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REGISTRATION NO. _____ Filed & Recorded
DEC 30 1971 - 8 45 AM
INTERSTATE COMMERCE COMMISSION

THE BANKERS' TRUST COMPANY,
Owner-Trustee

8½% EQUIPMENT TRUST CERTIFICATES

Due 1992

Equipment Trust Agreement

Dated as of December 1, 1971

by and between

CANADA PERMANENT TRUST COMPANY,
Trustee

and

THE BANKERS' TRUST COMPANY,
Owner-Trustee

EQUIPMENT TRUST AGREEMENT dated as of December 1, 1971, between CANADA PERMANENT TRUST COMPANY, a trust company subject to the jurisdiction of the Parliament of Canada, as Trustee hereinafter called the Trustee), and THE BANKERS' TRUST COMPANY, a trust company incorporated under the laws of the Province of Quebec and duly qualified to carry on business in the Province of Ontario, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 1, 1971, with PROCOR LIMITED and THE ROYAL TRUST COMPANY (hereinafter called the Owner Trust Agreement).

WHEREAS, the Company has agreed to cause the sale, assignment and transfer to the Trustee of title to the railroad equipment described in Schedule I hereto subject to the provisions hereof, which equipment is to be manufactured and sold pursuant to the Manufacturing Agreement to be dated as of December 1, 1971 (hereinafter called the Manufacturing Agreement) between the Company and Canadian National Railway Company (hereinafter sometimes called the Manufacturer or the Lessee), the Manufacturing Agreement to be substantially in the form of Annex A hereto; and

WHEREAS, title to such railroad equipment is to be retained by the Trustee and such railroad equipment is to be leased by the Trustee to the Company hereunder until transferred by the Trustee to the Company under the provisions hereof; and

WHEREAS, the Company proposes to enter into a Lease of Equipment to be dated as of December 1, 1971 (hereinafter called the Lease), with the Lessee, substantially in the form of Annex B hereto, pursuant to which the Company will lease such railroad equipment to the Lessee, and such Lease of Equipment is to be assigned to the Trustee pursuant to the Assignment (as hereinafter defined); and

WHEREAS, The Bankers' Trust Company, Owner-Trustee, 8½% Equipment Trust Certificates, Due 1992 (hereinafter called the Trust Certificates), are to be issued and sold, and the proceeds of such sale are to be held in trust by the Trustee and are to constitute a fund to

be known as THE BANKERS' TRUST COMPANY, OWNER-TRUSTEE, EQUIPMENT TRUST, DUE 1992, to be applied by the Trustee as provided herein; and

WHEREAS, the text of the Trust Certificates is to be substantially in the following form:

[FORM OF TRUST CERTIFICATE]

\$.....

No.

THE BANKERS' TRUST COMPANY,
AS OWNER-TRUSTEE

8½% EQUIPMENT TRUST CERTIFICATE
DUE 1992

Canada Permanent Trust Company, Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement dated as of December 1, 1971 (hereinafter called the Agreement), between the Trustee and The Bankers' Trust Company, a trust company incorporated under the laws of the Province of Quebec and duly qualified to do business in the Province of Ontario, as Owner-Trustee (hereinafter called the Company, certifies that

assigns is entitled to an interest of \$ or registered
(Canadian)
in The Bankers' Trust Company, Owner-Trustee, Equipment Trust, Due 1992, due and payable on or before March 1, 1992, in instalments as hereinafter provided, and to interest on the amount of unpaid principal from time to time owing pursuant to this Certificate, due and payable semi-annually on March 1 and September 1 in each year commencing March 1, 1972, at the rate of 8½% per annum from the date hereof until such principal amount becomes due and payable, with interest on any overdue principal and interest, to the extent legally

enforceable, at the rate of $8\frac{1}{2}\%$ per annum. Payments of principal and interest shall be made to the registered holder at the principal office of the Trustee in Toronto, Ontario, Canada, in lawful money of Canada. Each of such payments shall be made only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement or under the provisions of an Assignment of Lease and Agreement dated as of December 1, 1971, between the Company and the Trustee. The liability of the Company for all payments to be made by it to the Trustee under the Agreement is limited by Section 4.03 of the Agreement. The principal amount of the Trust Certificates is due and payable in 28 semiannual instalments of principal payable on March 1 and September 1, in each year commencing September 1, 1978, calculated as provided in the Agreement so that the aggregate of the principal and interest payable on each such date shall be substantially equal. Interest shall be computed hereunder on the basis of a 360-day year of twelve 30-day months. **Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiry should be made at said office of the Trustee as to the principal amount at any time remaining unpaid hereon.**

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding \$3,100,000 and issued or to be issued under the Agreement, under which title to certain railroad equipment (or cash or obligations defined in the Agreement as "Investments" in lieu thereof, as provided in the Agreement) and the above-mentioned Assignment of Lease and Agreement are held by the Trustee in trust for the equal and ratable benefit of the holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Schedule and Annexes thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

The transfer of this Certificate in whole or in part may be registered upon the terms and conditions set forth in the Agreement on the books of the Trustee upon surrender to the Trustee at said office of the Trustee of this Certificate accompanied by a written instrument of

transfer, duly executed by the registered holder in person or by duly authorized attorney, in form satisfactory to the Trustee. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) all instalments of principal and interest represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents or Assistant Vice Presidents, by his signature or a facsimile thereof, and its corporate seal or a facsimile thereof to be hereunto affixed or hereon imprinted and to be attested by the manual signature of an Authorized Officer.

Dated as of

CANADA PERMANENT TRUST COMPANY,
Trustee

by
Vice President.

Attest:

.....
Authorized Officer.

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

.....
the within The Bankers' Trust Company, Owner-Trustee, 8½% Equip-
ment Trust Certificate and does hereby irrevocably constitute and ap-
point attorney to transfer the said Certificate
on the books of the within named Trustee, with full power of substitu-
tion in the premises.

Dated

WHEREAS, it is desired to secure for the holders of the Trust
Certificates the payment of the principal thereof with interest thereon,
as hereinafter provided, and to evidence the rights of the holder or
holders of the Trust Certificates in substantially the form hereinbefore
set forth;

Now, THEREFORE, in consideration of the mutual covenants and
promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as
otherwise expressly provided or unless the context otherwise requires)
for all purposes of this Agreement shall have the respective meanings
hereinafter specified:

Affiliate of any corporation shall mean any corporation which,
directly or indirectly, controls or is controlled by, or is under common
control with, such corporation. For the purposes of this definition,
control (including *controlled by* and *under common control with*), as
used with respect to any corporation, shall mean the possession, directly

or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Assignment shall mean the Assignment of Lease and Agreement dated as of December 1, 1971, by the Company to the Trustee substantially in the form of Annex C hereto.

Authorized Officer shall mean such person or persons as are duly authorized by or on behalf of the board of directors or executive committee of the Trustee to sign, certify, countersign or attest documents on behalf of the Trustee.

Business Day shall mean a calendar day, excluding Saturdays, Sundays and holidays or other days on which banks are authorized by law to close in Toronto, Ontario, Canada.

Company shall mean The Bankers' Trust Company, a trust company incorporated under the laws of the Province of Quebec and duly qualified to do business in the Province of Ontario, as Owner-Trustee under a Trust Agreement dated as of December 1, 1971, with Procor Limited and The Royal Trust Company, referred to herein as the Owner Trust Agreement.

Consent shall mean the Lessee's Consent and Agreement dated as of December 1, 1971 in the form annexed to the Assignment.

Corporate Trust Office shall mean the office of the Trustee in Toronto, Ontario, Canada, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, on the date of execution of this Agreement, located at 320 Bay Street, Toronto, Ontario, Canada.

Cost, when used with respect to the Equipment, shall mean the actual cost thereof (including freight charges, if any, from the Manufacturer's plant to a point of delivery to the Lessee and applicable Canadian federal, provincial and other sales taxes, if any, and including only such other items as may be properly included in such cost under sound accounting practice), as evidenced by the Manufacturer's invoice with respect to such Equipment.

Deposited Cash shall mean the aggregate of (a) the proceeds from the sale of the Trust Certificates deposited with the Trustee pursuant to Section 2.01 and, when required or indicated by the context, any Investments (and the proceeds thereof) purchased by the use of such proceeds pursuant to the provisions of Section 8.04, subject, however, to the provisions of the last paragraph of Section 8.04, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 4.04 (3) and on deposit with the Trustee.

Equipment shall mean the new standard gauge railroad equipment described in Schedule I hereto.

Event of Default shall mean any event specified in Section 5.01 to be an Event of Default.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder thereof and shall include the plural as well as the singular number.

Investments shall mean (i) direct obligations of Canada or any of the Provinces thereof or obligations for which the faith of Canada or any of the Provinces thereof is pledged to provide for the payment of principal and interest or (ii) commercial paper of any company incorporated and doing business within the United States of America or Canada rated prime (or its equivalent) by a national rating agency or (iii) certificates of deposit of commercial banks or trust companies, including those of the Trustee, in the United States of America or Canada having capital and surplus aggregating at least \$25,000,000, in each case maturing in not more than one year from the date of such investment.

Lease shall mean the Lease of Equipment dated as of December 1, 1971, between the Company and the Lessee substantially in the form of Annex B hereto.

Lessee shall mean Canadian National Railway Company, a Canadian corporation, the lessee under the Lease, and its successors and assigns.

Handwritten signature and initials in the right margin. The signature appears to be 'R. J. ...' and the initials below it are 'R. J.'.

Lessee's Certificate shall mean a certificate signed by the President, any Vice President, the Treasurer or the Secretary, the Assistant Secretary or the Deputy Secretary of the Lessee.

Manufacturer shall mean Canadian National Railway Company, a Canadian corporation, the manufacturer and seller under the Manufacturing Agreement.

Manufacturing Agreement shall mean the Manufacturing Agreement dated as of December 1, 1971, between the Company and the Manufacturer substantially in the form of Annex A hereto.

Officer's Certificate shall mean a certificate signed by the President, any Vice President, ~~or~~ any Assistant Vice President of the Company.

[Handwritten initials]

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may be an employee of the Company, the Lessee or the beneficiaries under the Owner Trust Agreement. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

or any Assistant Secretary

Purchase Agreement shall mean the Purchase Agreement dated as of December 1, 1971, among the Company and the Purchasers named in Annex I thereto.

Purchaser shall mean each Purchaser named in Annex I to the Purchase Agreement and *Purchasers* shall mean all such Purchasers.

Request shall mean a written or telegraphic request for the action therein specified received by the Trustee in the case of the written request at least two Business Days prior to the time the action requested thereby is to be taken and signed on behalf of the Company by the President, any Vice President, ~~or~~ any Assistant Vice President of the Company.

[Handwritten initials]

or any Assistant Secretary

Trust Certificates shall mean The Bankers' Trust Company, Owner-Trustee, 8½% Equipment Trust Certificates, Due 1992, issued hereunder.

Trust Equipment shall mean all Equipment at any time subject to the terms of this Agreement.

Trustee shall mean Canada Permanent Trust Company, a trust company subject to the jurisdiction of the Parliament of Canada, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein, hereof, hereby, hereto, hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* An amount equal to the proceeds of the sale of the Trust Certificates, but not less than the aggregate principal amount thereof, shall forthwith be deposited with the Trustee.

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee under this Section shall not exceed the sum of \$3,100,000, and the aggregate principal amount represented by all the Trust Certificates shall be payable as hereinafter set forth.

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Maturity.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder and shall have a final maturity of March 1, 1992. The Trust Certificates will bear interest from the date thereof, payable on March 1 and September 1, of each year commencing March 1, 1972, at the rate

of $8\frac{1}{2}\%$ per annum, with interest payable on overdue principal and interest as set forth in the Trust Certificates. The first instalment of principal of the Trust Certificates shall be payable on September 1, 1978, and subsequent instalments shall be payable semiannually thereafter on each March 1 and September 1 to and including March 1, 1992, each such date being hereinafter called a Payment Date. The principal amount of the Trust Certificates payable on each of the 28 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 28 instalments of principal and interest will completely amortize the Trust Certificates. The Company will furnish to the Trustee and each Purchaser a schedule showing the respective amounts of principal and interest payable on each Payment Date.

The principal of and interest on the Trust Certificates shall be payable (a) at the Corporate Trust Office, in lawful money of Canada, but (b) only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions hereof. Notwithstanding the provisions of clause (a) of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon request and deposit with the Trustee of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the instalments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the Business Day preceding the date each such payment is due to such registered holder at his address shown on the registry books maintained by the Trustee; *provided, however*, that this sentence shall not apply to any Purchaser so long as such Purchaser is a holder of Trust Certificates, and the Trustee shall make payments of principal and interest to each Purchaser at its "home office" address set forth in Annex I to the Purchase Agreement by mailing its check as aforesaid.

SECTION 2.03. *Form of Trust Certificates.* The Trust Certificates shall be in substantially the form hereinbefore set forth.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of its President, one of its Vice Presidents or one of its Assistant Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Authorized Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.*

(a) The Trust Certificates: shall be registered, as to both principal and interest, in the name of the holder; shall be (i) transferable on the books of the Trustee in whole or in part and (ii) exchangeable for Trust Certificates of other denominations of equal aggregate outstanding principal amount, upon presentation and surrender thereof for registration of transfer or exchange at the Corporate Trust Office, accompanied, in the case of registration of transfer, by appropriate instruments of transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by duly authorized attorney, in form satisfactory to the Trustee; *provided, however*, that no Trust Certificate shall be issued in a principal amount less than \$10,000 except in the case of the transfer or exchange of a Trust Certificate which at the time is in an unpaid principal amount of less than \$10,000; each Trust Certificate shall be dated as of the date of issue unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date; and each Trust Certificate shall entitle the registered holder to interest from the date thereof. The Trustee shall, if any prepayment shall theretofore have been made pursuant to Section 3.01 or 4.07, attach to each

Trust Certificate issued upon registration of transfer or exchange a revised schedule of payments of principal and interest as provided in Section 3.01 and 4.07.

(b) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(c) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates and, upon presentation of the Trust Certificates for such purpose, the Trustee shall register any transfer as hereinabove provided, and under such reasonable regulations as it may prescribe.

(d) For any registration, registration of transfer or exchange, the Trustee shall require payment by the person requesting same of a sum sufficient to reimburse it for any governmental charge connected therewith.

(e) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for, or upon the registration of transfer of the whole or any part, as the case may be, of one or more other Trust Certificates, shall carry all the rights to principal and to interest accrued and unpaid and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, the Trust Certificates shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(f) The Trustee shall not be required to issue, register the transfer of or exchange any Trust Certificates for a period of ten Business Days next preceding any interest payment date.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not other-

wise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate pursuant to this Section shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish a letter of indemnity in the case of any Purchaser or, if other than a Purchaser, such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions, to the extent permitted by law, are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 3.01. *Acquisition and Exclusion of Equipment; Prepayment of Deposited Cash.* The Company shall cause the sale, assignment and transfer from the Manufacturer to the Trustee, as Trustee for the holders of the Trust Certificates, of title to all the Trust Equipment described in Schedule I hereto; *provided, however,* that any Equipment not accepted pursuant to Section 4.02 and settled for pursuant to this Article Three on or before March 1, 1972 (herein called the Cut-Off Date), shall be excluded from this Agreement and not included in the term Trust Equipment. In the event of any such exclusion, the Company and the Trustee shall execute an agreement supplemental hereto limiting this Agreement to the Trust Equipment theretofore accepted and settled for hereunder.

In the event that it is anticipated that on the Cut-Off Date any Deposited Cash shall remain in the possession of the Trustee, the Trustee shall so notify each holder of Certificates to whom a prepayment is to be made as provided below at least five Business Days preceding the Cut-Off Date, and, on the Cut-Off Date, shall (a) sell all Investments then held by it as soon as practicable and (b) apply Deposited Cash to the *pro rata* prepayment, by check drawn on a Canadian chartered bank, of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment. Thereupon the Company will promptly furnish to the Trustee and each of the holders of outstanding Trust Certificates so prepaid a revised schedule of payments of principal thereafter to be made hereunder calculated as provided in Section 2.02.

SECTION 3.02. *Payment of Deposited Cash.* From time to time, when and as any of the Equipment shall have become subject to the terms and provisions hereof as provided in Section 4.02, the Trustee shall upon Request (subject to the provisions of Section 3.04 and the Company's making payment as contemplated by the provisions of Section 3.03) pay to the Manufacturer out of Deposited Cash then held by the Trustee an amount not in excess of 80% of the aggregate Cost of such Trust Equipment, as specified in the certificate furnished to the Trustee pursuant to Section 3.04(b). Anything contained in this Agreement to the contrary notwithstanding, the Trustee shall have no duty to make any payment to the Manufacturer pursuant to this Section: (i) prior to the Closing Date (as defined in the Purchase Agreement) or (ii) in the event that on the Closing Date the aggregate principal amount of Trust Certificates to be sold on such Closing Date shall not have been purchased by the Purchasers or (iii) in the event that the Company shall have failed to pay to the Trustee the monies required to be paid by the Company to the Trustee under Section 3.03 hereof.

SECTION 3.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant

Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 5.02. *Remedies.* Neither the Trustee nor the Company shall have the right to terminate or impair the Lessee's possession or use of Trust Equipment subject to the Lease so long as the Lessee shall not be in default under the Lease. Subject to the preceding sentence, which qualifies this entire Agreement, upon the happening of any Event of Default the Trustee may by its agents enter upon the premises of the person having possession of the Trust Equipment and

take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, or for part cash and part credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable hereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of Trust Certificates hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and pay-

able, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the interests of the Trustee to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of

the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before March 1, 1992, all arrears of rent (with interest at the rate of 8½% per annum upon any overdue instalments, to the extent legally enforceable), ~~the expenses and reasonable compensation of the Trustee, together with all~~ expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default,

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but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be placed on such storage tracks of the Lessee as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad of the Lessee or premises of the Lessee approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holder of the Trust Certificates notice of each default hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment, this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent.

Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment or the Lease without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or encumbrance upon or against any of the Trust Equipment ranking prior to or *pari passu* with the interests of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, *provided* that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment (including the Consent), and each supplement or

Subject to the provisions of Article 4 hereof, the Company hereby promises to pay in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, the amounts set forth in Section 3.02 and Section 3.03 of the Equipment Trust Agreement.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 1, 1972, or such earlier date following the date of deposit of the net proceeds of the sale of the Equipment Trust Certificates (hereinafter called the Equipment Trust Certificates) issued pursuant to Section 2.01 of the Equipment Trust Agreement, following presentation to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Company and the Trustee at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in Toronto, Ontario, Canada.

Upon payment to the Manufacturer for any Group of Equipment as provided for in this Agreement, any and all claims, liens or other encumbrances of any nature of the Manufacturer with respect to title to such Group of Equipment under this Agreement shall forthwith cease and determine.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and settled for pursuant to this Article 3 on or before March 1, 1972, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 4. *Conditions to Obligations of the Company.* The obligation of the Company under this Agreement to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the conditions (a) that the conditions set forth in Section

3.02 (i) and (ii) of the Equipment Trust Agreement have been completed with, and (b) that the Company shall have received, on or prior to the Closing Date, the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it, (i) the documents referred to in Section 3.04 of the Equipment Trust Agreement, (ii) a Lessee's Certificate (as defined in the Equipment Trust Agreement) dated the Closing Date to the effect that no Event of Default (as defined in the Equipment Trust Agreement) which relates to the Lessee nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for in the Equipment Trust Agreement or in the Lease would constitute such an Event of Default thereunder shall have occurred and be continuing; and (iii) such other documents as the Company may reasonably request.

ARTICLE 5. *Warranties.* The agreement of the parties relating to the Manufacturer's warranty of materials and workmanship is set forth in Item 3 of Schedule I hereto, which said Item 3 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* The Manufacturer agrees to indemnify, protect and hold harmless the Company and the Trustee 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 Trustee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

ARTICLE 7. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

- (a) to the Company, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario, Canada,

(b) to the Manufacturer or the Lessee, at its address set forth in Item 4 of Schedule I hereto,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 8. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 9. *Effect and Modification of Agreement.* This Agreement, and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturer 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 Company and the Manufacturer.

ARTICLE 10. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario, Canada.

ARTICLE 11. *Successors and Assigns.* As used herein the terms Manufacturer, Company, Trustee and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Company, the Trustee and the Lessee.

ARTICLE 12. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

by

Vice President.

[CORPORATE SEAL]

Attest:

CANADIAN NATIONAL RAILWAY
COMPANY,

by

Vice President.

[CORPORATE SEAL]

Attest:

Deputy Secretary.

SCHEDULE I

Item 1: Canadian National Railway Company, a Canadian corporation.

Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than three Groups of units of the Equipment.

Item 3: *Manufacturer's Warranty of Materials and Workmanship.* The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of the Agreement and warrants the Equipment will be free from defects in material and workmanship or design 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, within one year after delivery of such unit 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, statutory or otherwise, 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 6 of the Agreement to which this Schedule I is attached (hereinafter called the Agreement).** 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 further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as

provided in said Article 2, shall be deemed a waiver or modification by the Company and/or the Trustee of any of their rights under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Article 6 of the Agreement shall be deemed to include articles, materials, systems, formulae and processes.

Item 4: P. O. Box 8100, Montreal 101, Quebec, Canada, attention of the Treasurer.

Trustee except as a result of its gross negligence or wilful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or wilful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 5.02. *Remedies.* Neither the Trustee nor the Company shall have the right to terminate or impair the Lessee's possession or use of Trust Equipment subject to the Lease so long as the Lessee shall not be in default under the Lease. Subject to the preceding sentence, which qualifies this entire Agreement, upon the happening of any Event of Default the Trustee may by its agents enter upon the premises of the person having possession of the Trust Equipment and

take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease or otherwise contract for the use of the Trust Equipment or any part thereof; or the Trustee may with or without retaking possession (but only after declaring due and payable the entire amount of rentals payable by the Company and the principal of all the outstanding Trust Certificates, as provided in Section 5.01) sell the Trust Equipment or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, for cash or upon credit, or for part cash and part credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of then outstanding Trust Certificates, all subject to any mandatory requirements of law applicable hereto. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. After the Trustee has fully exercised its remedies hereunder, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of Trust Certificates hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and pay-

able, or of principal and interest in respect of the Trust Certificates, and the Company shall be and remain liable for the same until such sums have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the obligations of the Company under this Agreement (other than interest not then accrued), whether or not they shall have then matured.

SECTION 5.03. *Application of Proceeds.* If the Trustee shall exercise any of the powers conferred upon it by Sections 5.01 and 5.02, all payments made by the Company to the Trustee and the proceeds of any judgment collected from the Company by the Trustee, and the proceeds of every sale or lease by the Trustee of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates or a part thereof, or interest thereon) shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of $8\frac{1}{2}\%$ per annum to the extent legally enforceable from the date of default, whether such Trust Certificates shall have then matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the interests of the Trustee to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof (hereinafter called the Deficiency) the Company agrees to pay the amount of

the Deficiency to the Trustee, upon demand; and if the Company shall fail to pay the Deficiency, the Trustee may bring suit therefor and shall be entitled to recover judgment therefor against the Company. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 5.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 5.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past default and its consequences, except a default in the payment of any instalment of rental payable pursuant to Section 4.04(3) or (4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 5.01, but before March 1, 1992, all arrears of rent (with interest at the rate of 8½% per annum upon any overdue instalments, to the extent legally enforceable), ~~the expenses and reasonable compensation of the Trustee, together with all~~ expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (otherwise than by such declaration or declarations) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment (or the making of any agreement for such sale or lease), and every other default shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default,

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but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 5.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder.

The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 5.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, promptly cause such Trust Equipment to be placed on such storage tracks of the Lessee as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad of the Lessee or premises of the Lessee approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 5.07. *Trustee to Give Notice of Default.* The Trustee shall give to the holder of the Trust Certificates notice of each default hereunder known to the Trustee, within 30 days after it has actual knowledge of the same, unless remedied or cured before the giving of such notice.

SECTION 5.08. *Control by Holders of Trust Certificates.* The holders of a majority in aggregate principal amount of the then outstanding Trust Certificates, by an instrument or instruments in writing executed and delivered to the Trustee, shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; *provided, however*, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action so directed may not lawfully be taken.

SECTION 5.09. *Remedies Cumulative; Subject to Mandatory Requirements of Law.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity; and such remedies so provided in this Agreement shall be subject in all respects to any mandatory requirements of law at the time applicable thereto, to the extent such requirements may not be waived on the part of the Company.

SECTION 5.10. *Transfer of Trust Certificates to the Company.* At any time after the occurrence and during the continuation of an Event of Default and upon request of the Company made to each holder of an outstanding Trust Certificate, each holder of a Trust Certificate agrees that, unless the holders of a majority in aggregate principal amount of the Trust Certificates shall have waived such Event of Default, it will, upon receipt from the Company of an amount equal to the aggregate unpaid principal of and accrued interest on all Trust Certificates then held by such holder plus all other sums then due and payable to such holder hereunder or under such Trust Certificates, forthwith sell, assign, transfer and convey to the Company all of the right, title and interest of such holder in and to the Trust Equipment, this Agreement, all Trust Certificates then held by such holder, the Purchase Agreement, the Lease, the Assignment and the Consent.

Anything contained in this Section to the contrary notwithstanding, no holder of any outstanding Trust Certificate shall have any obligation to sell such Trust Certificate to the Company unless the event constituting the Event of Default shall also constitute an Event of Default under the Lease. If the Company shall request, such holder will comply with all the provisions of Section 2.05 to enable new Trust Certificates to be issued to the Company in such denominations as the Company shall request. All charges and expenses required pursuant to Section 2.05 in connection with the issuance of any new Trust Certificates shall be borne by the Company. In the event that the Company shall have acquired all the Trust Certificates in the manner contemplated by this Section and all amounts owing to the Trustee pursuant to this Agreement shall have been paid, the Trustee shall not exercise any remedies under this Agreement, the Assignment or the Lease without the approval of the Company.

ARTICLE SIX

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 6.01. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien, charge or encumbrance upon or against any of the Trust Equipment ranking prior to or *pari passu* with the interests of the Trustee; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, *provided* that such contest will not adversely affect the rights or interests of the Trustee or the holders of the Trust Certificates and the Company and the Lessee shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 6.02. *Recording.* The Company will at its own expense, promptly after the execution and delivery of this Agreement, the Lease and the Assignment (including the Consent), and each supplement or

Subject to the provisions of Article 4 hereof, the Company hereby promises to pay in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, the amounts set forth in Section 3.02 and Section 3.03 of the Equipment Trust Agreement.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 1, 1972, or such earlier date following the date of deposit of the net proceeds of the sale of the Equipment Trust Certificates (hereinafter called the Equipment Trust Certificates) issued pursuant to Section 2.01 of the Equipment Trust Agreement, following presentation to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Company and the Trustee at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in Toronto, Ontario, Canada.

Upon payment to the Manufacturer for any Group of Equipment as provided for in this Agreement, any and all claims, liens or other encumbrances of any nature of the Manufacturer with respect to title to such Group of Equipment under this Agreement shall forthwith cease and determine.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and settled for pursuant to this Article 3 on or before March 1, 1972, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 4. *Conditions to Obligations of the Company.* The obligation of the Company under this Agreement to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the conditions (a) that the conditions set forth in Section

3.02 (i) and (ii) of the Equipment Trust Agreement have been completed with, and (b) that the Company shall have received, on or prior to the Closing Date, the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it, (i) the documents referred to in Section 3.04 of the Equipment Trust Agreement, (ii) a Lessee's Certificate (as defined in the Equipment Trust Agreement) dated the Closing Date to the effect that no Event of Default (as defined in the Equipment Trust Agreement) which relates to the Lessee nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for in the Equipment Trust Agreement or in the Lease would constitute such an Event of Default thereunder shall have occurred and be continuing; and (iii) such other documents as the Company may reasonably request.

ARTICLE 5. *Warranties.* The agreement of the parties relating to the Manufacturer's warranty of materials and workmanship is set forth in Item 3 of Schedule I hereto, which said Item 3 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* The Manufacturer agrees to indemnify, protect and hold harmless the Company and the Trustee 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 Trustee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

ARTICLE 7. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

- (a) to the Company, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario, Canada,

(b) to the Manufacturer or the Lessee, at its address set forth in Item 4 of Schedule I hereto,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 8. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 9. *Effect and Modification of Agreement.* This Agreement, and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturer 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 Company and the Manufacturer.

ARTICLE 10. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario, Canada.

ARTICLE 11. *Successors and Assigns.* As used herein the terms Manufacturer, Company, Trustee and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Company, the Trustee and the Lessee.

ARTICLE 12. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

by

Vice President.

[CORPORATE SEAL]

Attest:

CANADIAN NATIONAL RAILWAY
COMPANY,

by

Vice President.

[CORPORATE SEAL]

Attest:

Deputy Secretary.

SCHEDULE I

Item 1: Canadian National Railway Company, a Canadian corporation.

Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than three Groups of units of the Equipment.

Item 3: *Manufacturer's Warranty of Materials and Workmanship.* The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of the Agreement and warrants the Equipment will be free from defects in material and workmanship or design 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, within one year after delivery of such unit 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, statutory or otherwise, 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 6 of the Agreement to which this Schedule I is attached (hereinafter called the Agreement).** 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 further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as

provided in said Article 2, shall be deemed a waiver or modification by the Company and/or the Trustee of any of their rights under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Article 6 of the Agreement shall be deemed to include articles, materials, systems, formulae and processes.

Item 4: P. O. Box 8100, Montreal 101, Quebec, Canada, attention of the Treasurer.

SCHEDULE II

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (All Numbers Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Date and Place of Delivery</u>
52' gondola cars	Lessee's Specifications F-60-8 dated May, 1971	Montreal	200	CN 136400 to 136599	\$19,375 (Canadian)	\$3,875,000 (Canadian)	December, 1971 through February, 1972 F.O.B. Canadian National Railway Company tracks at Cornwall, Ontario, Canada

upon (unless such resignation shall have become effective earlier pursuant to Section 8.06(a)) the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee by it or for its account to secure any amounts then due it pursuant to the provisions of Section 8.05.

SECTION 8.08. *Merger, Amalgamation or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or amalgamated or with which it may be consolidated or any corporation resulting from any merger, amalgamation or consolidation to which the Trustee shall be a party shall be the successor of the Trustee hereunder, *provided* such corporation shall be qualified under the provisions of Section 8.06, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.09. *Appointment of Co-Trustees and Separate Trustees.* If at any time or times the holders of a majority in principal amount of the then outstanding Trust Certificates shall in writing request the Trustee and the Company, or the Trustee shall in writing request the Company, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to appoint another bank or trust company, either to act hereunder as co-trustee or co-trustees with respect to all or any of the Trust Equipment jointly with the Trustee or to act hereunder as separate trustee or trustees

with respect to any such equipment, with such power and authority and entitled to the benefit of such provisions hereunder as shall be specified in the instrument of appointment. In the event the Company shall not have joined in the execution of such instruments and agreements within 10 days after the receipt of a written request so to do from the Trustee or from the holders of a majority in principal amount of the then outstanding Trust Certificates, or in case an Event of Default shall have occurred and be continuing, the Trustee may act under the foregoing provisions of this Section 8.09 without the concurrence of the Company; and the Company hereby fully empowers the Trustee so to act and appoints the Trustee its agent and attorney to act for it under the foregoing provision of this Section 8.09 in either of such contingencies. Every co-trustee or separate trustee appointed hereunder shall be a national bank or a bank or trust company incorporated under the laws of Canada or any Province or incorporated under the laws of the United States or any State thereof and having a capital and surplus of not less than \$25,000,000, if there be such an institution willing, qualified and able to accept the position of co-trustee or separate trustee upon reasonable or customary terms.

SECTION 8.10. *Transfer of Title by the Trustee.* In any transfer hereunder by the Trustee of title to a unit, the Trustee shall covenant that it has not charged or encumbered such unit except as provided herein and the Trustee shall not be required to give any further covenant as to title to such unit.

ARTICLE NINE

MISCELLANEOUS

SECTION 9.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto, the holders of the Trust Certificates and the assignees and/or transferees contemplated by the second paragraph of Section 4.08 any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be

for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates and such assignees and transferees.

SECTION 9.02. *Ontario Law Governs.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the Province of Ontario, Canada; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act of the United States, the applicable recordings laws of Canada and the Provinces and Territories thereof and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking of the Trust Equipment as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited or in which any Trust Equipment may be located.

SECTION 9.03. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 9.04. *Satisfaction of Obligations.* The obligations of the Company under Section 4.04(1), Section 4.04(3) (only to the extent of the Lessee's obligations under paragraph (a) of § 18 of the Lease), Section 4.06, the first and last paragraphs of Section 4.07, Section 4.09, Section 4.10, Section 5.06 and Section 6.01 shall be deemed in all respects satisfied by the Lessee's undertakings contained in 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 by the Lessee such non-performance shall constitute the basis for an Event of Default hereunder pursuant to Section 5.01.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Company, while in form purporting to be the representations, covenants, undertakings and agreements of the

Company are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Company or for the purpose or with the intention of binding the Company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Owner Trust Agreement, and this Agreement is executed and delivered by the Company not in its own right but solely in the exercise of the powers expressly conferred upon it as such Owner-Trustee (as such term is used in the Owner Trust agreement); and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Company, or any beneficiary of the trust under which the Company is acting on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Company or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Trustee and by all persons claiming by, through or under the Trustee; *provided, however*, that the Trustee or any person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

SECTION 9.05. *Notices.* Except as otherwise expressly provided herein, all demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the Company, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario, Canada, or such other address as may hereafter be furnished to the Trustee in writing by the Company, (b) in the case of the Trustee, at its Corporate Trust Office, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 9.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 9.07. *Execution.* Although this Agreement is dated as of December 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 9.08. *Applicable Laws.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

IN WITNESS WHEREOF, the Trustee and the Company have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunder affixed as of the day and year first written.

CANADA PERMANENT TRUST
COMPANY, as Trustée,

by *R. R. [Signature]*
~~Assistant Vice President.~~
~~ASSISTANT GENERAL MANAGER~~
[Signature]
ASSOCIATE SECRETARY,

[CORPORATE SEAL]

Attest: *[Signature]*
Authorized Officer.

APPROVED
FOR EXECUTION
BY C.P.T.C.
[Signature]

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

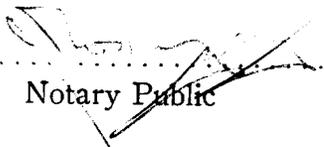
by ~~Vice President~~

[CORPORATE SEAL]

Attest: *[Signature]*
~~Assistant Secretary.~~
[Signature]
Authorized officer
[Signature]
Authorized officer

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

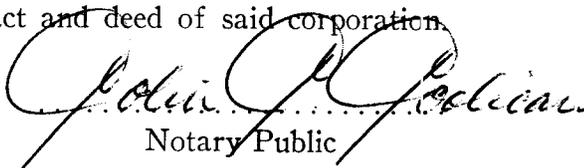
On this 27th day of December, 1971, before me personally appeared RONALD A. PARKER, to me personally known, who, being by me duly sworn, says that he is ~~Vice President~~ ^{ASSOCIATE SECRETARY} of CANADA PERMANENT TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its By-Laws, 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 ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.:

On this 29th day of December, 1971, before me personally appeared PETER W. CARREBUS, to me personally known, who, being by me duly sworn, says that he is ~~a Vice President~~ ^{an authorized officer} of THE BANKERS' TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[NOTARIAL SEAL]

SCHEDULE I

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

Manufacturing Agreement

Dated as of December 1, 1971

among

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Covering 200 Gondola Cars

MANUFACTURING AGREEMENT dated as of December 1, 1971, between the corporation named in Item 1 of Schedule I hereto (hereinafter called the Manufacturer or the Lessee) THE BANKERS' TRUST COMPANY, a trust company incorporated under the laws of the Province of Quebec and duly qualified to do business in the Province of Ontario, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 1, 1971, with Procor Limited and The Royal Trust Company.

WHEREAS the Manufacturer agrees to construct, sell and deliver to the order of the Company and the Company agrees to purchase the units of new, standard gauge railroad equipment described in Schedule II attached hereto (hereinafter called the Equipment); and

WHEREAS the Company proposes to enter into an Equipment Trust Agreement dated as of the date hereof (hereinafter called the Equipment Trust Agreement) with Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee); and

WHEREAS it is contemplated that, pursuant to the Equipment Trust Agreement, there will be paid to the Manufacturer on one or more Closing Dates (as hereinafter defined) the Purchase Price (as hereinafter defined) of all the Equipment; and

WHEREAS the Company, as lessor, is executing a lease of the Equipment dated as of the date hereof to the Lessee in substantially the form annexed to the Equipment Trust Agreement as Annex B (hereinafter called the Lease);

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.* Subject to the terms and conditions hereinafter set forth, the Manufacturer will construct the

Equipment at its plant set forth in Schedule II hereto and will sell and deliver the Equipment as hereinbelow provided and the Company will pay to the Manufacturer the Purchase Price of the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule II hereto (which specifications are hereinafter called the Specifications) and will, at or before delivery thereof pursuant to Article 2 hereof, have the following ownership markings stencilled on each side thereof in a conspicuous place in letters not less than three-eighths inch in height:

“OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, CANADA, AS TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT”.

The Manufacturer agrees that the design, quality and component parts of the Equipment will conform to all requirements and specifications of the United States Federal Railroad Administration and the Canadian Transport Commission and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of such units of the Equipment as of the date of delivery thereof.

ARTICLE 2. *Delivery.* Each unit of Equipment will be delivered to an authorized representative of the Company (who may be an employee of the Lessee), as agent of the Trustee, freight charges, if any, prepaid, at such point or points as shall be specified in Schedule II hereto, and in accordance with the time of delivery schedule set forth in Schedule II hereto, *provided, however,* that no unit of the Equipment shall be delivered under this Agreement unless such unit shall be contemporaneously accepted by the Lessee under the Lease and until the Equipment Trust Agreement and the Lease, together with the Assignment, including the Consent (both as defined in the Equipment Trust Agreement), shall have been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of the United States and deposited with the Registrar General of

Canada (notice of such deposit to be forthwith thereafter given in the *Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada and that each bill of sale delivered pursuant to this Article 2 shall have been registered in the office of the clerk of the county court of the county of Storemont in the Province of Ontario (and in delivering the Equipment, the Manufacturer may rely upon telegraphic advice from counsel for the Lessee that the Equipment Trust Agreement, the Lease, the Assignment (including the Consent) and each bill of sales have been so filed, recorded, deposited or registered).

The Manufacturer represents and warrants that at the time of the delivery of the Equipment to the authorized representative of the Company, as agent of the Trustee, the Equipment will be new railroad equipment, not having been used by any person after completion of manufacture and prior to delivery, and no capital cost allowance will have been claimed by any person with respect thereto.

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 or authorized representatives of the Lessee) and, if each such unit conforms to the Specifications and the other requirements, specifications and standards set forth or referred to in Article 1 hereof, such inspector or authorized representative shall promptly execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and the Trustee and are marked in accordance with Article 1 hereof; *provided, however*, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Schedule I hereto.

On acceptance of each of the units of the Equipment pursuant to this Article 2 on behalf of the Company and the Trustee as aforesaid and *provided, however*, that the Lessee shall at the same time have accepted the said Units under the Lease, the Company assumes with respect thereto the responsibility and risk of loss or damage and the Manufacturer shall deliver to the Trustee (i) an invoice describing such unit and stating that such unit is new standard gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than the date of such delivery and acceptance, and

that the Purchase Price of such unit is an amount therein specified in Canadian dollars and (ii) a bill of sale transferring title to such unit to the Trustee and warranting to the Trustee and the Company that at the time of such delivery the Manufacturer had legal title to such unit and good and lawful right to sell the same and that title to such unit was, at the time of such delivery of such unit, free from all claims, liens, security interests and other encumbrances of any nature except as created by this Agreement, the Equipment Trust Agreement or as permitted by Section 6.01 thereof and except for the rights of the Lessee under the Lease and warranting to the Trustee and the Company the materials and workmanship with respect to the Equipment as set forth in Item 3 of Schedule I.

ARTICLE 3. Purchase Price and Payment. The base price per unit of the Equipment, stated in Canadian dollars, is set forth in Schedule II hereto. Such base price shall include (a) sales taxes and (b) freight charges, if any, prepaid by the Manufacturer, from the Manufacturer's plant to the point of delivery. The term "Purchase Price" as used herein shall mean the base price. If on any Closing Date the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$3,875,000 (Canadian) (or such larger amount as the Company may at its option agree to), the Manufacturer will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of the Equipment then proposed to be settled for as specified by the Company, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices to not more than \$3,875,000 (Canadian) (or such larger amount as aforesaid).

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule I hereto (the Equipment settled for on each Closing Date being hereinafter called a Group).

Subject to the provisions of Article 4 hereof, the Company hereby promises to pay in cash to the Manufacturer at such place as the Manufacturer may designate, on each Closing Date with respect to a Group, the amounts set forth in Section 3.02 and Section 3.03 of the Equipment Trust Agreement.

The term "Closing Date" with respect to any Group of the Equipment shall mean March 1, 1972, or such earlier date following the date of deposit of the net proceeds of the sale of the Equipment Trust Certificates (hereinafter called the Equipment Trust Certificates) issued pursuant to Section 2.01 of the Equipment Trust Agreement, following presentation to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Company and the Trustee at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays or days on which banking institutions are authorized by law to close in Toronto, Ontario, Canada.

Upon payment to the Manufacturer for any Group of Equipment as provided for in this Agreement, any and all claims, liens or other encumbrances of any nature of the Manufacturer with respect to title to such Group of Equipment under this Agreement shall forthwith cease and determine.

Notwithstanding the preceding provisions of this Article 2, any unit of the Equipment not delivered, accepted and settled for pursuant to this Article 3 on or before March 1, 1972, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 4. *Conditions to Obligations of the Company.* The obligation of the Company under this Agreement to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of Article 3 hereof with respect to any Group of the Equipment is subject to the conditions (a) that the conditions set forth in Section

3.02 (i) and (ii) of the Equipment Trust Agreement have been completed with, and (b) that the Company shall have received, on or prior to the Closing Date, the following documents in such number of counterparts or copies as may reasonably be requested in form and substance satisfactory to it, (i) the documents referred to in Section 3.04 of the Equipment Trust Agreement, (ii) a Lessee's Certificate (as defined in the Equipment Trust Agreement) dated the Closing Date to the effect that no Event of Default (as defined in the Equipment Trust Agreement) which relates to the Lessee nor an Event of Default (as defined in the Lease), nor any event which with the lapse of time and/or notice provided for in the Equipment Trust Agreement or in the Lease would constitute such an Event of Default thereunder shall have occurred and be continuing; and (iii) such other documents as the Company may reasonably request.

ARTICLE 5. *Warranties.* The agreement of the parties relating to the Manufacturer's warranty of materials and workmanship is set forth in Item 3 of Schedule I hereto, which said Item 3 is by this reference made a part hereof.

ARTICLE 6. *Patent Indemnities.* The Manufacturer agrees to indemnify, protect and hold harmless the Company and the Trustee 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 Trustee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

ARTICLE 7. *Notice.* Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

- (a) to the Company, Royal Trust Tower, Toronto-Dominion Centre, Toronto, Ontario, Canada,

(b) to the Manufacturer or the Lessee, at its address set forth in Item 4 of Schedule I hereto,

or at such other addresses as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 8. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 9. *Effect and Modification of Agreement.* This Agreement, and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Manufacturer 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 Company and the Manufacturer.

ARTICLE 10. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario, Canada.

ARTICLE 11. *Successors and Assigns.* As used herein the terms Manufacturer, Company, Trustee and Lessee shall be deemed to include the successors and assigns of the Manufacturer, the Company, the Trustee and the Lessee.

ARTICLE 12. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be duly executed as of the date first above written.

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

by

Vice President.

[CORPORATE SEAL]

Attest:

CANADIAN NATIONAL RAILWAY
COMPANY,

by

Vice President.

[CORPORATE SEAL]

Attest:

Deputy Secretary.

SCHEDULE I

Item 1: Canadian National Railway Company, a Canadian corporation.

Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than three Groups of units of the Equipment.

Item 3: *Manufacturer's Warranty of Materials and Workmanship.* The Manufacturer warrants that the units of the Equipment will be built in accordance with the Specifications and with the other requirements, specifications and standards set forth or referred to in Article 1 of the Agreement and warrants the Equipment will be free from defects in material and workmanship or design 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, within one year after delivery of such unit 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, statutory or otherwise, 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 6 of the Agreement to which this Schedule I is attached (hereinafter called the Agreement).** 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 further agrees that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as

provided in said Article 2, shall be deemed a waiver or modification by the Company and/or the Trustee of any of their rights under this Item 3.

It is further understood and agreed that the word "design(s)" as used herein and in Article 6 of the Agreement shall be deemed to include articles, materials, systems, formulae and processes.

Item 4: P. O. Box 8100, Montreal 101, Quebec, Canada, attention of the Treasurer.

SCHEDULE II

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Manufacturer's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (All Numbers Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Date and Place of Delivery</u>
52' gondola cars	Lessee's Specifications F-60-8 dated May, 1971	Montreal	200	CN 136400 to 136599	\$19,375 (Canadian)	\$3,875,000 (Canadian)	December, 1971 through February, 1972 F.O.B. Canadian National Railway Company tracks at Cornwall, Ontario, Canada

Lease of Equipment

between

THE BANKERS' TRUST COMPANY,
as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Dated as of December 1, 1971

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CASUALTY VALUE

<u>Rental Payment Date No.</u>	<u>Percentage</u>	<u>Rental Payment Date No.</u>	<u>Percentage</u>
1	102.8625%	22	77.0414%
2	103.7800	23	74.2950
3	104.2561	24	71.3916
4	104.3590	25	68.3306
5	104.1479	26	65.1147
6	103.6733	27	61.7505
7	102.9776	28	58.2491
8	102.0957	29	54.6267
9	101.0554	30	50.9054
10	99.8786	31	47.1133
11	98.9041	32	43.2856
12	98.4196	33	39.4649
13	98.6577	34	35.7022
14	96.2591	35	32.0568
15	94.5075	36	28.5976
16	91.8826	37	25.4034
17	89.9448	38	22.5633
18	87.1335	39	20.1777
19	84.9321	40	18.3587
20	82.0787	41	15.0000
21	79.4988		

Thereafter, the lesser of 15.000% or the Fair Market Value thereof immediately prior to the Casualty Occurrence, such Fair Market Value to be calculated in the manner provided in § 19 hereof.

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

§ 7. *Annual Reports.* On or before January 15 in each year, commencing with the year 1972, or such other dates annually as may be requested in writing by the Lessor, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested an accurate statement signed by an authorized

representative, (i) showing, as of the end of the prior month, the amount, description and numbers of the Units then leased hereunder and the amount, description and numbers of all Units that may have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding calendar year (or since the date of this Lease in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Trustee may reasonably request and (ii) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the markings required by § 4 hereof and Section 4.06 of the Equipment Trust Agreement have been preserved or replaced. The Lessor shall have the right, by its agents, but shall be under no obligation, to inspect the Units and the records of the Lessee with respect thereto at any reasonable time during continuance of this Lease.

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

(ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee, the Lessor and the Trustee, that all Units described in a Certificate of Acceptance are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor or the Trustee based on any of the foregoing matters.

The Lessor represents and warrants as follows:

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

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

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

The Lessee agrees, for the benefit of the Lessor and the Trustee, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of any legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operations or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and the Trustee and agrees to hold the Lessor and the Trustee harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessor or the Lessee, or their employees, or any other person. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees, at its own expense, to make such alterations, changes, additions and replacements and to use, maintain and operate such Unit in full com-

pliance with such laws, regulations, requirements and rules so long as such Unit is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement.

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

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit (except such accessions other than those added or made to comply with the fifth paragraph of this § 8 as can be removed without damage to, and without impairing the originally intended function or use of such Unit and without cost or expense to the Lessor or the Trustee) and there shall be immediately vested in the Lessor and the Trustee the same interest in such accessions as the interests of the Lessor and the Trustee in such Unit. The Lessee may make alterations or modifications in any Unit so long as it does not affect the value of such Unit adversely.

The Lessee agrees to indemnify and save harmless the Lessor and the Trustee against any charge or claim made against the Lessor or the Trustee and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason of (a) the issuance of the Trust Certificates or by reason of entering into or performing the Equipment Trust Agreement, this Lease, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or (b) the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in

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

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

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

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

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

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

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

E. the Canadian government shall cease to own all the issued and outstanding shares of capital stock of the Lessee;

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 right of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have the right to recover from the Lessee any and all amounts which under the terms of this Lease may then be due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period), (i) as liquidated damages for loss of the bargain and not as a penalty, a sum with respect to the aggregate number of Units leased hereunder (less any Units for which the Lessee shall have paid to the Lessor the amounts stipulated in Section 6 hereof by reason of a Casualty Occurrence) which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rent which would have otherwise accrued under this Lease from the date of such termination to the end of the term of this Lease over (y) the then present value of the net rent which the Lessor reasonably estimates to be obtainable for the lease of such Units 'en bloc' in Canada or the United States on terms (other than rental) similar to this Lease and for the period from the date of such termination to the date on which this Lease would otherwise have terminated, such present value to be computed on a basis of 6% per annum discount compounded semi-annually from the respective dates upon which rental 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 sus-

tained 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 will cause the net return under this Lease of the Beneficiaries (as defined in § 14 hereof) to be equal to the net return that would have been available to the Beneficiaries if the Beneficiaries had been entitled in each of their respective taxation years to such deductions, credits and other benefits as are provided by The Income Tax Act (Canada) and Regulations thereunder, and/or any local state and provincial income tax statutes and regulations (all hereinafter called the "Act"), all as amended to the date hereof, as if for the purposes of the Act the Beneficiaries were the owners of the Units including, without limitation, the right to deduct interest paid on the Trust Certificates from and the right to claim capital cost allowance with respect to the Units computed at a rate of not less than 20% per annum on a declining balance against all their respective incomes from whatever source, as presently permitted by the regulations under Section 11(a) of The Income Tax Act (Canada), amended to the date hereof, which deductions, credits or other benefits were lost, not claimed, not available for claim or disallowed in respect of (i) the termination of this Lease, (ii) the Lessor's loss of the right to use such Unit, (iii) any action or inaction by the Lessor or (iv) the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default, such amount to be computed on the basis and in the manner set forth in the first paragraph of § 14 hereof. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that the Lessee shall receive a credit in respect of the amounts payable pursuant to sub-clause (i) of this clause (b) equal to any net proceeds received by the Lessor upon the sale or the re-leasing of the Units.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein

provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

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

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

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

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or

representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

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

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 encum-

brance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

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

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

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

§ 12. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of the term of this Lease as to any or all of the Units, the Lessee will (unless the Units shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble such Units and deliver possession of such Units to the Lessor upon such storage tracks 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 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 any Unit shall have suffered a Casualty Occurrence, the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof. Each Unit returned to Lessor pursuant to this Section shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear

and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable and the Canadian Transport Commission.

§ 13. *Opinion of Counsel for the Lessee.* On each Closing Date as defined in the Manufacturing Agreement, the Lessee will deliver to the Lessor and the Trustee the written opinion of counsel for the Lessee, in such number of counterparts as may reasonably be requested, and addressed to the Lessor and the Trustee, in scope and substance satisfactory to them and their counsel, to the effect that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such capital cost allowance deductions, credit or other benefits on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to such depreciation deductions disallowed, computed at the rate of $8\frac{1}{2}\%$ per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 14 shall survive the expiration or other termination of this Lease.

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

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

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

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $8\frac{1}{2}\%$ per annum of the overdue rentals for the period of time during which they are overdue.

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

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

§ 18. *Additional Payments by Lessee.*

In addition to the rentals specified in § 2 hereof:

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

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

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

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

under, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease or any 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, of such Units then covered by this Lease, for an additional five-year period commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond March 1, 2002, at a rental payable in 10 semi-annual payments for such five-year period, each in an amount equal to the following percentages of the Cost of such Unit: during the first five-year period (i) 1.5449% on each Unit delivered on or prior to December 29, 1971 and 1.5760% on each Unit delivered after December 29, 1971; and during the second five-year period (ii) 1.1035% on each Unit delivered on or prior to December 29, 1971 and (iii) 1.1257% on each Unit delivered after December 29, 1971; such semiannual payments to be made on March 1 and September 1 in each year of the applicable extended term or (b) to purchase all or up to 20% of the Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs or removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected

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

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

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

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

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

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

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

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

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

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

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

§ 25. *Severability.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

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

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

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

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

by

[CORPORATE SEAL]

Vice President.

Attest:

CANADIAN NATIONAL RAILWAY
COMPANY,

by

[CORPORATE SEAL]

Vice President.

Attest:

Deputy Secretary.

SCHEDULE I

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

ANNEX C

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all obligations of the Trustee hereunder.

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

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

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

13. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the Company hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

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

THE BANKERS' TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL.]

by

Vice President.

Attest:

Accepted:

CANADA PERMANENT TRUST
COMPANY, as Trustee.

by

Vice President.

