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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

between

FIRST WESTERN BANK AND TRUST COMPANY,
As Owner-Trustee,

and

GRAND TRUNK WESTERN RAILROAD COMPANY

Dated as of December 15, 1970

LEASE OF RAILROAD EQUIPMENT dated as of December 15, 1970, between FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Owner-Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of December 15, 1970, with WELLS FARGO BANK, NATIONAL ASSOCIATION, and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into Conditional Sale Agreements each dated as of December 15, 1970 (hereinafter called the Conditional Sale Agreements), with Pullman Incorporated (Pullman Standard Division) and National Steel Car Corporation, Limited (hereinafter together referred to as the Manufacturers), respectively, wherein the Manufacturers agree to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

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

WHEREAS, the Lessee desires to lease all the units of said railroad equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreements on or prior to July 15, 1971 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), of which the Lessee is

a wholly-owned subsidiary, has agreed, subject to receipt of the approval of the Governor in Council, to guarantee to the Lessor and the Vendor, as provided in a Guaranty Agreement to be dated as of December 15, 1970 (hereinafter called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums payable by, and the due and punctual performance of all other obligations of, the Lessee under this Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreements:

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

The Lessee represents and warrants that, at the time of delivery of each Unit to the Lessee, such Unit will not have

been used by the Lessee and no amortization or depreciation will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* Units subject to this lease with road numbers GTW 304853-304926, inclusive, are sometimes hereinafter called Section 184 Units and Units subject to this lease with road numbers CNIS 379250-379499, inclusive are sometimes hereinafter called Section 167 Units. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 60 consecutive quarterly payments, payable on the business day next preceding January 15, April 15, July 15 and October 15 of each year commencing April 15, 1971. The first of such quarterly payments shall be in an amount equal to .020278% of the Purchase Price of each Unit subject to this Lease which shall have been settled for under the Conditional Sale Agreements on or prior to April 15, 1971 (the term "Purchase Price" as used herein meaning the base price per Unit set forth in Schedule A hereto as increased or decreased by agreement among the Manufacturer, the Lessor and the Lessee, but expressed, in the case of Section 167 Units, in United States dollars based on the actual cost to the Lessor and the Vendor of the Canadian dollars used to make the payments to the Manufacturer contemplated by subparagraph (a) of Article 3 of the related Conditional Sale Agreement and Section 5 of the assignment of such Conditional Sale Agreement to the Vendor, *provided* that the Lessee's consent shall be obtained for any exchange, prior to the date of such payments (but not on the date of such payments), of United States dollars for Canadian dollars for the purpose of obtaining Canadian dollars to make such payments, and *provided, further*, 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) for each day elapsed from and including the date such Unit is settled for under the Con-

ditional Sale Agreement to April 15, 1971; the next such quarterly payment shall be in an amount equal to the sum of (x) 1.8250% of the Purchase Price of each Unit subject to this Lease which shall have been so settled for on or before April 15, 1971, plus (y) .020278% of the Purchase Price of each other Unit subject to this Lease for each day elapsed from and including the date such Unit shall have been so settled for to and including July 15, 1971; the next 10 of such quarterly payments shall each be in an amount equal to 1.8250% of the Purchase Price of each Unit; and the remaining 48 of such quarterly payments shall be in an amount equal to 2.9420% of the Purchase Price of each Section 184 Unit and 3.3662% of the Purchase Price of each Section 167 Unit.

All payments provided for in this Lease to be made to the Lessor shall be paid to the account of the Lessor, care of the Vendor, First National Bank Building, St. Paul, Minnesota 55101, attention of Corporate Trust Department, and shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreements accrued at the time such payments are due hereunder, with any balance being paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturers or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or

any other person, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

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

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

"FIRST TRUST COMPANY OF SAINT PAUL,
ST. PAUL, MINNESOTA, AGENT—OWNER"

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from

time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreements. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

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

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

other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreements, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreements. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturers or the Vendor pursuant to Article 9 of the Conditional Sale Agreements not covered by the foregoing paragraph of this § 5, the

Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 9.

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

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

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover

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

The Casualty Value of each Section 167 Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit set forth in the schedule set out below opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	107.66676%	31	88.43131%
2	108.89768	32	86.42651
3	110.06856	33	84.38509
4	111.17777	34	82.30806
5	112.22364	35	80.19490
6	113.21064	36	78.04511
7	114.13716	37	75.85815
8	115.00157	38	73.63500
9	115.80221	39	71.37512
10	116.54350	40	69.07797
11	117.22384	41	66.74298
12	117.84159	42	64.37109
13	116.85386	43	61.96175
14	115.79777	44	59.51436
15	114.67222	45	57.02833
16	113.47610	46	54.50457
17	112.20830	47	51.94247
18	110.87384	48	49.34140
19	109.47173	49	46.70075
20	108.00099	50	44.02137
21	106.46062	51	41.30261
22	104.85577	52	38.54381
23	103.18561	53	35.74430
24	101.46546	54	32.90490
25	99.70947	55	30.02492
26	97.91869	56	27.10364
27	96.09268	57	24.14034
28	94.23095	58	21.13580
29	92.33305	59	18.08928
30	90.40000	60 and thereafter	15.00000

The Casualty Value of each Section 184 Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit set forth in the schedule set out below opposite the number of such rental payment date:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	106.21887%	31	80.61838%
2	107.17363	32	78.75233
3	108.02006	33	76.86238
4	108.75572	34	74.94812
5	109.37816	35	73.00910
6	109.88484	36	71.04488
7	110.27317	37	69.05501
8	110.54052	38	67.03901
9	110.68419	39	64.99642
10	110.72705	40	62.92675
11	110.73262	41	60.82951
12	110.70067	42	58.70418
13	109.51396	43	56.55026
14	108.27385	44	54.36721
15	106.97982	45	52.15450
16	105.63133	46	49.91157
17	104.22784	47	47.63787
18	102.76880	48	45.33282
19	101.25366	49	42.99583
20	99.68185	50	40.62630
21	98.05280	51	38.22362
22	96.40401	52	35.78717
23	94.73515	53	33.31631
24	93.04587	54	30.81037
25	91.33581	55	28.26871
26	89.60462	56	25.69063
27	87.85192	57	23.07544
28	86.07733	58	20.42242
29	84.28048	59	17.73086
30	82.46096	60 and thereafter	15.00000

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

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

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1972, the Lessee will cause to be furnished to the Lessor and the Vendor in such number of counterparts or copies as may reasonably be requested an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and number of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the

case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 8 of the Conditional Sale Agreements shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Lessor's Representation and Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name and for the account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 14 of the Conditional Sale Agreements and Annex A to each thereof. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessor represents and warrants as follows:

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

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

The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease; *provided, however*, that this Lease shall be subordinated to the rights of the Vendor under the Conditional Sale Agreements but neither the Lessor nor the Vendor shall have the right to terminate or impair the Lessee's possession or use of the property subject to this Lease so long as the Lessee shall not be in default under this Lease; and, subject to the foregoing, covenants that the Lessor has not done and will not do (or suffer to be done by any person claiming through or against the Lessor) any act which interferes with or impairs (x) the Lessee's possession and use in accordance with the

terms of this Lease of the Units or (y) the title to the Units which may be transferred or conveyed to the Lessee under the provisions of §§ 6 and 12 of this Lease and that any title so conveyed shall then be free of any lien, claim and encumbrance of the Vendor.

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

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreements.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this

Lease in good order and repair, reasonable wear and tear excepted.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit (except such as can be removed without damage to, and without impairing the originally intended function or use of, such Unit, including without limitation, racks or partitions [hereinafter called Temporary Alterations]), and at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreements) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the Temporary Alterations from the Units and restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreements or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in

damage to property or injury to any person; *provided, however*, that the Lessee shall not be required to indemnify the Lessor or the Vendor under this paragraph for negligence on the part of the Lessor or the Vendor. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which, and to an event occurring after such Unit, shall have been returned to the Lessor pursuant to §§ 10 or 13 hereof or after this Lease with respect to such Unit has otherwise terminated; *provided, however*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

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

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

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

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

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

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

been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental pe-

riod by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 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, (iii) an amount in respect of each Section 184 Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) available to non-railroad lessors of railroad equipment which was lost, not claimed, not available for claim, disallowed or recaptured in respect of any Section 184 Unit as a

result of the termination of this Lease, the Lessee's loss of the right to use such Section 184 Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Section 184 Unit after the occurrence of an Event of Default, and (iv) an amount in respect of each Section 167 Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of depreciation deductions with respect to the Section 167 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 Lessor, 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 Section 167 Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Section 167 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 releasing of the Units.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, all or any portion of the

amortization deduction with respect to a Section 184 Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment, shall be, for all purposes of this Lease, deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Rapid Amortization Deduction in respect of such Section 184 Unit, agree to pay to the Lessor the revised rental rate in respect of such Section 184 Unit determined as provided in the third paragraph of § 15 of this Lease.

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

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

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

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

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

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

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

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

the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to rights under §§ 2, 5, 6, 9 and 15) shall inure to the benefit of the Lessor's assigns (including the beneficiary of any such assignee if such assignee is a trust). Whenever the Lessor is referred to in this Lease, it shall apply and refer to each assignee of the Lessor.

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

or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it, and the Guarantor shall be entitled to the use of Section 167 Units, upon the lines of railroad owned or operated by the Lessee or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreements.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or (ii) to sublease any Unit to such subsidiary or affiliated corporations of the Lessee or the Guarantor as are at the time such sublease is executed domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia, or to sublease the Section 167 Units to the Guarantor; *provided, however,* that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreements and the Lessor under this Lease. No such sublease shall relieve the Lessee of any liability or obligation here-

under which shall be and remain that of a principal and not a surety.

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

§ 12. *Purchase Option.* 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 60th rental payment date, elect to purchase all but not fewer than all Units then covered by this Lease at the end of the original term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

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

If on or before four months prior to the expiration of the original or any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the relevant Units, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by

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

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any extended term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of

the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor and the Lessee shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice.

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

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

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

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

C. upon the due filing and recordation of this Lease, the Conditional Sale Agreements and the Agreement and Assignments dated as of December 15, 1970 (hereinafter called the Assignments), between the respective Manufacturers and the Vendor, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units, in any State of the United States of America and the District of Columbia;

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) of the written opinions of counsel for the respective Manufacturers to the effect that at the time of delivery thereof to the Lessor under the Conditional Sale Agreements, each Unit was free of all claims, liens, security interests and other encumbrances except only the rights of the Company under the Conditional Sale Agreements and the rights of the Lessee under this Lease.

§ 15. *Federal Income Taxes; Opinion of Tax Counsel.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation) depreciation deductions with respect to Section 167 Units, computed in accordance with any of the methods listed in Section 167(b) of the Code or, with respect to Section 184 Units, an allowance for the Rapid Amortization Deduction (as

defined in § 9 of this Lease) available to non-railroad lessors of railroad equipment.

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

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

(ii) a voluntary transfer by the Lessor (other than by the assignment of this Lease to the Vendor) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Conditional Sale Agreements or of the assignment of this Lease to the Vendor without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim such depreciation deductions in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming such depreciation deductions; or

(v) the failure of the Lessor to have sufficient income to benefit from the deduction of such depreciation.

If (other than for the reasons set forth in clauses (i) through (v) of the preceding paragraph of this § 15) the Lessor shall lose, or shall not have or shall lose the right to claim, or if (other than for the reasons set forth in clauses (i) through (v) of the preceding paragraph of this § 15) there shall be disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to a Section 184 Unit, the rental rate applicable to such Section 184 Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed on and after the next succeeding rental date after payment on the tax attributable thereto, be increased by such amount for such Section 184 Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of which Section 184 Unit under this

Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of all or any portion of the Rapid Amortization Deduction; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of the Rapid Amortization Deduction with respect to such Section 184 Unit as a direct result of the occurrence of any of the events listed in clauses (i) through (v) of the preceding paragraph of this § 15.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of such depreciation deductions on any Unit, or the Rapid Amortization Deduction on any Section 184 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 or such Rapid Amortization Deduction disallowed, computed at the rate of $9\frac{1}{8}\%$ per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate

action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

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

On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor, shall have received a written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for federal income tax purposes and upon such review and on the basis of such understanding as such counsel deem necessary:

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

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

C. the Lessor will be entitled to deductions under Section 163 of the Code with respect to interest on the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreements.

§ 16. *Mileage Allowance; Subrogation.* Provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other moneys payable by reason of the use of the Units, and any such mileage allowances or other moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee

against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, up to an amount equal to the Casualty Value of any Unit which shall have suffered a Casualty Occurrence, paid by the Lessee to the Lessor or the actual expense of repair of a Unit not suffering a Casualty Occurrence paid by the Lessee, as set forth in a certificate of the Treasurer or Chief Accounting Officer of the Lessee, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

§ 17. *Additional Covenants and Guaranty of the Lessee.* As an inducement to the Vendor to enter into the assignments of the Conditional Sale Agreements and as an inducement to the Lessor to enter into this Lease, the Lessee unconditionally guarantees to the Vendor, and covenants with the Lessor to guarantee unconditionally to the Vendor, the due and punctual performance of all obligations of the Lessor and the due and punctual payment of any and all sums payable by the Lessor under the Conditional Sale Agreements including, but not limited to, that portion of the Purchase Price of the Equipment (as

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

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

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

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

deposit forthwith thereafter to be published in the *Canada Gazette* in accordance with Section 148 of the Railway Act of Canada.

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

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

§ 19. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to $9\frac{7}{8}\%$ per annum of the amount of the overdue rentals for the period of time during which they are overdue.

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

if to the Lessor, 235 Montgomery Street, San Francisco, California 94104, *attention of* Edgar H. Canfield, Vice President and Trust Officer;

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

and at P. O. Box 8100, Montreal 101, Quebec, Canada,
attention of the Treasurer;

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

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

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

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

Although this Lease is dated as of December 15, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

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

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

FIRST WESTERN BANK AND TRUST COMPANY,

As Owner-Trustee,

by *E. J. [Signature]* Vice President

[CORPORATE SEAL]

Attest:

J. I. [Signature]
Assistant Secretary



GRAND TRUNK WESTERN RAILROAD COMPANY,

[CORPORATE SEAL]

by

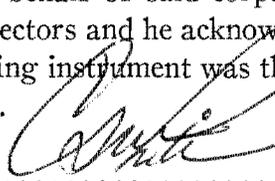
A. B. [Signature]
Vice President

Attest:

J. [Signature]
Assistant Secretary

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } ss.:

On this 26 day of Dec, 1970, before me personally appeared EDGAR H. CANFIELD, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST WESTERN BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



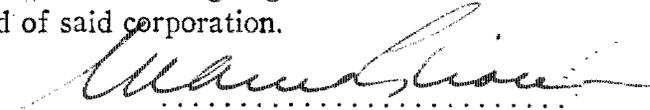
Notary Public

My Commission Expires March 9, 1971
C. S. WHITE

OFFICIAL SEAL
C. S. WHITE
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
SAN FRANCISCO

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this 23rd day of December, 1970, before me personally appeared R. O. Boudreau, to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[NOTARIAL SEAL]

My Commission is for life.

SCHEDULE A

Type and Specifications	Manufacturer's Plant	Quantity	Road Numbers (inclusive)	Unit Base Price	Total Base Price
89' 4" tri-level flat cars, Pullman Incorporated (Pullman Standard Division) Specification 9517-A, together with proposal and letter of Pullman dated, respectively, October 22, 1970, November 6, 1970, and December 9, 1970, and letter of Grand-Trunk Western Railroad Company dated November 27, 1970. AAR Mechanical Designation FA.	Butler, Pa.	74	GTW 304853-304926	\$18,400	\$1,361,590
100-ton covered hopper cars, National Steel Car Corporation, Limited, Specification No. F-70-12, dated April 1969, Addendum #1 thereto dated May 8, 1970, SS-1966 and General Arrangement Drawing 9H-37092, together with proposal and letter of National Steel Car Corporation, Limited, dated, respectively, June 8 and June 15, 1970; AAR Mechanical Designation LO.	Hamilton, Ontario	250	CNIS 379250-379499	\$17,601 (Canadian)	\$4,400,230 (Canadian)

COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 15, 1970 (hereinafter called "this Assignment"), by and between FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Owner-Trustee (hereinafter called the Company) under a Trust Agreement dated as of December 15, 1970, with WELLS FARGO BANK, NATIONAL ASSOCIATION, and FIRST TRUST COMPANY OF SAINT PAUL, acting as Agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of December 15, 1970 (hereinafter called the Finance Agreement), among the Agent and the Investors referred to therein (hereinafter called the Investors).

WHEREAS the Company has entered into Conditional Sale Agreements dated as of December 15, 1970 (hereinafter called the Conditional Sale Agreements), with Pullman Incorporated (Pullman Standard Division) and National Steel Car Corporation, Limited, respectively, providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreements as are delivered to and accepted by the Company thereunder; and

WHEREAS the Manufacturers have assigned their interests in the Conditional Sale Agreements to the Agent, acting under the Finance Agreement, pursuant to Agreement and Assignments dated as of December 15, 1970; and

WHEREAS the Company and GRAND TRUNK WESTERN RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of December 15, 1970 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agree-

ments and as an inducement to the Investors to invest in the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreements), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Agent;

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. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreements, 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, payments with respect to the guarantee of the Conditional Sale Agreements by the Lessee provided for in § 17 of the Lease 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. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Agent in its own name, or the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become en-

titled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Company agrees to cause all the Payments to be made by the Lessee directly to the Agent. The Agent agrees to hold and disburse the Payments in accordance with the provisions of the Finance Agreement.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding this 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 Agent.

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

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Agent, the Company will not anticipate the rents under the Lease or 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 or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void; the Company will hold all Payments received by the Company which are

assigned and set over to the Agent by this Assignment in trust for the Agent and will turn them over to the Agent 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, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the Company to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent 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 Agent, 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, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

4. The Company does hereby constitute the Agent the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance

for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligations under the Conditional Sale Agreements, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease 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 Conditional Sale Agreements have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreements 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 Agent'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, (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale Agreements 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 Conditional Sale Agreements on or prior to the date hereof and (e) the Lease and the Conditional Sale Agreements 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 under Conditional Sale Agreements or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreements shall occur and be continuing, the Agent may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent with or without bringing any action or proceeding or by a receiver to be appointed by a court, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreements and do any acts which the Agent 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 invalidate any act done hereunder.

7. The Company covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent, as assignee of the Company's right, title and interest 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 Agent 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 Agent or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure, to the satisfaction of the Agent and its counsel, this Assignment and the provisions hereof under Section 20c of the Interstate Commerce Act, as such Section has been or shall be amended.

9. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

10. This Assignment shall be governed by the laws of the State of California, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

11. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Agent at its office at First National Bank Building, St. Paul, Minnesota 55101, *attention of* Corporate Trust Department, or at such other address as the Agent shall designate.

12. The Company will promptly cause this Assignment to be filed and recorded in accordance with § 18 of the Lease.

13. Anything herein or in the Lease or in the Conditional Sale Agreements (or either of them) contained to the contrary notwithstanding:

(a) the Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in § 9 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreements (or either of them) which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreements be deemed to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee; and

(b) The Agent for itself and its successors and assigns, hereby agrees with the Company and its successors and assigns, that, except for the direct collection by the Agent of all rentals, profits and other sums payable by the Lessee to the Company pursuant to the Lease, the Agent will not, so long as no Event of Default under the Lease or an event of default under the Conditional Sale Agreements (or either of them) has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail

itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Agent by this Assignment.

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

FIRST WESTERN BANK AND
TRUST COMPANY,
As Owner-Trustee,

[CORPORATE SEAL]

by *[Signature]*
Vice President

Attest:

[Signature]
Assistant Secretary

FIRST TRUST COMPANY OF
SAINT PAUL,

As Agent,
by *[Signature]*
Vice President

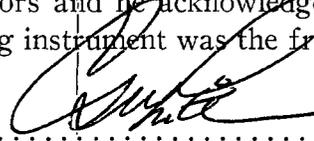
[CORPORATE SEAL]

Attest:

[Signature]
Assistant Secretary

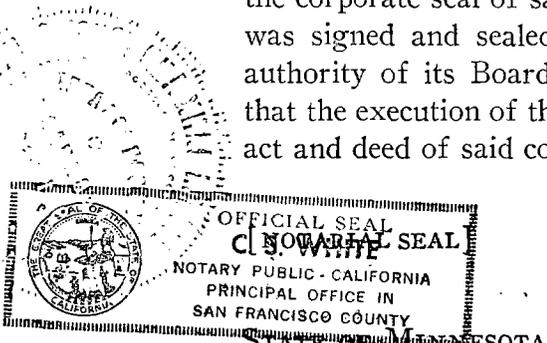
STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } ss.:

On this 26 day of Dec, 1970, before me personally appeared EDGAR H. CANFIELD, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST WESTERN BANK AND 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.



Notary Public

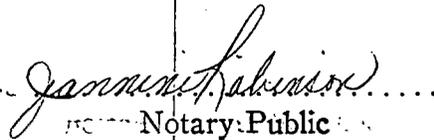
My Commission Expires March 9, 1971
C. S. WHITE



STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 24th day of DECEMBER, 1970, before me personally appeared HARLEY L. DANFORTH, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST TRUST COMPANY OF SAINT PAUL, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]


Notary Public

JEANNINE ROBINSON,
Notary Public, Dakota County, Minn.
My Commission Expires April 13, 1976

ANNEX I

LESSEE'S CONSENT AND AGREEMENT

The undersigned, GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of December 15, 1970 (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment of Lease and Agreement and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the Investors, parties to the Finance Agreement (a copy of which has been delivered to the Lessee) referred to in the Assignment, to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreements referred to in the Assignment, pursuant to which FIRST WESTERN BANK AND TRUST COMPANY, as Owner-Trustee (hereinafter called the Lessor) under a Trust Agreement dated as of December 15, 1970, with WELLS FARGO BANK, NATIONAL ASSOCIATION, is financing its purchase of the units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease, and in consideration of other good and valuable consideration, the Lessee 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 or otherwise in respect of the Units leased thereunder, directly to the Agent, the assignee named in the Assignment, at First National Bank Building, St. Paul, Minnesota 55101, (or at such other address as may be furnished in writing to the Lessee by the Agent) and, if the Lessee fails for any reason whatsoever to pay to the Agent any Payments, it will pay to the Agent on the respective dates or times set forth in the Lease, amounts equal to the Payments which it shall

not theretofore have paid to the Agent; it being hereby agreed that the obligation of the Lessee to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent 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 Lessee might have against the Lessor or otherwise, and the payment thereof to the Agent shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Agent against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or *pari passu* with the right of the Agent to apply such payments or sums equivalent thereto, as provided in the Assignment;

(4) the Agent 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; and

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

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Michigan and, for all purposes, shall be construed in accordance with the laws of said State.



GRAND TRUNK WESTERN RAILROAD
COMPANY,

[CORPORATE SEAL]

by *J.A. Bander*
Vice President

Attest:

J. Lyons
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of December, 1970.

FIRST TRUST COMPANY OF SAINT
PAUL,

As Agent

by *J. S. [Signature]*
Vice President

PROVINCE OF QUEBEC }
CITY OF MONTREAL } ss.:

On this *23rd* day of *December*, 1970, before me personally appeared *R.O. Bandeen*, to me personally known, who being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Maurice Chouin

Notary Public

[Signature]

[NOTARIAL SEAL]

My Commission is for life.