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INTERSTATE COMMERCE COMMISSION

Lease of Equipment

between

THE CANADA TRUST COMPANY,

as Owner-Trustee

and

CANADIAN NATIONAL RAILWAY COMPANY

Dated as of December 31, 1971

LEASE OF EQUIPMENT, dated as of December 31, 1971, between THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of December 31, 1971, with George S Eccles, and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Lessee).

WHEREAS, the Lessor, Hawker Siddeley Canada Limited (hereinafter called the Manufacturer) and the Lessee have entered into a Manufacturing Agreement dated as of December 31, 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 31, 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 May 1, 1972 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided,

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject and subordinate to all the rights and remedies of the Trustee under the Equipment Trust Agreement.

§ 1. *Delivery and Acceptance of Units* The Lessor will cause each Unit accepted pursuant to the Manufacturing Agreement to be tendered to the Lessee at such point or points as may be mutually acceptable to the Lessor and the Lessee. Immediately upon such tender, the Lessee will cause its authorized inspectors or representatives to inspect the same, and if such Unit is found to be in good operating order and repair, to accept delivery of such Unit and to execute and deliver to the Lessor a certificate of acceptance (hereinafter called a Certificate of Acceptance) certifying as to the actual date 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 or of the United States of America, as hereinafter more specifically set forth, as rental for each unit subject to this Lease, eighty-two (82) consecutive quarterly payments payable on the Business Day (as defined in the Equipment Trust Agreement) next preceding January 1, April 1, July 1 and October 1 of each year, commencing April 1, 1972. The Lessee acknowledges and agrees that the rental payments payable hereunder shall be paid partly in lawful money of Canada and partly in lawful money of the United States of America. That portion of each rental payment payable in lawful money of Canada shall be an amount equal to the percentage of the Canadian Cost (as such term is defined below) of the Units subject to this Lease set forth under the heading "Percentage of Canadian Cost" in the schedule set out below. That portion of each rental payment payable in lawful money of the United States of America shall be an amount equal to the percentage of U.S. Cost (as such term is defined hereinbelow) of the Units subject to this Lease set forth under the heading "Percentage of U.S. Cost" in the schedule set out below. For purposes of this Lease, Canadian Cost shall mean the aggregate Cost (as such term is defined in the Equipment Trust Agreement) of the Units subject to this Lease expressed in Canadian dollars. For purposes of this Lease, U.S. Cost shall mean an amount equal to the aggregate cost in U.S. dollars to the Lessor of the Canadian dollars used to make the payments to the Manufacturer on each Closing date (as defined in the Manufacturing Agreement) contemplated by Section 3.03 of the Equipment Trust Agreement divided by .203568. The Lessor agrees that the Lessee's consent shall be obtained for any exchange, prior to the date of the above-mentioned payments to the Manufacturer (but not on the date of such payments), of United States dollars for Canadian dollars for the purpose of obtaining Canadian dollars to make said payments, and that any such exchange shall be made at the selling price quoted on the New York market of Canadian dollars for bank transfers in the United States for payment abroad.

Except as otherwise provided above, the rental payment payable under this Lease on each rental payment date on which such rental payment is due shall be the sum of the amounts determined by multiplying the Canadian Cost and U.S. Cost of the Units subject to this Lease on such date by the applicable percentages set forth opposite such date in the following schedule:

RENTAL		
<u>Rental Payment Date No.</u>	<u>Percentage of Canadian Cost</u>	<u>Percentage of U.S. Cost</u>
1	.018804636%	.004806464%
2	018804636	.004806464
3	1.692418	.007582
4	1 692418	.007582
5	1.692418	.007582

<u>Rental Payment Date No.</u>	<u>Percentage of Canadian Cost</u>	<u>Percentage of U.S. Cost</u>
6	1.692418%	.007582%
7	1.692418	.007582
8	1.692418	.007582
9	1.692418	.007582
10	1.692418	.007582
11	1.692418	.007582
12	1.692418	.007582
13	1.692418	.007582
14	1.692418	.007582
15	1.692418	.007582
16	1.692418	.007582
17	1.692418	.007582
18	1.692418	.007582
19	1.692418	.007582
20	1.692418	.007582
21	1.692418	.007582
22	1.692418	.007582
23	1.692418	.007582
24	1.692418	.007582
25	1.692418	.007582
26	1.692418	.007582
27	1.692418	.007582
28	1.692418	.007582
29	1.692418	.007582
30	1.692418	.007582
31	1.692418	.970582
32	1.692418	.970582
33	1.692418	.970582
34	1.692418	.970582
35	2.662999	0
36	2.662999	0
37	2.662999	0
38	2.662999	0
39	2.662999	0
40	2.662999	0
41	2.662999	0
42	2.662999	0
43	2.662999	0
44	2.662999	0
45	2.662999	0
46	2.662999	0
47	2.662999	0
48	2.662999	0

<u>Rental Payment Date No.</u>	<u>Percentage of Canadian Cost</u>	<u>Percentage of U.S. Cost</u>
49	2.662999%	0%
50	2.662999	0
51	2.662999	0
52	2.662999	0
53	2.662999	0
54	2.662999	0
55	2.662999	0
56	2.662999	0
57	2.662999	0
58	2.662999	0
59	2.662999	0
60	2.662999	0
61	2.662999	0
62	2.662999	0
63	2.662999	0
64	2.662999	0
65	2.662999	0
66	2.662999	0
67	2.662999	0
68	2.662999	0
69	2.662999	0
70	2.662999	0
71	2.662999	0
72	2.662999	0
73	2.662999	0
74	2.662999	0
75	2.662999	0
76	2.662999	0
77	2.662999	0
78	2.662999	0
79	2.662999	0
80	2.662999	0
81	2.662999	0
82	2.662999	0

The first such quarterly rental payment shall be made in respect of the Units subject to this Lease which shall have been settled for on or prior to April 1, 1972 under the Manufacturing Agreement and the Equipment Trust Agreement and such payment shall be in an amount equal to the sum of the percentages of the Canadian Cost and U.S. Cost of each such Unit (as set forth in the schedule above) for each day elapsed from and including the date such Units are so settled for to and including April 1, 1972 The second such

quarterly rental payment, covering the period from April 2, 1972 to and including July 1, 1972, shall be in an amount equal to the sum of (x) the percentages of the Canadian Cost and U.S. Cost (as set forth in the schedule above) of the Units subject to this Lease which shall have been settled for on or before April 1, 1972, and (y) the percentages of the Canadian Cost and U.S. Cost (as set forth in the schedule above) of each such other Units subject to this Lease for each day elapsed from and including the date such Units are so settled for to and including July 1, 1972. The remaining quarterly rental payments in respect of each Unit subject to this Lease shall be in an amount equal to the sum of the percentages of the Canadian Cost and the U.S. Cost of such Units (as set forth in the schedule above).

All rental and other payments provided for in this Lease to be made to the Lessor shall be made to the Lessor 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 the date on which the final quarterly payment of rent in respect thereof is due hereunder.

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

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words: "OWNED BY CANADA PERMANENT TRUST COMPANY, 320 BAY STREET, TORONTO, ONTARIO, 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 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 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 Unit, execute and deliver to or upon the order of the Lessee a 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.

It is acknowledged and agreed that the Casualty Value payable by the Lessee to the Lessor shall be paid in lawful money of Canada and of the United States of America in the manner hereinafter described. That portion of the Casualty Value payable in lawful money of Canada shall be equal to the amount payable by the Lessor to the Trustee pursuant to the second paragraph of Section 4.07 of the Equipment Trust Agreement. That portion of the Casualty Value payable in lawful money of the United States of America shall be computed as follows: (i) the Casualty Value shall be determined on the basis of the U.S. Cost of the Equipment (as defined in § 2 of this Lease); (ii) there shall be deducted from the Casualty Value (as so determined) an amount equal to the amount which would be payable by the Lessor to the Trustee pursuant to the second paragraph of Section 4.07 of the Equipment Trust Agreement if such amount was to be paid to the Trustee in lawful money of the United States of America; (iii) the amount remaining, after deducting the assumed payments to the Trustee described in clause (ii) above from the Casualty Value determined in the manner described in clause (i) above, shall be the portion of the Casualty Value payment which shall be payable by the Lessee in lawful money of the United States of America.

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	107.7682%	42	101.6894%
2	107.7682	43	99.8986
3	109.4141	44	98.0783
4	110.9728	45	96.2281
5	111.5670	46	94.3489
6	112.9881	47	92.4453
7	114.2750	48	90.5149
8	115.4668	49	88.5574
9	116.5611	50	86.5719
10	117.6000	51	84.5666
11	118.5036	52	82.5376
12	119.3087	53	80.4842
13	120.0128	54	78.4043
14	120.6556	55	76.3095
15	121.1616	56	74.1940
16	121.5652	57	72.0575
17	121.8639	58	69.8959
18	122.0951	59	67.7246
19	122.1938	60	65.5361
20	122.2339	61	63.3299
21	122.2336	62	61.1004
22	122.2071	63	58.8668
23	122.1292	64	56.6198
24	122.0123	65	54.3588
25	121.8560	66	52.0763
26	121.6737	67	49.7959
27	121.4419	68	47.5060
28	121.1722	69	45.2061
29	120.8641	70	42.8869
30	120.5341	71	40.5762
31	119.2085	71	38.2604
32	117.8253	73	35.9391
33	116.3840	74	33.6007
34	114.8961	75	31.2778
35	113.3601	76	28.9545
36	111.7903	77	26.6305
37	110.1861	78	24.2920
38	108.5511	79	21.9765
39	106.8833	80	19.6657
40	105.1837	81	17.3593
41	103.4516	82	15.0000

Thereafter, the lesser of 15 0000% or the Fair Market Value thereof immediately prior to the Casualty Occurrence, such Fair Market Value to be calculated in the manner provided in § 19 hereof.

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

§ 7. *Annual Reports.* On or before April 1 in each year, commencing with the year 1973, the Lessee will furnish to the Lessor and the Trustee, in such number of counterparts or copies as may reasonably be requested an accurate statement signed by an authorized representative, (i) showing, as of the preceding December 31, the amount, description and numbers of all Units 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.* 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 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 peaceable 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 compliance with such laws, regulations, requirements and rules so long as such Unit is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Trustee, adversely affect the property or rights of the Lessor or the Trustee hereunder or under the Equipment Trust Agreement.

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

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 shall be immediately vested in the Lessor and the Trustee the same interest in such accessions, parts or replacements as the interests of the Lessor and the Trustee in such Unit. The Lessee may make alteration or modifications in any Unit so long as it does not affect the value of such Unit adversely.

The Lessee agrees to indemnify and save harmless the Lessor and the Trustee against any charge or claim made against the Lessor or the Trustee and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Trustee may incur in any manner by reason of the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any

Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee whichever is later, and to indemnify and save harmless the Lessor and the Trustee against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor or the Trustee under this paragraph for negligence on the part of the Lessor or the Trustee. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which shall have been returned to the Lessor pursuant to §§ 10 or 12 hereof or after this Lease with respect to such Unit has otherwise terminated, *provided* that such charge, claim, expense, loss or liability is attributable to an event occurring after such Unit was so returned or this Lease with respect to such Unit terminated, and *provided, further*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, 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, 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, arrange-

ments, 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 ineffectiveness 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

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 each Unit subject to this Lease (save and except those excluded pursuant to § 6 thereof), which represents the excess of (x) the present value at the time of such termination of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the net rentals which the Lessor reasonably estimates to be obtainable for the lease of the Unit during such period, such present value to be computed in each case on a basis of 5% per annum discount compounded quarterly from the

respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Beneficiary (as defined in § 14 hereof) in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Beneficiary, will cause the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Beneficiary if it had been entitled to utilization of all or such portion of depreciation deductions with respect to the Units computed in accordance with the method listed in Section 167(b) of the Internal Revenue Code of 1954 as amended to the date hereof most favorable to the Beneficiary, which was lost, not claimed, not available for claim or disallowed in respect of the termination of this Lease, the Lessor's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default. 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 the 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 of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same, *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

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

§ 11. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of 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 encumbrance resulting from claims against the Lessor or the Trustee not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Trustee or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or 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, 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 of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport

the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If 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 (other than a Unit which has suffered a Casualty Occurrence) shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the interchange rules of the Association of American Railroads if applicable 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, 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 Canada with full corporate power to enter into this Lease, the Manufacturing Agreement, the Equipment Trust Agreement and the Assignment, and of the opinion of counsel for the Manufacturer referred to in paragraph 3 04 (b) of the Equipment Trust Agreement

§ 14 *Indemnity in Respect of Tax Matters.* The Lease, the Equipment Trust Agreement, the Manufacturing Agreement and the Owner Trust Agreement have been entered into on the basis that the beneficiary of the Lessor, namely George S Eccles (herein called the "Beneficiary") shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof, to an owner of property including (without limitation) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) If (other

than for the reasons set forth below) the Beneficiary shall lose or shall not have or shall lose the right to claim, or if (other than for the reasons set forth below) there shall be disallowed with respect to the Beneficiary, all or any portion of such depreciation deductions with respect to a Unit in computing taxable income under one of the accelerated methods of depreciation provided in said Section 167(b) for the period this Lease is in effect, the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor and/or the Beneficiary that such depreciation deductions have not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Beneficiary, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Beneficiary had been entitled to utilization of all or such portion of the most favorable of such depreciation deductions which were not claimed or were disallowed and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest which may be assessed by the United States against the Beneficiary attributable to the loss of all or any portion of such depreciation deductions; *provided, however*, that such rental rate shall not be so increased if the Beneficiary shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Beneficiary all or any portion of such depreciation deductions with respect to such Unit as a direct result of the occurrence of any of the following events

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

(ii) a voluntary transfer by the Lessor or the Beneficiary (other than as contemplated by the Equipment Trust Agreement) of any interest in such Unit, the disposition by the Lessor or the Beneficiary of any interest in such Unit or the reduction by the Lessor or the Beneficiary 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 Beneficiary to claim such depreciation deductions in its income tax returns for the appropriate year or the failure of the Lessor or the Beneficiary to follow proper procedures in claiming the same; or

(v) the failure of the Beneficiary to have sufficient income to benefit from such depreciation deductions.

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 depreciation deductions 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 8½% 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 Commission 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 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 April 1, 1972, an amount equal to (x) the rental payment payable by the Lessor to the Trustee on or before April 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 quarterly rental payment payable by the Lessee to the Lessor under § 2 hereof.

(b) The Lessee agrees to pay to the Lessor on the Business Day (as defined in the Equipment Trust Agreement) next preceding July 1, 1972, an amount equal to (x) the rental payment payable by the Lessor to the Trustee from April 2, 1972 up to and including July 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 second quarterly rental payment payable by the Lessee to the Lessor under § 2 hereof.

(c) 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 May 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 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.

(d) 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 May 1, 1972, or on such earlier date as may be agreed upon by the Trustee and the Lessor, any interest (in excess of accrued interest paid from Deposited Cash [as defined in the Equipment Trust Agreement] at the time of purchase) or other profit which may be realized from any sale or redemption of Investments

§ 19. *Purchase and Renewal Options* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to the end of the term 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 two additional five-year periods 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 July 1, 2002, at a rental equal to the "Fair Rental Value" of such Units, payable in 20 quarterly payments for each five-year period, such quarterly payments to be made on January 1, April 1, July 1 and October 1 in each year of the applicable extended term or (b) to purchase some or all, 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. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne 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 Assurance.* 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 31, 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, 110 Yonge Street, Toronto, Ontario, Canada, attention of Corporate Trust Department.

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

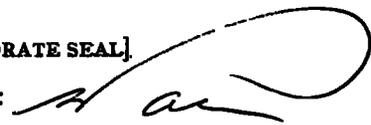
IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused this instrument to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above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

THE CANADA TRUST COMPANY,
as Owner-Trustee,

by 
Authorized Officer


Authorized Officer

[CORPORATE SEAL]

Attest: 

CANADIAN NATIONAL RAILWAY
COMPANY,

by 
Vice-President

Approved
as to form only

Attorney

[CORPORATE SEAL]

Attest: 

ASSISTANT ~~Deputy~~ Secretary.

SCHEDULE I

<u>Quantity</u>	<u>Type and Specifications</u>	<u>Cost</u>	<u>Identifying Numbers (both inclusive)</u>
105 ✓ 104 <i>AS</i> <i>ky</i> <i>Ru</i>	4-Container flat cars; CN Specification F-50-9 dated June, 1970, General Arrangement Drawing CN 9H-37285, Specification SS-1966 and Addendum No. 1 to Specification F-50-9 dated 24 March, 1971	\$2,217,162.00 (Canadian) ✓ \$2,197,034.09 <i>ky</i> <i>ky</i> <i>Ru</i>	CN 635374- 635462 639524- 639526 635467- 635468 <i>ky</i> <i>AS</i>



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

On this ^{26th} day of January, 1972, before me personally appeared *R. M. Andrew* to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CANADA 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.

Philip J. Poolica
Notary Public

[NOTARIAL SEAL]

PROVINCE OF QUEBEC }
CITY OF MONTREAL } s.s.:

On this ^{25th} day of January, 1972, before me personally appeared *W. B. Cairnes* to me personally known, who, being by me duly sworn, says that he is the Vice-President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

P. P. Langlois
Notary Public
Notary

My commission is for life.

[NOTARIAL SEAL]

ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 31, 1971, by and between THE CANADA TRUST COMPANY, a trust company incorporated under the laws of Canada, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 31, 1971 with George S. Eccles, and Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee), under an Equipment Trust Agreement dated as of December 31, 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 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 January 1, April 1, July 1 or October 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 January 1,

April 1, July 1 or October 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 or 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 Agreement to the contrary notwithstanding, no amounts shall be considered to be due and payable by the Company under the Equipment Trust Agreement in the event that such amounts shall have been paid by the Lessee to the Trustee pursuant to the Lease, the Equipment Trust Agreement, this Assignment and/or the Lessee's Consent and Agreement annexed hereto.

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

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

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

ment in trust for the Trustee and to turn them over to the Trustee forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

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

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

(d) To pay immediately upon demand, all sums expended by the Trustee under the authority hereof, together with interest thereon at the rate of 8½% 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 cheques 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 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 CANADA TRUST COMPANY,
as Owner-Trustee,

[CORPORATE SEAL]

Attest:



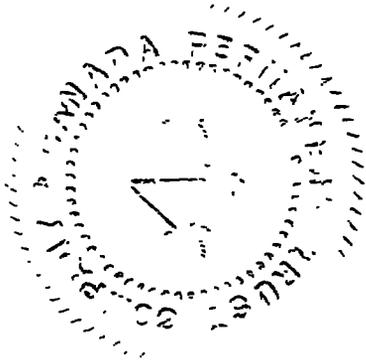
by


Authorized Officer


Authorized Officer

Accepted.

CANADA PERMANENT TRUST COMPANY,
as Trustee.



by


ASSISTANT VICE-PRESIDENT


ASSOCIATE SECRETARY

PROVINCE OF ONTARIO }
JUDICIAL DISTRICT OF YORK } ss.

On this *26th* day of January 1972, before me personally appeared *R. M. Andrew*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CANADA TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. Oliver Pollock
Notary Public

[NOTARIAL SEAL]



LESSEE'S CONSENT AND AGREEMENT

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

As an inducement to the purchasers of the equipment trust certificates to be issued pursuant to the Equipment Trust Agreement (hereinafter called the Equipment Trust Agreement) dated as of December 31, 1971, between Canada Permanent Trust Company, as Trustee (hereinafter called the Trustee) and The Canada Trust Company, as Owner-Trustee (hereinafter called the Lessor), (a copy of which has been delivered to the undersigned) pursuant to which the Lessor is partially financing the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Lessor to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned agrees that

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

(2) the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Trustee were named therein as the Lessor,

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Lessor or otherwise, and the payment thereof to the Trustee shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Trustee

against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Trustee not arising out of the transactions contemplated by the Equipment Trust Agreement, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease, prior to or *pari passu* with the right of the Trustee to apply such Payments or sums equivalent thereto, as provided in the Assignment;

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

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

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

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

This Consent and Agreement, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the

laws of the Province of Ontario and, for all purposes, shall be construed in accordance with the laws of said Province.

Dated as of December 31, 1971.

CANADIAN NATIONAL RAILWAY
COMPANY,

Approved
as to form only
[Signature]
Attorney

by *[Signature]*
Vice-President

[CORPORATE SEAL]

Attest:

[Signature]
ASSISTANT ~~Executive~~ Secretary

Accepted:

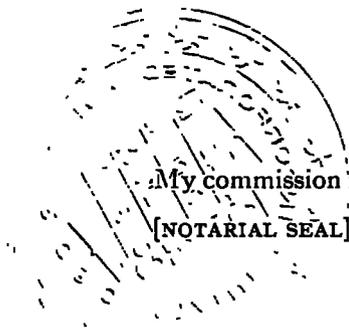
CANADA PERMANENT TRUST COMPANY
as Trustee,

by *[Signature]*
ASSISTANT VICE-PRESIDENT
[Signature]
ASSOCIATE SECRETARY

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.

On this *25th* day of January, 1972, before me personally appeared *W. B. Coiner*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

L. Pauglies
Notary Public
Notary



My commission is for life.

[NOTARIAL SEAL]

