"Trustee's Indemnification" means sufficient funds, in the opinion of the Trustee, to commence, continue and carry out any act, action or proceeding and indemnity satisfactory to the Trustee to protect and hold harmless the Trustee against all costs, charges, expenses, and liabilities to be incurred as a result of any such act, action or proceeding and any loss and damage it may sustain by reason thereof.

SECTION 1.2. Number and Gender. Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms, associations and corporations and vice versa.

SECTION 1.3. Headings. The division of this Indenture into articles, sections, subsections, paragraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect its construction or interpretation.

SECTION 1.4. Holidays. Payments required to be made hereunder which fall due on dates on which Canadian chartered banks are closed may be made without penalty on the next succeeding business day on which such banks are open for business.

SECTION 1.5. Currency. All dollar amounts herein are expressed in United States dollars, unless the context otherwise requires.

## ARTICLE II

### Form and Terms of Notes

SECTION 2.1. The Notes authorized to be issued hereunder from time to time are to be payable in lawful money of the United States of America and are limited to an aggregate principal amount of Four million five hundred thousand Dollars (\$4,500,000) designated "8-1/4% Secured Equipment Notes".

SECTION 2.2. All Notes issued hereunder and secured hereby shall be under the seal of the Company and shall be signed by the Chairman of the Board of Directors, the President or a Vice President together with the Secretary or an Assistant Secretary or any Director of the Company. The signature or signatures of all or any one or more of such officers or directors may be engraved, lithographed, printed or otherwise mechanically reproduced on the Notes and such engraved, lithographed, printed or otherwise mechanically reproduced signature or signatures shall be deemed for all purposes to be the signature of such officer or officers or Director and shall be binding upon the Company. Notwithstanding any change in any of the persons holding the said offices between the time of actual signing and the certifying and delivery of the said Notes and notwithstanding that the Chairman of the Board of Directors, the President or the Vice President or Secretary or Assistant Secretary or Director signing may not have held office at the date of this Indenture or at the date of said Notes or at the date of the certifying and delivery thereof, the said Notes so signed shall be valid and binding upon the Company and entitled to the security of this Indenture.

SECTION 2.3. No Note shall be issued or, if issued, shall be obligatory or shall entitle the holder to the benefit of the security of these presents or the benefit of the trusts hereunder until it has been certified by or on behalf of the Trustee, and such certification by the Trustee upon any such Note shall be conclusive evidence that the Note so certified has been duly issued hereunder and that the holder thereof is entitled to the benefit of the security of and the trusts under this Indenture.

SECTION 2.4. When any of the Notes are to be issued hereunder the Company shall, if requested by any Noteholder and without unreasonable delay, cause to be prepared, executed and delivered to the Trustee definitive Notes which shall be engraved, lithographed, typewritten, mimeographed or printed.

SECTION 2.5. All Notes issued hereunder shall be fully registered as to both principal and interest.

Every Note shall be dated the date of its certification and, except as otherwise provided in this Article II, shall bear interest, payable semi-annually on February 23 and August 23 of each year, from the February 23 or August 23 as the case may be, next preceding the date of such Note to which interest on the Notes has been paid, unless the date of such Note is a February 23 or August 23 to which interest has been paid, in which case from such date, or unless no interest has been paid on the Notes, in which case from the date of original issue of all the Notes to the initial purchasers thereof.

SECTION 2.6. The Company shall at all times, while any Notes are outstanding, cause to be kept by and at the office of the Trustee in the City of Montreal, a register in which shall be entered the names and post office addresses of the holders of Notes and particulars of the Notes held by them respectively and in which transfers of such Notes shall be registered.

SECTION 2.7. No transfer of a fully registered Note shall be valid unless made on such register by the registered holder or by its legal representative or its attorney duly appointed by an instrument in writing, in form and as to execution satisfactory to the Trustee, and upon compliance with such reasonable requirements as the Trustee may prescribe, and upon surrender of such Note to the Trustee for cancelation, whereupon a new Note or Notes of

the same aggregate principal amount and so registered shall be issued to the transferee in exchange therefor. The ownership of the Notes shall be proven by such register.

SECTION 2.8. The registered holder of a Note shall be deemed and regarded as the owner thereof for all purposes of this Indenture and shall be entitled to the principal moneys and interest evidenced by such Note free from all equities or rights of set-off or counterclaim between the Company and its transferor or any previous holder thereof.

SECTION 2.9. In case any Note issued and secured hereby shall become mutilated or be lost or destroyed, the Company shall issue and thereupon the Trustee shall certify and deliver to the person or persons whose name or names is, or are entered in the register referred to in Section 2.6 hereof as holder or holders of such Note, a new Note of like tenor as the one mutilated, lost or destroyed, in exchange for and in place of and upon cancelation of such mutilated Note, or in lieu of and substitution for such lost or destroyed Note.

SECTION 2.10. In the case of loss or destruction, the applicant for a substituted Note shall, as a condition precedent to the issue thereof, furnish to the Company and to the Trustee such evidence of ownership and of such loss or destruction as shall be satisfactory to the Company and to the Trustee, in their discretion, and such applicant shall also furnish indemnity in amount and form satisfactory to them in their discretion and shall pay the expenses which may be incurred by them and their reasonable charges in the premises, provided that if such applicant shall be an insurance company or other institutional investor with assets of at least \$10,000,000, the indemnity of such applicant in form reasonably satisfactory to the Company and to the Trustee shall be sufficient.

SECTION 2.11. All notices given hereunder to the Noteholders shall be deemed validly given if sent by first-class mail, postage prepaid, addressed to such holders at their respective post-office addresses appearing in the register above mentioned. Every such notice shall be deemed to have been given on the third day following its mailing.

SECTION 2.12. The Notes shall be substantially in the form set out in Article XX of this Indenture, with such variations and additions, if any, as shall be required;

be dated and bear interest as provided in Section 2.5 hereof; mature August 23, 1991; bear interest (as well after, subject to Article XV hereof, as before maturity) from the date of their certification at the rate of 8-1/4 percent per annum (computed on the basis of a 360-day year of twelve 30 day months) payable semiannually on the twenty-third day of February and August in each year, commencing on February 23, 1978, together with interest on all overdue principal or interest at the rate of ~~8-1/4~~ <sup>9 1/4</sup> percent per annum (computed as aforesaid) from its due date to date of actual payment; be issued as fully registered Notes in any denomination of not less than \$50,000 except upon the transfer or exchange of a Note with a remaining unpaid principal amount of less than \$50,000; be numbered in such manner as the Company, with the approval of the Trustee, may determine; and shall be payable as to principal in semi-annual instalments on the twenty-third day of February and August in each year, commencing on February 23, 1978, and terminating on August 23, 1991; and shall not be prepayable except as hereinafter provided in Article III. The principal amount of the Notes payable on each of the aforesaid instalment payment dates shall be calculated on such a basis that the aggregate of the principal and interest payable on such date and on each subsequent date for the payment of principal and interest shall be substantially equal and such instalments of principal and interest will completely amortize the unpaid aggregate principal amount of the Notes. The Company will furnish to the Trustee and to each Noteholder upon the execution and delivery hereof and upon any prepayment of the Notes pursuant to Article III hereof, a schedule or a revised schedule, as the case may be, showing the respective amounts of principal and interest payable on each such instalment payment date, which schedules shall be and be deemed to form part of the Notes issued and certified hereunder. Nothing in this Indenture, including such schedule or revised schedule, as the case may be, shall be construed as requiring or shall require in any event (other than on the happening of an "event of default" as defined in Section 8.1 hereof) the Company to pay or prepay under Section 3.1 hereof to the Trustee more than 25% of the aggregate principal amount of the Notes issued hereunder within five years of the date of issuance of such Notes.

SECTION 2.13. The principal of the Notes and the interest thereon and all sums which may at any time become payable thereon, whether at maturity, on a declaration, on prepayment or otherwise, shall be payable in lawful money of the United States of America at the principal office of the Trustee in the City of Montreal.

SECTION 2.14. Notes of any authorized denomination may be exchanged for an equal aggregate principal amount of Notes in any other authorized denomination or denominations without charge. All Notes tendered for exchange pursuant to this Article II shall be surrendered to the Trustee for cancelation.

SECTION 2.15. The payment of instalments of principal and interest on the Notes or any prepayment of principal may be noted thereon as therein provided; provided, however, that prior to any sale, assignment or transfer of any Note, the holder thereof shall make a notation of all payments or prepayments of principal and interest on such Note. The records of the Trustee shall be conclusive proof as to the amounts of principal and interest paid on or in respect of the Notes issued and outstanding under this Indenture. The Company covenants that it will not make any payments on or account of the principal or interest on the Notes otherwise than through the Trustee.

### ARTICLE III

#### Prepayment of Notes

SECTION 3.1. Whenever any unit of the Equipment shall suffer a Casualty Occurrence the Company shall, promptly after it is informed of a Casualty Occurrence, notify the Trustee in writing with respect thereto and the Company shall (a) within its then current taxation year replace such unit of Equipment with any replacement unit of equipment acquired by the Company pursuant to the provisions of article 6 of the CN Lease, and thereupon such replacement unit of equipment shall be and become part of the Equipment and be included in the Mortgaged Property hereunder and be subject to all the terms and provisions hereof as if originally described in Article XXI hereof, or (b) if the Company shall not so acquire a replacement unit of Equipment, on the February 23 or August 23 next following the date of such notice by the Company by more than 20 days, the Company shall deposit or cause to be deposited with the Trustee an amount in cash equal to the Casualty Value of such unit of Equipment as of such February 23 or August 23, payable by CN pursuant to article 6 of the CN Lease, and, upon such payment, such unit shall be released and discharged of the charges created by this Indenture.

Of the cash deposited with the Trustee pursuant to this Section 3.1 an amount thereof which bears the same proportion to the aggregate principal amount of Notes at the time outstanding as the Original Cost of the unit of Equip-

ment which has suffered the Casualty Occurrence bears to the total Original Cost of all of the Equipment then subject to the CN Lease, shall be applied, subject to the provisions of Section 2.12 hereof, to the pro rata prepayment on such February 23 or August 23 of each instalment of principal remaining unpaid on the Notes (in proportion to the principal amount represented by each such instalment), each of the Noteholders to share proportionately in such prepayment. The balance of any cash deposited with the Trustee pursuant to this Section 3.1 shall be paid over by the Trustee to the Company provided no event of default shall have occurred and be continuing hereunder. The Company will promptly furnish to the Trustee and each of the holders of the Notes then outstanding a revised schedule of payments of principal and interest thereafter to be made calculated as provided in Section 2.12 hereof. Such revised schedule of payments shall be and be deemed to form part of the Notes then outstanding in substitution for the schedule of payments replaced thereby.

SECTION 3.2. Not less than ten days' prior notice of any prepayment to be made on any February 23 or August 23 with amounts required to be deposited by the Company as provided in Section 3.1 of this Indenture shall be given to the holders of the Notes by the Trustee in the manner specified in Section 2.11 of this Indenture. The Company shall furnish to the Trustee fifteen days' prior written notice of any payment so required to be deposited.

SECTION 3.3. If at any time after the fifth anniversary of the date of original issue of the Notes Her Majesty the Queen in right of Canada shall at any time not be the owner of at least 50.1% of the shares of each class of common stock of CN and each class of any other capital stock of CN having ordinary voting power for the election of directors, the Company shall, promptly after obtaining knowledge of such ownership, give the Trustee and the holders of the Notes written notice thereof which shall state whether or not the Company proposes to declare the CN Lease to be terminated pursuant to article 10 of the CN Lease by reason of such event.

If such notice states that the Company intends so to declare the CN Lease to be terminated, then the Company shall forthwith make such declaration by written notice to CN with a copy to the Trustee, whereupon the Company shall become obligated to prepay the principal of and all accrued interest on the Notes then outstanding and all other moneys secured hereby, without penalty or premium,

on the next succeeding February 23 or August 23 which is more than 15 days after the date of such declaration, and the Trustee shall apply the amounts paid by CN pursuant to the CN Lease on such date to the prepayment of all outstanding Notes and interest accrued thereon.

If such notice states that the Company does not intend to declare the Lease so to be terminated, or if the Company shall fail forthwith to make such declaration or if such cessation of ownership after such fifth anniversary date shall have occurred and the Company shall have failed to give such notice then the holders of the Notes by Noteholders' Instrument shall have the right for a period of 60 days following the giving of such notice by the Company (or at any time after obtaining knowledge of such event if the Company shall have failed to give such notice) to direct the Trustee to declare the principal of and all accrued interest on the Notes then outstanding and all other moneys secured hereby due and payable, without penalty or premium, on the February 23 or August 23 next succeeding the date of such declaration by the Trustee by more than 15 days, and the Company shall on such date pay to the Trustee the full amount due. The Trustee shall apply the amounts paid by the Company on such date to the prepayment of all outstanding Notes and interest accrued thereon.

The Trustee shall give the holders of the Notes not less than ten days' prior written notice of any prepayment pursuant to this Section 3.3 in the manner specified in Section 2.11 of this Indenture.

#### ARTICLE IV

##### Charging Provisions

SECTION 4.1. In consideration of the premises and One Dollar (\$1) to it in hand paid by the Trustee (receipt whereof is hereby acknowledged) and in pursuance of every power and authority it thereunto enabling and for the purpose of securing the payment in lawful money of the United States of America of all of the Notes and of the interest thereon and of all other sums, if any, from time to time due hereunder to the holders of the Notes the Company doth hereby, subject only to Permitted Encumbrances,

(a) grant, bargain, sell, convey, confirm, assign,

release, transfer, mortgage, pledge and charge as and by way of a first fixed and specific mortgage to and in favor of the Trustee and its successors in the trust, as Trustee for the benefit of the holders of the Notes ~~all present and future assigned rentals and all right, title and interest of the Company, in, to and under the CN Lease and the Equipment, and~~

*Handwritten initials and scribbles*

(b) hypothec, mortgage, pledge and charge as and by way of a first fixed and specific hypothec, mortgage, pledge and charge to and in favor of the Trustee and its successors in the trust as Trustee for the benefit of the holders of the Notes, for and with the payment of the sum of Six million Dollars (\$6,000,000) in lawful money of Canada and interest thereon at the rate of eight and one-quarter percent (8-1/4%) per annum payable as hereinbefore provided and for and with the payment of the additional sum of One million two hundred thousand Dollars (\$1,200,000) to secure the due payment of all other sums, if any, from time to time due hereunder to the holders of the Notes; and

(c) cede and transfer for the same purposes to the Trustee and its successors in the trust as Trustee for the benefit of the holders of the Notes.

*all present and future assigned rentals and all right, title and interest of the Company, in, to and under the CN lease and the Equity*

SECTION 4.2. To have and to hold the Mortgaged Property and the hypothec, mortgages, pledges and charges and cessions and transfers thereof hereunder and all rights hereby conferred unto the Trustee, its successors and assigns, but in trust, nevertheless, for the benefit and security of all the holders of all Notes issued and to be issued hereunder without any preference or priority of any of said Notes over any others thereof, by reason of priority at the time of issue or negotiation thereof, or otherwise howsoever, and subject to the conditions, provisions, covenants and stipulations herein expressed.

*Handwritten initials and scribbles*

SECTION 4.3. The hypothecs, mortgages, pledges and charges and cessions and transfers hereby made and created shall be and have effect whether or not the moneys thereby secured shall be advanced before or after or at the same time as, the issue of any of the Notes intended to be thereby secured, or the advance of the moneys thereby secured, or any part thereof, or before or after, or upon the date of the execution of these presents.

SECTION 4.4. The Company shall forthwith, and from time to time, execute and do all deeds, documents and things which in the opinion of the legal advisers of the Trustee are necessary or advisable for giving the Trustee the security intended to be created by this deed, and for conferring upon the Trustee such powers of sale and other powers over the Mortgaged Property as are hereby expressed to be conferred.

## ARTICLE V

### Possession and Use of Mortgaged Property

SECTION 5.1. Until the security hereof shall become enforceable, the Company may (subject to the terms of this Indenture) possess, manage, operate, deal in and with and enjoy the Mortgaged Property in the same manner and to the same extent as though this Indenture had not been executed.

SECTION 5.2. So long as no Event of Default hereunder shall have occurred and be continuing, the Company shall cause all Assigned Rentals to be paid directly to the Trustee for application by the Trustee (subject as provided in Article III hereof with respect to prepayment) first to the payment of the instalment of principal and interest on the Notes falling due on the date such Assigned Rentals are required to be paid under the CN Lease with the excess, if any, to be forthwith paid to the Company by the Trustee.

SECTION 5.3. The Company shall not be obliged to insure or cause to be insured the Equipment.

## ARTICLE VI

### Representation of the Company as to Rentals and Other Payments Under the CN Lease

The Company hereby represents that the rentals provided for in the CN Lease are sufficient to pay the full amount of the principal of and interest on the Notes as the same become due and that the Casualty Values provided for in the CN Lease on any rental payment date in respect of all the Equipment thereunder is sufficient to pay the full amount of the unpaid principal of the Notes outstanding on such date.

## ARTICLE VII

Certain Covenants by the Company

The Company hereby covenants and agrees:

SECTION 7.1. That the Company is the owner of the Mortgaged Property subject to no liens or encumbrances whatsoever other than Permitted Encumbrances, that it has good right and lawful authority to hypothecate, mortgage, pledge, charge, cede, transfer and assign the same as provided in and by this Indenture, and that it will warrant and defend the title thereto and every part thereof against the claims and demands of all persons whatsoever, the whole however subject to the rights of CN under article 11 of the CN Lease.

SECTION 7.2. That the Company shall diligently maintain, use and operate or shall cause to be maintained, used and operated, the Mortgaged Property and shall carry on and conduct, or cause to be carried on and conducted, its business in a proper and efficient manner so as to preserve and protect the Mortgaged Property and the earnings, income, rents, issues and profits thereof.

SECTION 7.3. That the Company shall well, duly and punctually pay or cause to be paid to every Noteholder the principal and interest of and on the Notes of which he is the holder at the dates and places in the moneys and in the manner mentioned or provided for herein and in the Notes.

SECTION 7.4. That the Company shall perform all its obligations under the CN Lease.

SECTION 7.5. That the Company shall from time to time pay or cause to be paid all rents, taxes, rates, levies, assessments, ordinary or extra-ordinary, government fees or dues lawfully levied, assessed or imposed upon the Mortgaged Property or any part thereof and upon the income and profits of the Company as and when the same become due and payable, unless the imposition thereof is being contested in good faith by appropriate proceedings and the security of the Indenture is not thereby in the opinion of the Trustee materially endangered, and shall not suffer any workmen's, suppliers', builders' or other liens, privileges or rights of retention to remain outstanding upon the Mortgaged

Property or any part thereof unless the imposition thereof is being contested in good faith by appropriate proceedings and the security of the Indenture is not thereby in the opinion of the Trustee materially endangered.

SECTION 7.6. The Company, with all convenient speed, at its expense will duly record, register, file, rerecord, reregister and refile this Indenture and every indenture supplemental hereto which hereafter may be executed and any bill or agreement of sale with respect to the Mortgaged Property as may be required by law in order to protect the interest of the Company in and the lien hereof on the Mortgaged Property. At or prior to the issuance of any Notes hereunder the Company will furnish to the Trustee an opinion of Counsel that this Indenture and any bill or agreement of sale with respect to the Mortgaged Property have been duly recorded, registered and filed as may be required by law in order to protect the interest of the Company in and the lien hereof on the Mortgaged Property and that no rerecording, reregistration or refileing of this Indenture is required. The Company will also furnish to the Trustee annually on or before the last day of November in each year an opinion of Counsel that such rerecording, reregistering and refileing of any bill or agreement of sale as may be required to protect the interest of the Company in the Mortgaged Property has been done and, if any indenture supplemental hereto shall have been executed and delivered during the preceding year that all recording, registering and recording of such supplemental indenture as may be required to comply with the provisions of this Section 7.6 has been effected and that no rerecording, reregistering or refileing of such supplemental indenture is required.

SECTION 7.7. That the Company shall fully and effectually maintain and keep maintained the security hereby created as a valid and effective security at all times so long as any Notes are outstanding hereunder and that it will not, save for Permitted Encumbrances, create or suffer to be created or have outstanding on the Mortgaged Property any mortgage, pledge, privilege, lien or charge, but it shall not be required to pay or discharge any such mortgage, pledge, privilege, lien or charge so long as it shall in good faith with due diligence by appropriate proceedings contest the validity thereof, unless thereby, in the judgment of the Trustee, the security constituted by this Indenture will be materially endangered.

SECTION 7.8. That, subject to the express provisions of this Indenture and the CN Lease respecting maintenance, repair, accessions and Casualty Occurrences and the alternatives available to the Company and CN in such connection, the Company shall at all times maintain and keep or cause to be maintained and kept in good order and repair, ordinary wear and tear excepted, all the Equipment, and at all reasonable times allow the Trustee or its representative the right to inspect the Mortgaged Property in order to view the state and condition the same are in.

SECTION 7.9. That the Company shall not enter into any amendment or modification of, or supplement to, the CN Lease, or waive compliance by CN with any of the provisions thereof, without the consent of the Trustee authorized by Noteholders' Instrument.

SECTION 7.10. If the Company shall fail to perform any of the covenants or fulfill any of the conditions contained in this Indenture or in the Notes, the Trustee may in its discretion perform any of the said covenants or fulfill any such condition capable of being performed by it and, if any such covenant or condition requires the payment or expenditure of money, it may make such payments or expenditures with its own funds, or with money borrowed by or advanced to it for such purpose, but shall be under no obligation so to do; and all sums so expended or advanced shall be at once payable by the Company and shall bear interest at the rate of 8-1/4 percent per annum from the date so expended or advanced until paid, and shall be secured hereby, having the benefit of the charges hereby created in priority to the indebtedness evidenced by the Notes and interest, but no such performance or payment shall be deemed to relieve the Company from any default hereunder.

SECTION 7.11. That the Company will at all times maintain its corporate existence and, subject to all the provisions herein contained, will diligently preserve all the rights, powers, privileges and goodwill owned by it.

SECTION 7.12. Nothing contained in this Indenture shall render the Trustee liable to CN under the CN Lease for the fulfillment of any and all obligations of the Company under the CN Lease.

SECTION 7.13. That if the Company should be in default hereunder at any time, it will not while such default shall continue sell, charge or otherwise dispose of any of the Notes secured hereby.

## ARTICLE VIII

Events of Default

SECTION 8.1. The security hereby constituted shall become enforceable, subject to the terms hereinafter contained, if and when one or more of the following events (herein called "events of default") shall happen, that is to say:

(a) default shall be made in the payment of the principal of any of the Notes (including without limitation payments in respect of Casualty Occurrences) when the same becomes due and payable, either by the terms thereof or otherwise, and such default shall have continued for a period of fifteen days; or

(b) default shall be made in the payment of any interest due on any of the Notes issued hereunder and such default shall have continued for a period of fifteen days; or

(c) a decree or order of a court having jurisdiction in the premises shall have been entered, and shall remain undischarged or not dismissed for more than 60 days, declaring the Company a bankrupt or appointing a custodian under the Bankruptcy Act in respect of the Company's properties; or an order of a court having jurisdiction in the premises shall have been entered, and shall remain undischarged or not dismissed for more than 60 days, or if a receiver or receiver and manager or a sequestrator shall be appointed of the Company or of the Mortgaged Property or any part thereof, and shall remain undischarged or not dismissed for more than 60 days, or if an encumbrancer shall take possession of the Mortgaged Property or any part thereof which is, in the opinion of the Trustee, a substantial part thereof and shall remain in possession for more than 60 days; or

(d) if the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization under any applicable bankruptcy or similar law, or shall consent to the filing of any such petition, or shall consent to the

appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of it or of its property, or shall make an assignment for the benefit of creditors or a proposal under any applicable bankruptcy or other law, or an effective resolution shall be passed for the winding-up, dissolution or liquidation and dissolution of the business and affairs of the Company, or the Company shall admit in writing its inability to pay its debts generally as they become due; or

(e) any process of execution be enforced or levied upon any of the property of the Company and remain unsatisfied, unbonded or not stayed pending appeal for a period of thirty days, provided that such process is not in good faith disputed by the Company and, in that event, provided further that nonpayment shall not in the judgment of the Trustee jeopardize or impair the security hereby created; or

(f) if, save for Permitted Encumbrances, the Company shall at any time hereafter, create or suffer to exist or purport or attempt to create any mortgage, hypothec, pledge, charge or other encumbrance upon the Mortgaged Property, or any part thereof; or

(g) default shall be made in the due observance or performance of any other covenant or condition in this Indenture required to be observed or performed by the Company and any such default shall continue for a period of 60 days after notice received by the Company from the Trustee specifying such default and requiring the Company to rectify such default or shall continue for such shorter period of time as would at any time, if continued, render any substantial part of the property of the Company liable to forfeiture; or

(h) if there shall be an event of default under the CN Lease (other than an event of default under the CN Lease which could constitute the basis for an event of default under subparagraph (a) or (b) above in this Section 8.1) and such default shall continue for a period of more than 30 days.

SECTION 8.2. Any notice as aforesaid may be given by the Trustee on its own initiative and shall be given upon receipt by it of a Noteholders' Instrument directing it to do so.

## ARTICLE IX

Remedies

SECTION 9.1. In case the security hereby constituted shall become enforceable as herein provided, the Trustee may in its discretion and shall, upon receipt of the written request to do so by Noteholders' Instrument, declare the principal of all Notes then outstanding and other moneys secured hereby to be due and payable and the same shall forthwith become immediately due and payable to the Trustee on demand, anything therein or herein contained to the contrary notwithstanding, and the Company shall on such demand forthwith pay to the Trustee for the benefit of the holders of the Notes secured, the principal of and all accrued interest on the Notes then outstanding and all other moneys secured hereby, and such payment when made shall be deemed to have been made in discharge of its obligations hereunder, and any moneys so received by the Trustee shall be applied in the same manner as if they were the proceeds of a sale of the Mortgaged Property.

SECTION 9.2. In the event of the security hereunder becoming enforceable, the Noteholders by Noteholders' Instrument shall have power to require the Trustee to waive the default, and in such event the Trustee shall thereupon waive the default unconditionally or upon such terms and conditions as such holders shall prescribe or the Noteholders shall have power by Noteholders' Instrument to direct the Trustee to cancel any declaration made by it pursuant to the provisions of Section 9.1 hereof, provided always that no act or omission either of the Trustee or of the Noteholders shall extend to or be taken in any manner whatsoever to affect any subsequent default or the rights resulting therefrom.

SECTION 9.3. In case the security hereby constituted shall become enforceable as herein provided, the Trustee may in its discretion and, upon receipt of written request to do so by Noteholders' Instrument, shall, by its officers, agents or attorneys, enter into and upon and take possession of all or any part of the Mortgaged Property (subject to the provisions of article 11 of the CN Lease), with full power to administer the CN Lease, including the power to borrow moneys or advance its own moneys for such purpose and the maintenance and preservation of the Mortgaged Property or any part thereof, the payment of

taxes, wages and other charges ranking in priority to the Notes and current operating expenses incurred not more than 60 days prior to such taking of possession (and moneys so borrowed or advanced shall be repaid by the Company on demand and until repaid shall, with interest thereon at the rate of 8-1/4 percent per annum, be a charge upon the Mortgaged Property in priority to the said Notes), and to receive the revenues, incomes, issues and profits of the Mortgaged Property (including, without limitation, the Assigned Rentals and all other amounts payable pursuant to the CN Lease), and to pay therefrom all the expenses, charges and advances of the Trustee in administering the CN Lease and carrying on the said business operations or otherwise, and all taxes, assessments and other charges against the Mortgaged Property ranking in priority to the Notes, or payment of which may be necessary to preserve the Mortgaged Property, and to apply the remainder of the moneys so received in the same manner as if the same arose from a sale or realization of the Mortgaged Property; provided that the Trustee shall, upon the removal and waiver by Noteholders' Instrument of all defaults hereunder, restore the said Mortgaged Property to the Company, and pay to it any balance of income so received after such payment of all amounts due to or properly payable to the Trustee hereunder in priority to the Notes, and in case of any such return of the Mortgaged Property to the Company, the security hereby constituted shall no longer be deemed to have become enforceable by reason of the default or defaults which theretofore existed, but the rights to arise upon a subsequent default shall not be affected thereby.

SECTION 9.4. In case the security hereby constituted shall have become enforceable as herein provided, and the Company shall have failed to pay the Trustee, on demand, the principal of and accrued interest on all Notes outstanding together with any other amounts due hereunder or on the Notes, the Trustee may in its discretion (subject to the provisions of article 11 of the CN Lease) either after such entry, as aforesaid, or after other entries by its officers or agents, or without any entry, sell and dispose of, and upon receipt of written request to do so by Noteholders' Instrument the Trustee shall sell and dispose of all the Mortgaged Property at such time and on such terms and conditions (but subject as aforesaid) as the Trustee shall fix, either (i) at public auction or by tender at such time and on such terms and conditions, subject as herein provided, as the Trustee shall appoint, or (ii) by private sale, in

either case upon not less than 30 days' prior written notice of the time, place, terms and conditions thereof, and such additional notice as may be required by law. It shall be lawful for the Trustee to make any such sale, either for cash or upon credit, upon such reasonable conditions as to terms of payment and, in the case of any such sale at public auction or by tender, as to upset or reserve bid or price, as it may deem proper, to rescind or vary any contract of sale that may have been entered into, and re-sell with or under any of the powers conferred herein, to adjourn any such sale from time to time, and to execute and deliver to the purchaser or purchasers of the Mortgaged Property good and sufficient bills of sale or other instruments transferring title to the same, the Trustee being hereby constituted the irrevocable attorney-in-fact of the Company for the purpose of making such sale and executing such instruments, and any such sale made as aforesaid shall be a perpetual bar both in law and equity against the Company and its assigns and all other persons claiming the Mortgaged Property or any part or parcel thereof, by, from, through, or under the Company or its assigns, save and except the rights of CN under the CN Lease, and the proceeds of any such sale shall be distributed in the manner hereinafter provided.

The Trustee, or any one or more of the Noteholders or any agent or representative thereof, may become purchasers at any sale of the Mortgaged Property whether made under the power of sale herein contained or pursuant to foreclosure or other judicial proceedings.

SECTION 9.5. The Company binds and obliges itself to yield up possession of the Mortgaged Property to the Trustee on demand whenever the Trustee shall have a right of entry under the foregoing provisions of this Article IX and agrees to put no obstacles in the way of, but to facilitate by all legal means, the actions of the Trustee hereunder and not to interfere with the carrying out of the powers hereby granted to it, and the Company shall forthwith by and through its officers and directors, execute such documents and transfers as may be necessary to place the Trustee in legal possession of the Mortgaged Property and thereupon all the powers and functions, rights, and privileges of each and every of the directors and officers of the Company shall cease and determine with respect to the Mortgaged Property, unless specially continued in writing by the Trustee, or unless the Mortgaged Property shall have been restored to the Company as hereinbefore in this Article IX provided.

SECTION 9.6. Except as herein otherwise expressly provided, the moneys arising from any sale or realization of the Mortgaged Property whether under any sale by the Trustee or by judicial process or otherwise, shall be applied, together with any other moneys then in the hands of the Trustee available for such purpose, in the first place to pay or reimburse to the Trustee the costs, charges, expenses, borrowings, advances and compensation of the Trustee in or about the execution of its trust or otherwise in relation to these presents with interest thereon as herein provided, and the residue of the said moneys shall be applied:

(a) first, to the payment equally and ratably of the unpaid interest on the Notes;

(b) second, to the payment equally and ratably of the unpaid principal of the Notes; and

(c) the balance, if any, of such moneys shall be forthwith paid to the Company or its assigns.

SECTION 9.7. The Trustee shall have the right at the time it makes any payment required by this Article IX to demand of the person claiming such payment the production of the actual Note under which it claims such payment be made, and shall cause to be endorsed on the same a memorandum of the amount so paid and the date of payment, but the Trustee may in its discretion dispense with such production and endorsement in any special case, upon such indemnity being given as it shall deem sufficient, provided, that if such applicant shall be an insurance company or other institutional investor with assets of at least \$10,000,000, the indemnity of such applicant in form reasonably satisfactory to the Company and to the Trustee shall be sufficient.

SECTION 9.8. Upon any such sale of the Mortgaged Property, whether made under the power of sale herein contained, or pursuant to foreclosure or other judicial proceedings, the principal of all the Notes issued hereunder and then outstanding, if not previously declared due, shall immediately become due and payable, anything in the Notes or in this Indenture to the contrary notwithstanding.

SECTION 9.9. The Company hereby irrevocably appoints the Trustee to be the attorney-in-fact of the Company, after occurrence of an event of default hereunder, for and in the name and on behalf of the Company to execute

and do any deeds, documents, transfers, conveyances, assignments, assurances, consents, and things which the Company ought to sign, execute and do hereunder and generally to use the name of the Company in the exercise of all or any of the powers hereby conferred on the Trustee with full powers of substitution and revocation.

SECTION 9.10. The Trustee shall have the right in its discretion to proceed in its name as Trustee hereunder in the enforcement of the security hereby constituted by any remedy provided by law, whether by legal proceedings or otherwise but it shall not be bound to do or to take any act or action in virtue of the powers conferred on it by these presents unless and until it shall have been required so to do by Noteholders' Instrument defining the action which it is required to take, and the Trustee may, before taking such action, require such Noteholders to deposit with the Trustee the Notes held by them for which Notes the Trustee shall issue receipts. The obligation of the Trustee to commence or continue any act, action or proceedings for the purpose of realizing upon the Mortgaged Property or for the enforcement of any covenant or obligation under or arising out of these presents or of the Notes shall, at the option of the Trustee, be conditional upon the Noteholders or any one or more of them furnishing, when required in writing by the Trustee, Trustee's Indemnification.

SECTION 9.11. The Trustee shall not be responsible or liable, otherwise than as a Trustee, for any debts contracted by it, for damages to persons or property or for salaries or nonfulfillment of contracts during any period wherein the Trustee shall manage the Mortgaged Property upon entry, as herein provided, nor shall the Trustee be liable to account as a mortgagee in possession or for anything except actual receipts or be liable for any loss on realization, and the Trustee shall not be bound to do, observe or perform or to see to the observance or performance by the Company of any of the obligations or covenants herein imposed upon the Company, unless and until the security hereby created has become enforceable and the Trustee shall have become bound to enforce the same and shall have been kept supplied with moneys reasonably necessary to provide for the expenses of the required action and with satisfactory indemnity as aforesaid.

SECTION 9.12. No person dealing with the Trustee or its agents shall be concerned to inquire whether the

security hereby constituted has become enforceable, or whether the powers which the Trustee is purporting to exercise have become exercisable, or whether any money remains due upon the security of these presents or the Notes, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or of any other dealing by the Trustee with the Mortgaged Property or to see to the application of any money paid to the Trustee, and, in the absence of fraud on the part of such person, such dealing shall be deemed, so far as regards the safety and protection of such person, to be within the powers hereby conferred and to be valid and effectual accordingly.

SECTION 9.13. If the security hereby created shall become enforceable, the Trustee may in its discretion and, upon receipt of the written request to do so by Noteholders' Instrument, shall by writing appoint a receiver of the Mortgaged Property, or any part thereof, and may remove any receiver so appointed by it and appoint another in his stead and the following provisions shall take effect:

(a) such appointment may be made at any time after the security shall have become enforceable and either before or after the Trustee shall have entered into or taken possession of the Mortgaged Property or any part thereof but such appointment shall be revoked upon the direction in writing of the Noteholders by Noteholders' Instrument;

(b) every such receiver may be vested with all or any of the powers and discretions of the Trustee;

(c) the Trustee may from time to time fix the remuneration of every such receiver and direct the payment thereof out of the Mortgaged Property or the proceeds thereof;

(d) the Trustee may from time to time require any such receiver to give security for the performance of his duties and may fix the nature and amount thereof, but it shall not be bound to require such security;

(e) every such receiver may, with the consent in writing of the Trustee and the written consent of the holders of the Notes then outstanding as evidenced

by a Noteholders' Instrument, borrow money for the purpose of the maintenance of the Mortgaged Property or any part or parts thereof or for any other purposes approved by the Trustee and said holders, and may issue certificates (herein called "Receiver's Certificates") for such sums as will in the opinion of the Trustee and said holders be sufficient for obtaining upon the security of the Mortgaged Property the amounts from time to time required, and such Receiver's Certificates may be payable either to order or to bearer and may be payable at such time or times as to the Trustee may appear expedient, and shall bear interest as shall therein be declared, and the receiver or the Trustee may sell, pledge or otherwise dispose of the same in such manner as to the Trustee may seem advisable and may pay such commission on the sale thereof as to it may appear reasonable, and in the name of and as attorney-in-fact for the Company may hypothecate, mortgage, pledge, charge or otherwise grant security upon the whole or any part of the Mortgaged Property, in priority over the security created hereunder, as security for the repayment of the moneys borrowed upon such Receiver's Certificates, and interest thereon, which security may be granted either at the time of or subsequent to the borrowing of said moneys, and said moneys shall be secured by the security created hereby and shall be a first charge upon the Mortgaged Property in priority to the Notes; provided always that in the exercise of the powers and duties conferred upon the Trustee by this Article the Trustee shall be bound to observe and act in accordance with the written directions and instructions of the holders of the Notes then outstanding, as evidenced by Noteholders' Instrument, if and whenever any such directions or instructions shall be given;

(f) save so far as otherwise directed by the Trustee, all moneys from time to time received by such receiver shall be paid over to the Trustee to be held by it on the trusts of these presents.

SECTION 9.14. No remedy herein conferred upon or reserved to the Trustee, or upon or to the holders of Notes hereby secured, is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now existing or hereafter to exist by law or by statute.

SECTION 9.15. The Company covenants and agrees to and with the Trustee that in case of any foreclosure proceedings or other proceedings to enforce the security hereby created, judgment may be rendered against it in favor of the Noteholders hereunder or in favor of the Trustee, as trustee of an express trust for the Noteholders hereunder for any amount which may remain due in respect of the Notes secured hereby and the interest thereon, after the application to the payment thereof of the proceeds of any sale of the property covered hereby.

## ARTICLE X

### Concerning the Trustee

#### SECTION 10.01.

(1) In this Article, the term "Applicable Legislation" means the provisions, if any, of the Canada Corporations Act, the Canada Business Corporations Act and any other statute of Canada or a province or territory thereof, and of regulations under any such named or other statute, relating to trust indentures and/or to the rights, duties and obligations of trustees under trust indentures and of corporations issuing debt obligations under trust indentures, to the extent that such provisions are at the time in force and applicable to this Trust Indenture.

(2) If and to the extent that any provision of this Trust Indenture limits, qualifies or conflicts with a mandatory requirement of Applicable Legislation, such mandatory requirement shall prevail.

(3) The Company and the Trustee agree that each will at all times in relation to this Trust Indenture and any action to be taken hereunder observe and comply with and be entitled to the benefits of Applicable Legislation.

(4) In addition to the reports, certificates, opinions and other evidence required by this Trust Indenture, the Company shall furnish to the Trustee such additional evidence of compliance with any provision hereof, and in such form, as may be prescribed by Applicable Legislation or as the Trustee may reasonably require by written notice to the Company.

(5) Whenever Applicable Legislation requires that evidence referred to in subsection (4) of this section be in the form of a statutory declaration, the Trustee may accept such statutory declaration in lieu of a certificate of the Company required by any provision hereof. Any such statutory declaration may be made by one or more of the chairman of the board, president, executive vice presidents, vice presidents, secretary, treasurer, assistant secretaries or assistant treasurers of the Company.

SECTION 10.2. By way of supplement to the provisions of the laws of Canada and the provinces and territories thereof for the time being relating to trustees, it is expressly declared as follows, that is to say:

(a) In the exercise of its rights and duties, the Trustee may, if it is acting in good faith, rely as to the truth of the statements and the accuracy of the opinions expressed therein, upon statutory declarations, opinions, reports, certificates or other evidence furnished to the Trustee pursuant to any provision hereof or of Applicable Legislation or pursuant to a request of the Trustee provided that such evidence complies with Applicable Legislation and that the Trustee examines the same and determines that such evidence complies with the applicable requirements of this Trust Indenture.

(b) In the exercise of the rights and duties prescribed or conferred by the terms of this Indenture, the Trustee shall, except as herein expressly otherwise provided, exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.

(c) That the Trustee shall not be liable for or by reason of any failure or defect of title to or any encumbrance upon the Mortgaged Property, or for or by reason of the statements of facts or recitals in this Indenture or in the Notes contained, or be required to verify the same; but all such statements and recitals are and shall be deemed to have been made by the Company only, and it shall not be the duty of the Trustee, and nothing herein contained shall in any way cast any obligation upon the Trustee, to see to the registration or filing or renewal of this Indenture or

any other deed or writing by way of mortgage, charge or bill of sale upon the Mortgaged Property or any part thereof, or upon any other property of the Company, or to procure any local mortgage, charge or other additional instrument of further assurance, or to do any other act for the continuance of the lien or charge hereof, or for giving notice of the existence of such lien or charge, or for extending or supplementing the same, or to insure or keep insured, against loss or damage by fire or otherwise, the Mortgaged Property or any part thereof or the properties of any other company controlled by the Company, or to keep itself informed or advised as to the payment by the Company of any taxes or assessments or premiums of insurance or other payments which the Company or any company controlled by it should make or to require such payments to be made.

(d) That the Trustee may for the execution of the duties and powers conferred upon it hereunder appoint or employ, attorneys, bankers, receivers, lawyers, agents or other persons as it shall reasonable require, but the Trustee shall not be responsible for any misconduct on the part of any such attorney, banker, receiver, lawyer, agent or other person appointed by it hereunder, or bound to supervise the proceedings of any such other appointee.

(e) That the Trustee shall not be bound to give notice to any person or persons of the execution hereof or of the lien and charge of these presents unless and until the security hereby constituted shall have become enforceable and the Trustee shall have determined or become bound to enforce the same.

(f) That the Trustee shall not be responsible for the moneys subscribed by applicants for or purchasers of the Notes or be bound to see to the application thereof.

(g) That, in the event of the Company making an authorized assignment or a trustee, receiver or liquidator in respect to the Company's properties being appointed under the Bankruptcy Act or the Winding-Up Act or the Canada Business Corporation Act or in the event of the Company making a compromise or arrangement under the Companies' Creditors Arrangement Act, the Trustee, if directed to do so by Noteholders'

Instrument may, in bankruptcy or winding-up or dissolution or liquidation and dissolution proceedings or proceedings under the Companies' Creditors Arrangement Act, and as Trustee and on behalf of the Noteholders, file and prove a claim, value security and vote and act at all meetings of creditors and otherwise in such proceedings as directed.

(h) That the Trustee shall, subject only to the provisions of Section 9.10 hereof, be obliged to act and shall act and be fully protected in acting upon the instructions, requests or directions of the Noteholders given by Noteholders' Instrument in connection with any proceedings, act, power, right, matter or thing relating to or conferred by or to be done under this Indenture.

(i) The Trustee may from time to time delegate to any corporation or person which it may select with reasonable care the performance of any of the trusts and powers vested in it by these presents and the Trustee shall not be in any way responsible for any loss incurred by the misconduct or default of any such delegate or as a result of such delegation.

(j) If requested by the Noteholders or by those to whom the Notes have been assigned or pledged, the Trustee shall be obliged to give to those requesting or to their officers or authorized agents, free access to and communication of the Trustee's records relating to these presents and all matters connected therewith.

### SECTION 10.3.

(1) The Trustee represents to the Company that at the time of the execution and delivery hereof no material conflict of interest exists in the Trustee's role as a fiduciary hereunder and agrees that in the event of a material conflict of interest arising hereafter it will, within 90 days after ascertaining that it has such material conflict of interest, either eliminate the same or resign its trust hereunder.

(2) Subject to subsection (1) of this Section 10.3, the Trustee, in its personal or any other capacity, may buy, lend upon and deal in securities of the Company and generally may contract and enter into financial transactions with the Company or any subsidiary without being liable to account for any profit made thereby.

## ARTICLE XI

Suits and Proceedings by  
Trustee and Noteholders

SECTION 11.1. All rights of action under this Trust Indenture may be enforced by the Trustee without the possession of the Notes hereby secured or the production thereof at the trial or other proceedings relative thereto.

SECTION 11.2. The Trustee shall have power to institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security hereunder by any acts of the Company, or of others, in violation of this Trust Indenture or any applicable provision of law or as the Trustee may be advised shall be necessary or expedient to preserve and to protect its interests and the security and interests of the Noteholders in respect of the Mortgaged Property or income, earnings, rents, issues and profits thereof.

SECTION 11.3. No delay or omission of the Trustee, or of any holder of the Notes secured hereby, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein and every power and remedy given hereby to the Trustee or to the Noteholders may be exercised by it and/or them from time to time and as often as may be deemed expedient by it and/or them.

## ARTICLE XII

Appointment of New Trustee

SECTION 12.1. Any Trustee may at any time resign office by not less than three months' notice in writing to the Company, or by such shorter notice as the Company may be willing to accept, and the Company, may, subject as herein provided, at any time appoint in writing a new Trustee, approved by Noteholders' Instrument, in the place of any Trustee so resigning, becoming bankrupt or going into liquidation or otherwise becoming unfit to act or desiring to be discharged from the trusts hereof; and in the event of the Company failing so to do within five days after being thereunto requested or, if such vacancy occur after

default, such appointment shall be made by the Noteholders by Noteholders' Instrument, who shall also have the power by a similar instrument to remove at any time the Trustee and to appoint a new Trustee. Any such new Trustee without further act shall be vested and have all the property, right, powers and authority granted to the Trustee hereunder and be subject in all respects to the terms, conditions and provisions hereof. And it is agreed that the Trustee hereunder shall always be a trust company having capacity and power to administer the trusts hereof with an office in the City of Montreal and qualified to carry on business as a trust company in each of the provinces and territories of Canada.

SECTION 12.2. Any corporation into which the Trustee may be merged or with which it may be consolidated or amalgamated, or any corporation resulting from any merger, consolidation or amalgamation to which the Trustee shall be a party, shall be the successor Trustee under this Indenture without the execution of any instrument or any further act.

#### ARTICLE XIII

##### Investment of Trust Moneys

SECTION 13.1. Unless otherwise provided in this Indenture, any moneys held by the Trustee, which under the trusts of these presents may or ought to be invested, shall be invested and reinvested by the Trustee in its name or under its control in any bonds or obligations which are a direct obligation of the United States Government or shall be placed by the Trustee on deposit at interest at the current bank rate in a United States dollar account in some Canadian chartered bank or trust company or, with the consent of the Directors, may be held by the Trustee subject to the payment of interest at such rate as may be agreed upon by the Trustee and the Company.

#### ARTICLE XIV

##### Immunity of Officers, Shareholders and Directors

SECTION 14.1. No recourse under or upon any obligation, covenant or agreement contained in this Indenture

or in any Note or under any judgment obtained against the Company, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances under or independently of this Indenture, shall be had against any shareholder, officer, director or employee, past, present or future, of the Company or of any successor corporation either directly or through the Company or otherwise, for the payment for or to the Company or any receiver, liquidator, trustee or sequestrator thereof or for or to the holders of any Note issued or secured hereunder or otherwise, of any sum that may be due and unpaid by the Company upon any such Note, and any and all personal liability of every kind and nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such shareholder, officer, director or employee on account of the Notes and indebtedness represented thereby, by reason of any insufficiency or insufficiencies in the payment of any shares of the capital of the Company, is hereby expressly waived and released as a condition of and as part of the consideration for the execution of this Indenture and the issue of the Notes. Nothing herein or in the Notes contained shall be taken, however, to prevent recourse to and the enforcement of the liability of any shareholder of the Company for uncalled capital, or the liability of any such shareholder upon unsatisfied calls or upon shares not fully paid up.

#### ARTICLE XV

##### Satisfaction and Discharge; Repayment of Unclaimed Moneys

SECTION 15.1 These presents and the estate and rights hereby granted shall cease, determine and be void and the Trustee shall at the request and at the expense of the Company cancel and discharge the charges of this Indenture and execute and deliver to the Company such deeds or other instruments as shall be requisite to satisfy the charges hereof and to effect the cancelation of the registration hereof and to reconvey to the Company the Mortgaged Property free and clear of the charges of this Indenture, if the Company shall have first satisfied the Trustee that it has paid or made due provision satisfactory to the Trustee for the payment of all of the principal moneys and interest due or to become due on all the Notes outstanding hereunder, at the time and in the manner therein and herein provided, and also all other moneys payable hereunder by the Company or

shall surrender or cause to be surrendered to the Trustee for cancellation all of the Notes and shall in any case pay all sums due or accruing to the Trustee hereunder. Notes for the payment of which money shall have been set apart by or paid to the Trustee in conformity with the provisions of this Indenture shall be deemed to be paid within the meaning of this Section.

The registrar of any registration division in which any properties affected by this Indenture are situated shall discharge and cancel the registration of any hypothecation, mortgage, pledge, charge, cession, transfer or assignment created hereby or hereafter created under the provisions hereof upon the registration of any discharge, release or document to that effect signed by the Trustee, without being obliged to see that any of the conditions of this Indenture have been fulfilled.

SECTION 15.02. In case the holder of any Note shall fail to present the same for payment on the date on which the principal thereof, and/or the interest thereon or represented thereby becomes payable either at maturity, on redemption or otherwise:

(1) the Company shall be entitled to pay to the Trustee and direct it to set aside; or

(2) in respect of moneys in the hands of the Trustee which may or should be applied to the payment or redemption of the Notes, the Company shall be entitled to direct the Trustee to set aside;

the principal moneys and/or the interest, as the case may be, in trust to be paid to the holder of such Note upon due presentation or surrender thereof in accordance with the provisions of this Trust Indenture; and thereupon the principal moneys and/or the interest payable on or represented by each Note in respect whereof such moneys have been set aside shall be deemed to have been paid and the holder thereof shall thereafter have no right in respect thereof except that of receiving payment of the moneys so set aside by the Trustee upon due presentation and surrender thereof, subject always to the provisions of Section 15.3 hereof.

SECTION 15.3. Any moneys set aside under Section 15.2 hereof and not claimed by and paid to holders of Notes, as provided in Section 15.2 hereof, within six years after

the date of such setting aside shall be repaid to the Company by the Trustee on demand, and thereupon the Trustee shall be released from all further liability with respect to such moneys, and thereafter the holders of the Notes in respect of which such moneys were so repaid to the Company shall have no rights in respect thereof except to obtain payment of the moneys due thereon from the Company.

#### ARTICLE XVI

##### Acceptance by Trustee and Trustee's Expenses

SECTION 16.1. The Trustee hereby accepts the trusts in this Trust Indenture declared and provided and agrees to perform the same upon the terms and conditions herein set forth.

SECTION 16.2. The Trustee acknowledges that it has entered into an agreement with CN relating to remuneration for its services hereunder and all other expenses of the Trustee in and about the execution of the trust hereby created, and that the Company shall in no circumstances be liable for the payment of all or any part of such remuneration and expenses.

#### ARTICLE XVII

##### Correction of Errors

SECTION 17.1. The Company and the Trustee may correct typographical, clerical or other manifest errors in this Indenture, provided that such correction shall in the opinion of the Trustee in no way prejudice the rights of the Trustee or the Noteholders hereunder, and the Company and the Trustee may execute all such documents as may be necessary to correct such errors.

#### ARTICLE XVIII

##### Notarial Deed

SECTION 18.1. The Company, in conformity with the laws of the Province of Quebec, in which part of the Mortgaged Property is situate, has signed and executed or

will sign and execute in notarial form a Trust Deed of Hypothec, Mortgage and Pledge hypothecating, mortgaging, pledging and charging and ceding and transferring the Mortgaged Property in the manner herein provided as security for the Notes, such Deed being substantially in the same tenor and to the same effect as this Trust Indenture, both the said instruments constituting and to be read as one instrument.

#### ARTICLE XIX

##### Formal Date

SECTION 19.1. This Indenture may be referred to as being dated as of June 1, 1977, notwithstanding the actual date of its execution.

#### ARTICLE XX

##### Form of Notes

SECTION 20.1. The following is the form of the Notes:

(This Note may not be sold in contravention of the provisions of the United States Securities Act of 1933, as amended)

PETERSON, HOWELL & HEATHER (CANADA) LIMITED  
(Incorporated under the Laws of Canada)

8-1/4% SECURED EQUIPMENT NOTE

No.

\$

PETERSON, HOWELL & HEATHER (CANADA) LIMITED (hereinafter called the "Company"), for value received promises to pay to the registered holder hereof on or before August 23, 1991, in instalments as hereinafter provided, or on such earlier date as the principal moneys become payable in accordance with the provisions hereof and of the Trust Indenture hereinafter mentioned,  
Dollars (\$                    ), in lawful money of the United States of America, at the principal office of The Royal Trust Company in the City of Montreal, Canada, and to

pay interest thereon (as well after as before maturity) from the date hereof, at the same place, in like money as aforesaid, at the rate of 8-1/4% per annum, on the 23rd day of February and August in each year, commencing on February 23, 1978, together with interest on all overdue principal or interest at the rate of 9-1/4 per cent per annum.

The principal hereof shall be due and payable in semiannual instalments on February 23 and August 23 in each year, commencing on February 23, 1978, and terminating on August 23, 1991, calculated as provided in the Trust Indenture, so that the aggregate of the principal and interest payable on each such instalment payment date shall be substantially equal and such instalments shall completely amortize the principal. Such payments of principal shall be subject to prepayment as set forth in the Trust Indenture. The Company has covenanted in the Trust Indenture to furnish to the Trustee thereunder and to the holder hereof a schedule of instalment payments of principal and interest and any revised schedule which may be required in the event of prepayment of principal, such schedule or revised schedule, as the case may be, to be and be deemed to form part of this Note.

Since partial payments of principal on this Note are not required to be noted hereon, inquiry should be made at the aforesaid office of The Royal Trust Company as to the principal amount at any time remaining unpaid hereon.

This Note is one of an issue designated "8-1/4% Secured Equipment Notes", secured by the Trust Indenture and the Trust Deed of Hypothec, Mortgage and Pledge dated as of June 1, 1977, executed between the Company and The Royal Trust Company, as Trustee, which instruments and any and all indentures supplemental thereto are herein collectively referred to as the "Trust Indenture", and to which reference is hereby made for the terms and conditions upon which the Notes are issued and the nature and extent of the security therefor.

All Notes at any time outstanding rank pari passu and are equally and ratably secured by the Trust Indenture.

Subject to the provisions of the Trust Indenture, Notes of any authorized denomination may be exchanged for other Notes in any other authorized denominations equivalent



## (FORM OF TRUSTEE'S CERTIFICATE)

This Note is one of the 8-1/4% Secured Equipment Notes issued under the Trust Indenture within mentioned.

Date of Certification

THE ROYAL TRUST COMPANY, Trustee

by \_\_\_\_\_  
Authorized Officer

## (FORM OF NOTATION ON NOTES WITH RESPECT TO PAYMENTS ON ACCOUNT OF PRINCIPAL)

(Indicate below whether fixed instalment or prepayment)      Due Date      Amount Paid      Balance of Principal Unpaid      Notation Made By:

---

(FORM OF NOTATION ON NOTES WITH  
RESPECT TO INTEREST PAYMENTS)

The interest instalments payable on this  
Note on the dates below specified have been paid.

<u>Due Date of</u> <u>Interest Instalment</u>	<u>Notation</u> <u>Made By:</u>
--	------------------------------------

FORM OF TRANSFER

FOR VALUE RECEIVED, the undersigned hereby  
sells, assigns and transfers unto

the within Note, hereby irrevocably constituting and  
appointing

attorney-in-fact, to transfer the said Note on the  
books of the within-mentioned Company, with full power  
of substitution in the premises.

Dated \_\_\_\_\_, 19

In the presence of:

\_\_\_\_\_

## ARTICLE XXI

SECTION 21.1. The following is a description of the Equipment and the amount of the Cost of each unit thereof to the Company:

<u>Type of Equipment</u>	<u>Specifications</u>	<u>Builder</u>	<u>No. of Units</u>	<u>Unit Numbers</u>	<u>Date First Placed in Railroad Service by CN</u>	<u>Cost per Unit to the Company*</u>	<u>Total Cost to the Company for All Units*</u>
Hopper Ballast Cars	70-ton	National Steel Car Corporation, Limited	68	CN-56500-56567	After April 1, 1974	\$46,087.45	\$3,133,946.60
Flat Cars-- Bulkhead	70-ton	National Steel Car Corporation, Limited	55	CN-620443; 620446-620499	After April 1, 1974	28,452.75	1,564,901.25
Long Steel Hopper Cars	70-ton	National Steel Car Corporation, Limited	9	CN-302591-302599	After April 1, 1974	29,419.01	264,771.09
Well Body Flat Car	140-ton	Canadian National Railway Company	1	CN-670002	After April 1, 1974	46,752.00	46,752.00
			<u>133</u>				<u>\$5,010,370.94</u>

\* In U.S. dollars.

## ARTICLE XXII

Amendment

SECTION 22.1. The Company and the Trustee when authorized by Noteholders' Instrument, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any indenture supplemental hereto or modifying the rights and obligations of the Company and the rights and obligations of the Noteholders; provided, however, that no such supplemental indenture shall (a) reduce the percentage of the Notes the consent of whose holders is required for a Noteholders' Instrument or (b) extend the maturity of any of the Notes or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of the principal thereof or terminate the security hereby created except as herein provided.

It shall not be necessary for the Noteholders' Instrument to approve the particular form of any proposed supplemental indenture or any proposed amendment to the CN Lease, but it shall be sufficient if such Noteholders' Instrument approve the substance thereof.

## ARTICLE XXIII

Successor Corporations

SECTION 23.1. The Company shall not enter into any transaction whereby all or substantially all of its undertaking, property and assets would become the property of any other person whether by way of reconstruction, reorganization, consolidation, amalgamation, merger, transfer, sale or otherwise unless, but may do so if:

- (1) such other person is a corporation (herein called a "successor corporation") incorporated under the laws of Canada or a province of Canada;
- (2) the successor corporation shall execute, prior to or contemporaneously with the consummation of such transaction, such instruments as are satisfactory to the Trustee and in the opinion of Counsel are necessary or advisable to evidence the assumption by the successor corporation of liability for the due and

punctual payment of all the Notes and the interest thereon and all other moneys payable hereunder and the covenant of the successor corporation to pay the same and its agreement to observe and perform all the covenants and obligations of the Company under this Trust Indenture;

(3) such transaction shall to the satisfaction of the Trustee and in the opinion of Counsel be upon such terms as substantially to preserve and not to impair any of the rights and powers of the Trustee or of the holders of the Notes hereunder; and

(4) no condition or event shall exist in respect of the successor corporation at the time of such transaction and after giving full effect thereto which constitutes or would constitute an event of default hereunder.

SECTION 23.2. Whenever the conditions of Section 23.1 have been duly observed and performed the successor corporation shall possess and from time to time may exercise each and every right and power of the Company under this Indenture in the name of the Company or otherwise and any act or proceeding by any provision of this Indenture required to be done or performed by any directors or officers of the Company may be done and performed with like force and effect by the like directors or officers of such successor corporation.

~~ARTICLE XXIV~~

Law Governing

~~SECTION 24.1. This Indenture shall be construed in accordance with and shall be governed by the laws of the Province of Ontario and the laws of Canada applicable therein.~~

IN WITNESS WHEREOF the parties hereto have executed this Indenture.

Signed, sealed and delivered in the presence of:

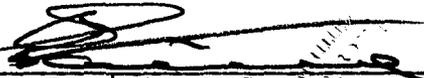
Dorinda Whitney

PETERSON, HOWELL & HEATHER  
(CANADA) LIMITED

by U. U. Smith  
Executive Vice President.

and by   
Comptroller

THE ROYAL TRUST COMPANY

by   
Assistant Secretary

and by   
Corporate Trust Consultant

*Dale Bess*



