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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of August 1, 1970

Between

**WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING DIVISION**

and

C. I. T. CORPORATION

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AGREEMENT AND ASSIGNMENT

Dated as of August 1, 1970

Between

**WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING DIVISION**

and

**THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY,
*As Agent***

CONDITIONAL SALE AGREEMENT dated as of August 1, 1970, between the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof) and C. I. T. CORPORATION, a New York corporation (hereinafter sometimes called the Company), acting through its agent, C. I. T. LEASING CORPORATION, a Delaware corporation.

WHEREAS the Manufacturer has agreed to construct, sell and deliver to the Company, and the Company has agreed to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS the Company is executing a lease of the Equipment as of the date hereof to Grand Trunk Western Railroad Company, as lessee (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS the Lessee is assigning to the Company, pursuant to an Assignment of Purchase Agreements as of the date hereof in substantially the form annexed hereto as Annex D, a certain purchase agreement or agreements between the Lessee and the Manufacturer covering the Equipment;

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be new standard-guage railroad equipment constructed in accordance with the specifications

referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement, the Lease and any assignments thereof have been filed pursuant to Section 20c of the Interstate Commerce Act. The Manufacturer represents and warrants that, to the best of its knowledge, at the time of the delivery of the Equipment to the Company, the Equipment will be new standard-gauge railroad equipment and no amortization or depreciation will have been claimed by any person with respect thereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for

pursuant to Article 3 hereof on or before March 1, 1971 (unless such date is extended by the Company and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion, the Vendor and the Company shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Lessee), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of the Company for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company, conform to the Specifications and to all applicable Interstate Commerce Commission and Department of Transportation requirements and specifications and are marked in accordance with the provisions of Article 8 hereof; *provided, however,* that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company assumes with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment is set forth in Annex B hereto. The base price is subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Lessee. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) of the units of the Equipment for which settlement has theretofore and is then being made under this Agreement and the conditional sale agreement referred to in Item 4 of Annex A hereto (hereinafter called the Other Agreement), would, but for the provisions of this sentence, exceed $3,066,667, the Manufacturer (and any assignee of the Manufacturer) and the Company will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion, if any, under the Other Agreement, reduce such aggregate of the Invoiced Purchase Prices under both this Agreement and the Other Agreement to not more than $3,066,667.

The Equipment shall be settled for in one or more groups as specified in Item 5 of Annex A hereto; *provided, however,* that, if there shall at any time have been delivered to and accepted by the Company units of the Equipment and the Manufacturer shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units of the Equipment for a period of 30 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional group of Equipment for the purpose of settlement (the Equipment being settled for in each such group being hereinafter called a Group). The term

"Closing Date" with respect to each Group shall mean such date not more than 10 business days following presentation by the Manufacturer to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer and the Lessee by telephonic or telegraphic notice (confirmed in writing) to the Company and the Vendor at least five business days prior to the Closing Date designated therein (or such lesser number of days as may be agreed to by the Company and the Vendor). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Subject to the conditions specified in the last paragraph of this Article 3, the Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group (i) an amount equal to 25% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 75% of the aggregate Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Other Agreement, for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of $2,300,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreement (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however,* that if settlement is also being made on such

Closing Date for units of railroad equipment under the Other Agreement, the amount payable pursuant to clause (ii) of this subparagraph (a) shall bear the same ratio to the Excess Amount as the Invoiced Purchase Price payable on such Closing Date under this Agreement bears to the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreement; and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (such portion being herein called the Conditional Sale Indebtedness) shall be payable on March 1, 1976, and subsequent instalments shall be payable semiannually thereafter on each March 1 and September 1, to and including September 1, 1985 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness in respect of a Group shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 10¼% per annum and such interest shall be payable, to the extent accrued, on March 1 and September 1 of each year, commencing March 1, 1971. The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on

each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying the Conditional Sale Indebtedness prior to the dates it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price of each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an agreement and assignment (hereinafter called the Assignment) between the Manufacturer and The First Pennsylvania Banking and Trust Company, as Agent (hereinafter called the Assignee).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the following conditions:

(a) no event of default under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing;

(b) prior to the first Closing Date hereunder, there shall not have been enacted, nor shall there have been introduced in Congress, a bill seeking enactment of, nor shall there have been officially announced by an administration spokesman the intention of the administration to seek enactment of, any amendment to the Internal Revenue Code of 1954, as amended, which would (i) operate to reduce the amount of accelerated depreciation allowed under Section 167(b) of such Code in respect of the Equipment or (ii) operate to reduce the amount of amortization allowed under Section 184 of such Code in respect of the Equipment (it being the duty of the Company promptly to give notice to the Manufacturer and the Assignee of any enactment, introduction or announcement of which the Company has knowledge which, in the opinion of the Company, is within the purview of this subparagraph (b)) in respect of which the Company shall not have been indemnified to its satisfaction;

(c) the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in Section 5 of the Assignment; and

(d) the Company shall have received signed counterparts of the documents listed in Sections 5(a), (b), (c), (d), (e), (g), (h), (i) and (j) of the Assignment and shall concurrently receive the opinions of counsel required by §§ 14 and 15 of the Lease and such other documents as the Company may reasonably request.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the

Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Articles 20 and 21 hereof, shall not exceed an amount equal to the income and proceeds from the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company at any time after such event and during the continuance thereof: (a) all amounts of rental (or damages under clause (i) of subparagraph (b) of § 9 of the Lease) and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and payments equivalent to such amounts and (b) any and all payments or proceeds received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness and/or interest thereon then due and payable or due and payable on the March 1 or September 1 next succeeding the date such amounts received by the Company were required to be paid to it pursuant to the Lease or as shall equal any other payments (including payments in respect of Casualty Occurrences) then due and payable under this Agreement. Nothing contained herein shall constitute an assignment of, or lien, charge or encumbrance against, the "income and proceeds from the Equipment" or any right, title or interest of the Company under or arising out of the Lease, or of or against any payments received

or to be received by the Company under or in connection with the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Lessee or any guarantor of the obligations of the Lessee as provided for herein or in the Lease or otherwise for the full unpaid Purchase Price of the Equipment and interest thereon. The Vendor agrees, however, that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain security title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Lessee as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment (except such as can be removed without damage to and without impairing the originally intended function or use of the Equipment, including, without limitation, racks or partitions, and which have been added to the Equipment by the Company or the Lessee, the cost of which is not included in the Purchase Price of the Equipment and which are not required for the operation or use of the Equipment) and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been

paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens, security interests and other encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 22 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificates within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Com-

pany shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully inform the Vendor in regard thereto. On the next succeeding March 1 or September 1, whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to the *pro rata* prepayment of each instalment of the Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of Conditional Sale Indebtedness represented by each such instalment) and the Company will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, calculated as provided in the fourth paragraph of Article 3 hereof.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of title to and property in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be

determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like ratio as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

ARTICLE 6. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair, ordinary wear and tear excepted.

ARTICLE 7. *Reports and Inspections.* On or before March 1 in each year, commencing with the year 1971, the Company will cause to be furnished to the Vendor an accurate statement as of the preceding January 1 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 8 hereof have been preserved or replaced.

ARTICLE 8. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B

and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words, "THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, PHILADELPHIA, PENNSYLVANIA, AGENT-OWNER", or other appropriate words designated by the Vendor, 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 Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of a new identifying number to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

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

ARTICLE 9. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor

for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts, excess profits and similar taxes [except gross receipts taxes in the nature of or in lieu of sales taxes]), license fees, charges, fines or penalties of any kind (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Company 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 Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of invoices therefor.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the inter-

change rules of the Association of American Railroads, if applicable, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Company 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 Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however,* that the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies of, the Vendor under this Agreement. The Vendor will not terminate or impair the Lessee's possession or use of the Equipment subject to the Lease so long as the Lessee is not in default under the Lease. The Company hereby agrees that it will not exercise any of the remedies provided in the case of any Event of Default under and as defined in the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and

hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default shall have occurred and be continuing hereunder, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used by the Lessee or by any affiliated corporation upon the lines of railroad owned or operated by the Lessee or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and the Equipment may be used 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 Agreement. The Equipment may be subleased by the Lessee to such subsidiary or affiliated corporations of the Lessee or Canadian National Railway Company as are, at the time such sublease is executed and in effect, domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however,* that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and all terms and conditions hereof. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement.

The Company agrees that during the period that any portion of the Conditional Sale Indebtedness in respect of any Group remains outstanding and unpaid, any use of any unit of the Equipment outside the United States of America will be limited to use in Mexico, the Province of On-

tario, Canada, or in other Provinces and Territories of Canada so long as the aggregate of the Purchase Price of the units of the Equipment and the purchase price of the units of railroad equipment covered by the Other Agreement in use in Mexico and in such other Provinces and Territories does not, at any time, exceed 10% of the aggregate of the Purchase Price of the Equipment and the purchase price of the railroad equipment covered by the Other Agreement. In the event that the foregoing limitation with respect to use of the Equipment in such other Provinces and Territories of Canada becomes inapplicable in accordance with Article 20 hereof, the 10% limitation shall remain applicable to Equipment used in Mexico.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or encumbrance upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities; Warranty of the Manufacturer.* The Company agrees to indemnify, protect and

hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor; *provided, however,* that this indemnity shall not benefit the Manufacturer in respect of such events occurring after the assignment by the Manufacturer of its interests in this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

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

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 14. *Patent Indemnities.* Except in cases of designs specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Company and the Lessee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Lessee because of the use in or about the con-

struction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right. The Company will give notice to the Manufacturer of any claim known to the Company on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 15. *Assignments.* The Company will not assign or transfer its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder, but subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights against the Lessee).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company, may be assigned by the Vendor and reassigned by its assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 13 and 14 hereof and Annex A hereto, or relieve the Company of its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 hereof or in Annex A hereto or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company, together

with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Company recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the names and word or words to be marked on each side of each unit of the Equipment so as to indicate the title of an assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on railroad equipment covered by conditional sale agreements. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) shall be borne by the Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee in case the first assignee is an agent or trustee) shall be borne by the subsequent assignee.

In the event of any such assignment, the Company will, in connection with settlement for any Group of the Equipment, deliver to the assignee of the units of the Equipment in such Group, at least five business days prior to the Closing Date in respect of such Group (or such lesser number of days as such assignee shall agree to), all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement (except for any opinion of counsel for the assignee), in such number of counterparts as may reasonably be requested.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall

be due hereunder and such default shall continue for 10 days; or

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

(c) Any proceedings shall be commenced by or against the Company for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, 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 ineffectiveness shall continue), all the obligations of the Company under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or for its property 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; or

(d) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(e) An event of default shall occur under the Lease or the Other Agreement (as defined in Article 3 hereof);

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Company acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 11% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company (subject to the provisions of the last paragraph of Article 3 hereof) wherever situated.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver or re-

scission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 11 hereof) take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Lessee or wherever the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Lessee for the delivery of the Equipment to the Vendor, the Company shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall reasonably be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Lessee until the earlier of (x) the date the Vendor shall have leased, sold or otherwise disposed of the same or (y) the 270th day from the date the Equipment shall have been placed for storage on such

lines or premises. For such purpose the Company agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice within 30 days after a Declaration of Default. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payments made by the Company may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued

and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, further, however,* that if the Company or any other person notified under the terms of this paragraph shall object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

The Vendor, with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Lessee) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited against

the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however,* that the Company shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale, it shall be subject to the right of the Company to purchase or provide a purchaser within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company, subject to the provisions of the last paragraph of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company.

The Company, subject to the provisions of the last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law

may be waived, they are hereby waived by the Company to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* Prior to the delivery and acceptance of any unit of the Equipment, the Company will cause this Agreement, any assignments hereof by the Company and any supplements hereto and thereto, and prior to the settlement for such unit, the Company will cause any assignment hereof by the Manufacturer and any supplement thereto, in each case (i) to be filed, registered, recorded or deposited and refiled, reregistered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, (ii) to be deposited in the office of the Registrar General of Canada (and will cause the required notice of such deposit forthwith thereafter to be published in the *Canada*

Gazette) and (iii) to be filed in the office of the Provincial Secretary of the Province of Ontario, Canada. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States and the Province of Ontario, Canada, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Company will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel. If the Vendor and the Company shall have been furnished opinions of counsel for the Lessee and of Canadian counsel satisfactory to the Vendor and the Company that, upon the due deposit of this Agreement and of any assignments hereof in the office of the Registrar General of Canada and upon the giving of notice of such deposit in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada, no other act, filing, recording or deposit (or giving of notice) in respect of this Agreement or any assignments hereof is necessary in order to protect the rights hereunder of the Vendor and in and to the Equipment in Canada or any Province or Territory thereof, the limitations in the last paragraph of Article 11 hereof with respect to the use of the Equipment in Canada shall no longer be applicable.

ARTICLE 21. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to the preparation and execution of this Agreement and the

first assignment of this Agreement (including the fees and expenses of an agent or trustee, if the first assignee is an agent or trustee), or any instrument supplemental thereto, including all reasonable fees and expenses of special counsel for the first assignee of this Agreement. For the purposes of this Article 21, if the first assignee is an agent or trustee, then any successor thereto shall be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to any party designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) the Company: 650 Madison Avenue, New York, N. Y. 10022, *attention of* the President;

(b) the Manufacturer: the address specified in Item 2 of Annex A hereto;

(c) any assignee of the Vendor, or of the Company: such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. The Company represents and warrants that its chief place of business is in New York.

ARTICLE 23. *Satisfaction of Undertakings.* The obligations of the Company under Articles 6, 7, 8, 9, 10, 12, 13 and the last paragraph of Article 11 and second paragraph of Article 17 hereunder shall be deemed in all respects satisfied, so long as the Lease is in effect, by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 10 and 11 of the Lease. The Company shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 16.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement and the Annexes hereto exclusively and completely state the rights and agreements of the Vendor and the Company with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Company.

ARTICLE 25. *Law Governing.* The terms of this Agreement 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 and Territories thereof and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Annex A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Annex A hereto and any successor or succes-

sors for the time being to its manufacturing properties and business.

ARTICLE 27. *Execution.* This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of August 1, 1970, 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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or officials thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING DIVISION,

[CORPORATE SEAL]

by .....
Authorized Signatory

Attest:

.....
Assistant Secretary

C.I.T. CORPORATION,
by C.I.T. LEASING CORPORATION,
as Agent,

[CORPORATE SEAL]

by .....
Vice President

Attest:

.....
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF LUZERNE, } ss.:

On this 9TH day of AUGUST, 1970, before me personally appeared Walter P. Whitaker, to me personally known, who, being by me duly sworn, says that he is a VICE-PRES of WHITTAKER CORPORATION, BERWICK FORGE & FABRICATING DIVISION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Lloyd H. Adams
Notary Public
LLOYD H. ADAMS, NOTARY PUBLIC
My Commission Expires September 19, 1970
Nescopeck, Penna. Luzerne County

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

On this 25TH day of August 1970, before me personally appeared C. J. Crump Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of C. I. T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Ruth E. Greene
Notary Public

RUTH E. GREENE
Notary Public, State of New York
No. 03-1557810
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1971

ANNEX A—WHITTAKER

Item 1: Whittaker Corporation, Berwick Forge & Fabricating Division, a California corporation.

Item 2: P.O. Box 188, Berwick, Pennsylvania 18603.

Item 3: The Manufacturer warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Manufacturer) and workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. **This warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, 3 and 14 of the Agreement, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid.**

The Manufacturer agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

Item 4: The Conditional Sale Agreement dated as of August 1, 1970, between the Company and General Motors Corporation (Electro-Motive Division).

Item 5: The Equipment may be settled for on or after August 27, 1970, in not more than one Group of units of the Equipment delivered to and accepted by the Company.

ANNEX B—WHITTAKER

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Road Numbers (all numbers inclusive)	Unit Base Price	Total Base Price	Delivery
70-ton damage free box cars	Proposal No. 70-D-23 dated Apri 22, 1970	Berwick, Pennsylvania	35	GTW 309400-309434	$21,034	$736,190	Prior to September 4, 1970, at Berwick, Pennsylvania

ANNEX C

LEASE OF RAILROAD EQUIPMENT

between

C.I.T. CORPORATION

and

GRAND TRUNK WESTERN RAILROAD COMPANY

Dated as of August 1, 1970

LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1970, between C. I. T. CORPORATION, a New York corporation (hereinafter called the Lessor), acting throught its agent, C. I. T. LEASING CORPORATION, a Delaware corporation, and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into Conditional Sale Agreements each dated as of August 1, 1970 (hereinafter called the Conditional Sale Agreements), with General Motors Corporation (Electro-Motive Division) and Whittaker Corporation, Berwick Forge & Fabricating Division (hereinafter together referred to as the Manufacturers), respectively, wherein the Manufacturers agree to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturers are assigning, concurrently with the execution and delivery of this Lease, their respective interests in the Conditional Sale Agreements to The First Pennsylvania Banking and Trust Company, as Agent (hereinafter referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to March 1, 1971 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), of which the Lessee is a wholly-owned subsidiary, has agreed, subject to receipt of the approval of the Governor in Council, to guarantee to the Lessor and the Vendor, as provided in a Guaranty Agreement to be dated as of August 1, 1970 (hereinafter

called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums payable by, and the due and punctual performance of all other obligations of, the Lessee under this Lease;

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 to all the rights and remedies of the Vendor under the Conditional Sale Agreements:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Unit is delivered to the Lessor under the appropriate Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the appropriate Manufacturer a certificate of acceptance (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

The Lessee represents and warrants that, at the time of delivery of each Unit to the Lessee, such Unit will not have been used by the Lessee and no amortization or depreciation will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive

semiannual payments, payable on the business day next preceding March 1 and September 1 of each year commencing March 1, 1971. The first of such semiannual payments shall be in an amount equal to .021354% of the Purchase Price (the term "Purchase Price" as used herein meaning the base price per Unit set forth in Schedule A hereto as increased or decreased by agreement among the appropriate Manufacturer, the Lessor and the Lessee) of such Unit for each day elapsed from and including the date such Unit is settled for under the appropriate Conditional Sale Agreement to March 1, 1971; the next nine of such semiannual payments shall be in an amount equal to 3.84375% of the Purchase Price of such Unit; and the remaining 20 of such semiannual payments shall be in an amount equal to 7.1925% of the Purchase Price of such Unit.

All payments provided for in this Lease to be made to the Lessor shall be paid to the account of the Lessor, care of the Vendor, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, attention of Corporate Trust Department, and shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreements accrued at the time such payments are due hereunder, with any balance being paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs 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 the Manufacturers or the Vendor or otherwise; 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 whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, 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.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual 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 Vendor under the Conditional Sale Agreements.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, PHILADELPHIA, PENNSYLVANIA, AGENT—OWNER"

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor 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 or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than any federal, Canadian [Dominion or Provincial] or Mexican income tax [to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability] payable by the Lessor in con-

sequence of the receipt of payments provided herein and other than the aggregate of all state 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, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being 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 or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof 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 result in a lien upon such Unit; *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, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturers or the Vendor pursuant to Article 9 of the Conditional Sale Agreements

not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 9.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the expiration 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, destroyed, irreparably damaged 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, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued 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 the date of such payment 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 and

(except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the Casualty Value of any Unit which shall have been lost, stolen or completely destroyed, execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit set forth in the schedule set out below opposite the number of such rental payment date:

Payment No.	Percentage	Payment No.	Percentage
1	103%	16	86%
2	103	17	78
3	106	18	78
4	106	19	68
5	107	20	68
6	107	21	58
7	108	22	58
8	108	23	48
9	108	24	48
10	108	25	36
11	102	26	36
12	102	27	23
13	94	28	23
14	94	29 and thereafter	20
15	86		

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.

Although the Lessee shall not be required to maintain insurance on any Unit, the Lessee agrees that the benefits of any insurance maintained by it upon the Units will be made available to the Lessor and the Vendor, as their interests may appear, to the extent the Lessee is permitted to do so under such policies of insurance. Any net insurance proceeds as the result of insurance carried by the Lessee or proceeds of payments from any governmental agency as compensation for requisition by condemnation received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such net insurance proceeds or any such condemnation payments after the Lessee shall have made payments pursuant to this § 6 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1971, the Lessee will cause to be furnished to the Lessor and the Vendor in such number of counterparts or copies as may reasonably be requested an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such state-

ment), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by § 4 hereof and Article 8 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Lessor's Representation and Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, 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 and for the account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 14 of the Conditional Sale Agreements and Annex A to each thereof. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatso-

ever against the Lessor 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 appropriate 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 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 expressly subject to the terms and provisions of this Lease; *provided, however,* that this Lease shall be subordinated to the rights of the Vendor under the Conditional Sale Agreements but neither the Lessor nor the Vendor 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 12 of this Lease and that any title so conveyed shall then be free of any lien, claim and encumbrance of the Vendor.

The Lessor covenants and agrees not to alter, amend or modify the Conditional Sale Agreements without the prior written consent of the Lessee.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require 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 to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it 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 Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

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 at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the Temporary Alterations from the Units and restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, 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 Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on ac-

count of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person; *provided, however,* that the Lessee shall not be required to indemnify the Lessor or the Vendor under this paragraph for negligence on the part of the Lessor or the Vendor. 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, and to an event occurring after such Unit, shall have been returned to the Lessor pursuant to §§ 10 or 13 hereof or after this Lease with respect to such Unit has otherwise terminated; *provided, however,* 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 to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof 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;

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

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 and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or the Guarantor under the Guaranty Agreement) and, 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 ineffectiveness shall continue), all the obligations of the Lessee under this Lease or of the Guarantor under the Guaranty Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or the Guarantor or for the property of the Lessee or the Guarantor 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 proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered

ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), 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 appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate 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 a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of

days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, 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 a basis of a 7.60% per annum discount, compounded semiannually 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 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 Rapid Amortization Deduction (as hereinafter defined) available to non-railroad lessors of railroad equipment which was lost, not claimed, not available for claim or disallowed in respect of any Unit as a result of the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment, shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the first paragraph of § 15 of this Lease.

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 the 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 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 reasonably may 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 date the Lessee shall have placed the Units on such storage tracks, and

C. transport the same to any place on the lines of railroad operated by it 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 such 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 its agent and attorney, 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.

§ 11. *Assignment; Possession and Use.* This Lease 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.

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 Vendor 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 Vendor 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 upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee 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 Conditional Sale Agreements.

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 any state of the United States of America or the District of Columbia (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 or (ii) to sublease any Unit to such subsidiary or affiliated corporations of the Lessee or the Guarantor as are at the time such sublease is executed domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however,* that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Conditional Sale Agree-

ments and the Lessor under this Lease. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remains that of a principal and not a surety.

The Lessee agrees that during the term of this Lease, any use of any Unit outside the United States of America will be limited to use in Mexico, in the Province of Ontario, Canada, or in other Provinces or Territories of Canada so long as the aggregate Purchase Price of the Units in use in Mexico or in such other Provinces or Territories does not, at any time, exceed 10% of the aggregate Purchase Price of all of the Units; *provided, however,* that upon receipt by the Lessor of the opinions of counsel referred to in the last sentence of Article 20 of the Conditional Sale Agreements, the Units may be used in any and all Provinces and Territories of Canada, but the 10% limitation stated above shall remain applicable to Units in use in Mexico.

Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not make or permit any use of a Unit which shall result in such Unit failing to qualify as "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended, any successor section thereto or any regulations promulgated by the Internal Revenue Service thereunder.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the thirtieth rental payment date, elect to purchase all but not fewer than all such Units then covered by this Lease at the end of the original term of this Lease for a purchase price equal to the

"Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the 30th rental payment date or the end of an extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all but not fewer than all such Units then covered by this Lease for up to three five-year periods (each such five-year period being referred to herein as an "extended term") commencing on the scheduled expiration of the original term or of the first or second extended term of this Lease (provided that no such extended term shall extend beyond September 1, 2000) at a rental during each extended term payable in ten semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first extended term, 2.8218%; during the second extended term, 1.8812%; and during the third extended term, 1.4109%; such semiannual payments to be made on the business day next preceding March 1 and September 1 in each year of such extended term, and (b) to purchase all but not fewer than all such Units then covered by this Lease at the end of the original or an extended 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 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 original or any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the relevant Units, such value shall be determined in accordance with the foregoing definitions 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 the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any 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. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor and the Lessee shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice.

§ 14. *Opinions of Counsel for the Lessee, the Guarantor, the Lessor and the Manufacturers.* On each Closing Date (as that term is defined in the Conditional Sale Agreements), as a condition to the obligation of the Lessor to continue thereafter to lease the Units to the Lessee hereunder, the Lessee will deliver to the Lessor and the Vendor counterparts, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor and the Vendor and their respective counsel of:

(i) the written opinion of counsel for the Lessee to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under

the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into this Lease;

B. this Lease and any consent and agreement executed by the Lessee (hereinafter called the Consent) in connection with any assignment hereof to the Vendor have been duly authorized, executed and delivered by the Lessee and constitute legal and valid agreements binding upon the Lessee and enforceable in accordance with their terms;

C. upon the due filing and recordation of this Lease, the Conditional Sale Agreements and the Agreement and Assignments dated as of August 1, 1970 (hereinafter called the Assignments), between the respective Manufacturers and the Vendor, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units, in any State of the United States of America and the District of Columbia;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or execution of the Consent by the Lessee, or if any such approval is required, it has been properly obtained;

E. the entering into and performance of this Lease and the execution of the Consent will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein (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); and

(ii) the written opinion of counsel for the Guarantor to the effect that:

A. the Guarantor is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement;

B. the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable in accordance with its terms;

C. upon the due deposit of this Lease, any assignment of this Lease to the Vendor, the Conditional Sale Agreements and the Assignments in the office of the Registrar General of Canada and upon the giving of notice of such deposit in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada, no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor in and to the Units,

in the Dominion of Canada or any Province or Territory thereof;

D. no approval is required of any governmental ministry or agency or public regulatory body with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, it has been duly obtained; and

E. the entering into and performance of the Guaranty Agreement will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust or other agreement or instrument to which the Guarantor is a party or by which it may be bound.

On each Closing Date, the Lessor will deliver to the Vendor, the Lessee and the Guarantor counterparts, addressed to the Vendor, the Lessee and the Guarantor, in scope and substance satisfactory to the Vendor, the Lessee and the Guarantor and their respective counsel:

(i) of the written opinion of counsel for the Lessor to the effect that:

A. the Lessor is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into this Lease; and

B. this Lease and any assignment hereof to the Vendor have been duly authorized, executed and delivered by the Lessor and constitute legal and valid agreements binding upon the parties thereto and enforceable in accordance with their terms; and

(ii) of the written opinions of counsel for the respective Manufacturers to the effect that at the time of

delivery thereof to the Lessor under the Conditional Sale Agreements, each Unit was free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreements and the rights of the Lessee under this Lease.

§ 15. *Federal Income Taxes; Opinion of Tax Counsel.* 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, to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 9 of this Lease) available to non-railroad lessors of railroad equipment. If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Unit as a result of such Unit not being, or any use of such Unit which prevents such Unit from being, "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof, or any regulations issued or promulgated by the Internal Revenue Service thereunder, 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 Rapid Amortization 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 Rapid Amortization 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 Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization 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 attribuable to the Rapid Amortization Deduction disallowed, computed at the rate of 10¼% 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 § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor, shall have re-

ceived a written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended to the date hereof, or, at the election of the Lessor, Rapid Amortization Deductions with respect to the Units (provided that the Units retain their status as "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code of 1954, as amended to the date hereof).

§ 16. *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.

§ 17. *Additional Covenants and Guaranty of the Lessee.* As an inducement to the Vendor to enter into the assignments of the Conditional Sale Agreements and as an inducement to the Lessor to enter into this Lease, the Lessee unconditionally guarantees to the Vendor, and covenants with the Lessor to guarantee unconditionally to the Vendor, the due and punctual performance of all obligations of the Lessor and the due and punctual payment of any and all sums payable by the Lessor under the Conditional Sale Agreements including, but not limited to, that portion of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreements) payable pursuant to subparagraph (b) of the third paragraph of Article 3 thereof (except for the obligations of the Lessor to make payment of the sums payable by the Lessor pursuant to (i) subparagraph (a) of the third paragraph of

Article 3 and (ii) Articles 20 and 21, thereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed, the Lessee agrees punctually to pay or perform the same, irrespective of any enforcement against the Lessor of any of the rights of the Vendor under the Conditional Sale Agreements; *provided, however,* that there shall be no obligation upon the Lessee to make the payments or perform the obligations aforementioned in this § 17 while or for so long as the Lessee shall not be in default under this Lease. The Lessee hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Lease or the Conditional Sale Agreements or any other conduct of the Lessor, the Vendor and/or the Lessee which might otherwise constitute a legal or equitable discharge of a surety or guarantor, and irrespective of the last paragraph of Article 3 of the Conditional Sale Agreements or any other circumstances which might limit the recourse of the Vendor to the Lessor or of the Lessor or the Vendor to the Lessee. The Lessee hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor or the Vendor of any of their respective rights hereunder and no action by the Lessor or the Vendor to enforce any of their respective rights or failure to take, or delay in taking, any such action shall affect the obligations of the Lessee hereunder or under the Conditional Sale Agreements.

It is understood and agreed between the Lessor and the Lessee that any and all sums paid by the Lessee pursuant to the guarantee obligations aforementioned in this § 17 shall be thereupon deemed to have been received and paid in reduction or satisfaction, to the extent thereof, of any

amount then or thereafter due or pavable by the Lessee to the Lessor under this Lease.

Subject to the foregoing, in the event that the Lessee shall make any payments to the Vendor under the Conditional Sale Agreements on account of its guaranty hereunder, the Lessee hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Lessor or with respect to any of the Units by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Lessee; *provided, however,* that after the payment by the Lessee to the Vendor under the Conditional Sale Agreements of all sums payable by the Lessor under the Conditional Sale Agreements, the Lessee shall, by subrogation, be entitled to the rights of the Vendor under Conditional Sale Agreements against the Lessor by reason of any such payment made by it pursuant to this § 17, to the extent, but only to the extent, that the Lessor had received "income and proceeds from the Equipment" (as defined in Article 3 of the Conditional Sale Agreements) and has not applied such income and proceeds to the payment, in accordance with the Conditional Sale Agreements, of sums payable by the Lessor to the Vendor under the Conditional Sale Agreements.

§ 18. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessor will, at the expense of the Lessor, cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited in the office of the Registrar General of Canada; and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada.

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgement and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each, respectively, bear the fees and disbursements of any counsel which it may respectively retain.

§ 19. *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 11% per annum of the amount of the overdue rentals for the period of time during which they are overdue.

§ 20. *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 certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, 650 Madison Avenue, New York, N. Y. 10022, *attention of* the President;

if to the Lessee, at 131 West Lafayette Boulevard, Detroit, Michigan 48226, *attention of* the Secretary

and at 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.

§ 21. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, 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 parties hereto.

§ 22. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of August 1, 1970, 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.

§ 23. *Law Governing.* This Lease shall be construed in accordance with the laws of New York.

In Witness Whereof, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be

hereunto affixed and duly attested, as of the date first above written.

C. I. T. CORPORATION,

[CORPORATE SEAL] by C. I. T. LEASING CORPORATION, as Agent,

by .....
Vice President

Attest:

.....
Assistant Secretary

GRAND TRUNK WESTERN RAILROAD COMPANY,

[CORPORATE SEAL] by .....
Vice President

Attest:

.....
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of , 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of C. I. T. LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

. . . . . .
Notary Public

[NOTARIAL SEAL]

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this day of , 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

. . . . . .
Notary Public

[NOTARIAL SEAL]

SCHEDULE A

Type	Manufacturer's Plant	Quantity	Road Numbers (inclusive)	Unit Base Price	Total Base Price
3,000 H. P. Model SD-40 diesel electric locomotives	McCook, Illinois	9	5921-5929	$255,366	$2,298,294
70-ton damage free box cars	Berwick, Pennsylvania	35	GTW 309400-309434	21,034	736,190

the Assignee and its assigns for its and their own use forever.

In furtherance and not in limitation of the foregoing, the Assignor recognizes that, concurrent with the execution and delivery of this Assignment, the Assignee is arranging for the purchase of the Equipment pursuant to the Conditional Sale Agreements, which are being assigned pursuant to Agreement and Assignments dated as of August 1, 1970, (hereinafter called the Assignments), between each Manufacturer, respectively, and The First Pennsylvania Banking and Trust Company, as Agent, and that the Conditional Sale Agreements permit (under Articles 2 and 3 thereof) the exclusion therefrom of, and (under Article 3 thereof) nonpayment for, and the Assignments permit (under Section 5 thereof) nonpayment for, all or any portion of the Equipment under the circumstances described in said Articles and said Section. In respect thereof, the Assignor covenants with the Assignee, and the Manufacturers as third party beneficiaries hereof, that, in the event of any such exclusion of or nonpayment for units of the Equipment, the Assignor will be obligated to accept all units of the Equipment completed and delivered by the appropriate Manufacturer and to pay the full purchase price therefor not later than 90 days after such payment was due, together with interest from the date such payment was due to the date of payment by the Assignor at the average prime rate of interest charged by the five largest New York City banks in effect at 11:00 a.m., New York City time, on the date such payment was due. Such payment by the Assignor shall be made in cash, either directly or, in case the Assignor shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Assignor shall determine. The Assignor warrants that none of the units of the Equipment has been delivered by any Manufacturer and no payment has been made in respect thereof to any Manufacturer.

The Assignor does hereby represent that it is the lawful owner, free from all liens, security interests and encumbrances, of the Purchase Agreements and that the Assignor has the right to sell and assign the Purchase Agreements as set forth herein and that the Assignor will warrant and defend this Assignment against the lawful claims and demands of all persons.

Settlement for the units of Equipment to be acquired from the Manufacturers will be made under the Conditional Sale Agreements as provided in Article 3 thereof.

IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed as of the date first above written.

GRAND TRUNK WESTERN RAILROAD COMPANY,

by .....
Vice President

[CORPORATE SEAL]

ATTEST:

.....
Assistant Secretary

The foregoing Assignment is hereby accepted as of August 1, 1970.

C. I. T. CORPORATION,

by C. I. T. LEASING CORPORATION, as Agent,

by .....
Vice President

AGREEMENT AND ASSIGNMENT dated as of August 1, 1970, between the corporation first signing under the testimonium below (hereinafter called the Manufacturer), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, whose address is Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19101, acting as Agent under a Finance Agreement dated as of August 1, 1970 (hereinafter called the Finance Agreement and said Trust Company, so acting, being hereinafter called the Assignee).

WHEREAS, the Manufacturer and C.I.T. CORPORATION (hereinafter called the Company) have entered into a Conditional Sale Agreement dated as of August 1, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the third paragraph of Article 3 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Articles 13 and 14 of the Conditional Sale Agreement or Annex A thereto or relieve the Company from its obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 9 and 13 of, and Annex A to, the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this As-

signment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as such terms are defined in the Condi-

tional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price (as that term is defined in the Conditional Sale Agreement) of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 14 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Lessee by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 15 of the Conditional Sale Agreement to strike any such defense, setoff, counterclaim or recoupment asserted by the Company or the Lessee and (2) if the court or other body having jurisdiction denies

such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, setoff, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of designs specified by the Company or the Lessee and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Company or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

The Manufacturer agrees that any amount payable to it by the Company or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

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

"THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, PHILADELPHIA, PENNSYLVANIA, AGENT-OWNER."

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) shall pay to the Manufacturer an amount equal to that portion of the Invoiced Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there have been delivered to the Assignee and its counsel (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer hereunder to the Assignee of title to the units of Equipment in the Group and warranting to the Assignee and to the Company that, at the time of delivery to the Company under the Conditional Sale Agreement, the Manufacturer had legal title to the Equipment and good and lawful right to sell the Equipment and title to the Equipment was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the

Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Lessee stating that prior to delivery and acceptance of units of the Equipment in the Group under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee;

(d) Invoices for the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Lessee as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated as of such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, addressed to the Assignee, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Lessee and the Agent and is binding upon the Lessee, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms, (iii) this Assignment, the Lease, the Lease Assignment and the Consent (as defined in the Finance Agreement) have been duly authorized, executed and delivered by the respective parties thereto and are legal and valid instruments binding upon the parties thereto, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and the Equipment, at the time of delivery thereof to the Company under the Conditional Sale Agreement, was free of all claims, liens,

security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreement and the rights of the Lessee under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement, this Assignment, the Lease, the Lease Assignment or the Consent, or, if any approval is necessary, it has been obtained, (vii) the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights hereunder of the Assignee in any state of the United States of America or the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated as of such Closing Date of counsel for the Company addressed to the Assignee, to the effect that (i) the Company is a duly organized and existing corporation in good standing under the laws of New York and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and the Lease and the Lease Assignment have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated as of such Closing Date of counsel for the Lessee addressed to the Assignee and to the Company, to the effect set forth in clause (v) of subparagraph (e) above and stating that (i) the Lessee is a duly organized and existing corporation in good standing under the laws of Michigan and Indiana and has the power and authority to own its property and carry on its business as now conducted, (ii) the Finance Agreement, the Lease and the Consent have been duly authorized, executed and delivered by the Lessee and are binding upon the Lessee, (iii) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Lease or the Consent by the Lessee or the consummation of the transactions therein contemplated, or, if any approval is necessary it has been obtained and (iv) upon the due filing and recordation of the Conditional Sale Agreement, this Assignment, the Lease and the Lease Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other filing, recording or deposit (or giving of notice) is necessary for the protection of the rights of the Assignee hereunder or of the Company and the Assignee under the Lease in any state of the United States of America or the District of Columbia;

(h) Opinion dated as of such Closing Date of Messrs. McCarthy & McCarthy, who are acting as special counsel for the Company, addressed to the Assignee and the Lessee, stating that (i) the Conditional Sale Agreement and this Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada and counterparts

of such documents have been duly filed in the office of the Provincial Secretary of Ontario, and no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect the rights hereunder of the Assignee in the Conditional Sale Agreement and the Equipment in the Group in the Province of Ontario, Canada against any and all subsequent purchasers or mortgagees and/or from creditors of the Company and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada and notice of such deposit has been duly published in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada and counterparts of such documents have been duly filed in the office of the Provincial Secretary of the Province of Ontario and no other act, filing, recording or deposit (or giving of notice) in respect of the Lease is necessary in order to protect the interests thereunder of the Company and the Assignee in and to the Equipment in Canada, (iii) the Guarantor referred to in the Lease is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement (as defined in the Lease), (iv) the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, and (v) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, such approval has been duly obtained;

(i) Opinion dated as of such Closing Date of counsel for the Manufacturer addressed to the Assignee, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(j) Unless payment of the amount, if any, payable under Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that (i) any agreement is a legal and valid instrument binding upon the parties thereto and enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (ii) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (e) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units of the Equipment in the Group at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, counsel may in fact rely, as to any matters

governed by the law of any jurisdiction other than New York or the United States on the opinions of counsel for the Manufacturer or the Lessee as to such matters.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the Assignee having on deposit under the Finance Agreement sufficient funds available to make such payment pursuant to the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the payments required to be made by the Assignee herein shall not be paid, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment in the Group with respect to which such payment has not been made by the Assignee.

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

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agree-

ment was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company) it is a valid and existing agreement binding upon the Manufacturer and the Company and that it is now in force without amendment thereto; and

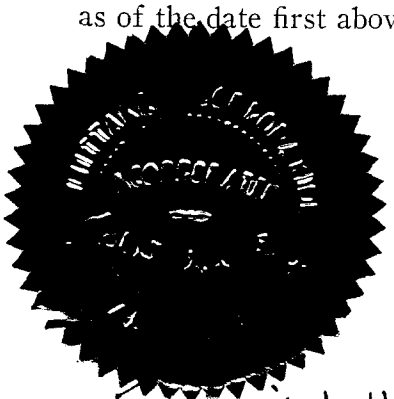
(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or is successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

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

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of August 1, 1970, 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.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers or officials duly authorized, and their

respective corporate seals to be affixed and duly attested, all as of the date first above written.



WHITTAKER CORPORATION,
BERWICK FORGE & FABRICATING
DIVISION,

by .....
Authorized Signatory

.....
Assistant Secretary

THE FIRST PENNSYLVANIA
BANKING AND TRUST
COMPANY, as Agent,

[CORPORATE SEAL]

by .....
Vice President

Attest:

.....
Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF LUZERNE, } ss.:

On this 19TH day of August, 1970, before me personally appeared Walter N. Vorbleski, to me personally known, who, being by me duly sworn, says that he is a VICE-PRES of WHITTAKER CORPORATION, BERWICK FORGE & FABRICATING DIVISION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lloyd H. Adams
Notary Public

LLOYD H. ADAMS, NOTARY PUBLIC
My Commission Expires September 19, 1970
Nescopeck, Penna. Luzerne County

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.:

On this 14 day of August, 1970, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judith Z. Pote
Notary Public

[NOTARIAL SEAL]

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of, the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of August 1, 1970.

C. I. T. CORPORATION,

by C. I. T. LEASING CORPORATION, as Agent,

by .....

Vice President