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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 1, 1975,

BETWEEN

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Trustee,

AND

CANADIAN NATIONAL RAILWAY COMPANY

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of December 1, 1975, between **MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY**, acting as trustee (hereinafter called the Vendor) for certain institutional investors under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) and **CANADIAN NATIONAL RAILWAY COMPANY**, a corporation duly incorporated under the laws of Canada (hereinafter called the Railroad).

WHEREAS, the Railroad has heretofore sold to **CANADIAN NATIONAL REALTIES, LIMITED** (hereinafter called the Owner), a corporation duly incorporated under the laws of Canada and affiliated with the Railroad, the new standard-gauge railroad equipment described in Schedule A hereto, built by the respective builders specified in said Schedule A (hereinafter called the Builders) and first put in service not earlier than January 23, 1975 (hereinafter called the Equipment); and

WHEREAS, the Owner and the Railroad have entered into an interim-lease agreement dated as of December 5, 1975, (hereinafter called the Interim Lease Agreement) substantially in the form annexed hereto as Exhibit A, providing for the use and possession of each unit of the Equipment by the Railroad; and

WHEREAS, the Vendor is willing to acquire, pursuant to a purchase agreement dated as of the date hereof (hereinafter called the Purchase Agreement), substantially in the form annexed hereto as Exhibit B, all the right, title and interest of the Owner in the units of the Equipment and to sell such units of the Equipment as are acquired by the Vendor pursuant to the Purchase Agreement to the Railroad under this Agreement upon and subject to the terms and conditions hereinafter set forth.

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

ARTICLE 1. *Representations by Railroad as to Construction and Sale by Builders and Sale by Railroad to Owner.* The Railroad hereby represents to the Vendor (a) that the Builders, pursuant to the purchase orders and contracts referred to in Schedule A hereto, have constructed the units of the Equipment and sold and delivered them to the Railroad, and the Railroad purchased from the Builders and accepted delivery

of and paid for, said Equipment, each unit of which was constructed in accordance with the specifications set forth therefor in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications) and (b) that the design, quality and component parts of each unit of the Equipment conformed on the date of completion of manufacture of each thereof, to all Canadian Transport Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment is new railroad equipment first put into service no earlier than January 23, 1975.

The Railroad hereby further represents to the Vendor that the Railroad has heretofore sold the Equipment to the Owner and delivered bills of sale therefor transferring good and lawful title to the Equipment to the Owner and the Owner has the right to sell the Equipment to the Vendor pursuant to the Purchase Agreement.

ARTICLE 2. *Disclaimer by Vendor of Warranties.* The Builders and the Vendor are not in privity of contract and THE VENDOR MAKES NO WARRANTY OF MERCHANTABILITY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, OR AS TO THE SUITABILITY, ADEQUACY, OPERATION, USE OR PERFORMANCE OF, THE EQUIPMENT DELIVERED TO THE RAILROAD HEREUNDER, AND THE VENDOR MAKES NO WARRANTY OR MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE VENDOR AND THE RAILROAD, ARE TO BE BORNE BY THE RAILROAD; but no provision of this Agreement is intended or shall be deemed to limit, restrict or interfere with any rights that the Railroad may have to assert and enforce from time to time, in the name and for the account of the Railroad, whatever claims and rights the Railroad, Owner or Vendor may have against the

Builders of the Equipment or of the components thereof. The Vendor shall have no responsibility or liability under this Agreement to the Railroad or any other person with respect to any of the following:

- (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by the Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith;
- (ii) the use, operation or performance of any units of the Equipment or any risks relating thereto;
- (iii) any interruption of service, loss of business or anticipatory profits or consequential damages; or
- (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any units of the Equipment.

The Railroad's acceptance of delivery of the Equipment under this Agreement shall be conclusive evidence, as between the Railroad and the Vendor, that all units of the Equipment described in any Certificate of Acceptance delivered pursuant to Article 3 hereof are in all the foregoing respects satisfactory to the Railroad and that the Railroad will not assert any claim of any nature whatsoever against the Vendor based on any of the foregoing matters.

ARTICLE 3. *Delivery and Inspection.* The Vendor shall not have any obligation to sell or deliver any unit of Equipment hereunder not acquired by the Vendor pursuant to the Purchase Agreement. Upon such acquisition pursuant to the Purchase Agreement, each such unit so acquired shall automatically become subject to this Agreement. On or prior to the Closing Date hereunder in respect of each such unit so acquired by the Vendor, the Railroad shall execute and deliver to the Vendor a certificate of acceptance (herein called a Certificate of Acceptance) stating, on behalf of the Railroad, that such unit or units have been inspected, delivered and accepted by the Railroad under this Agreement; *provided, however,* that the Builders shall not thereby be relieved of their warranties to the Railroad.

Upon acceptance by the Railroad of each unit of Equipment pursuant to this Agreement, the Railroad will assume the responsibility

and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

Notwithstanding the preceding provisions of this Article 3, any Equipment not accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom and from the Purchase Agreement. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Vendor and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom.

ARTICLE 4. Purchase Price and Payment; Interest; Closing Dates; Closing Documents and Opinions of Counsel. The purchase price (hereafter called the Purchase Price) per unit of the Equipment is set forth in Schedule A hereto.

For the purpose of making settlement hereunder, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the Owner, the Vendor and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash in immediately available United States funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) in 10 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (a) shall not, when divided by 10, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to 24% of the aggregate of the Purchase Prices for all the Equipment; and thereafter

(b) in 20 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 20, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Purchase Prices for all the Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this para-

graph (the aggregate of all said instalments provided for in subparagraphs (a) and (b) of this paragraph being hereinafter called the Conditional Sale Indebtedness).

The instalments of the Conditional Sale Indebtedness payable pursuant to the third paragraph of this Article 4 shall be payable semi-annually on January 1 and July 1 in each year commencing on July 1, 1976, to and including January 1, 1991; *provided, however*, that the instalments payable pursuant to subparagraph (a) of the third paragraph of this Article 4 shall be payable commencing on July 1, 1976, to and including January 1, 1981, and the instalments payable pursuant to subparagraph (b) of said third paragraph shall be payable commencing on July 1, 1981, to and including January 1, 1991. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on or prior to January 1, 1981, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9% per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on or after July 1, 1981, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9.75% per annum. All such interest shall be payable, to the extent accrued, on January 1 and July 1 in each year, commencing July 1, 1976.

The Railroad will pay to the Vendor in immediately available United States funds (a) on the Repayment Date (as hereinafter defined) an amount equal to interest from December 30, 1975, to the Repayment Date on an amount equal to the Surplus (as hereinafter defined), such interest calculation to be at the rates set forth above for the Conditional Sale Indebtedness on the same basis as if the Surplus constituted Conditional Sale Indebtedness incurred on December 30, 1975, and (b) on July 1, 1976, such amount, if any, as will equal interest from December 30, 1975, to the respective Closing Dates on the Conditional Sale Indebtedness incurred on each such respective Closing Date, such interest calculation to be at the rates set forth above for the Conditional Sale Indebtedness on the same basis as if the Conditional Sale Indebtedness was incurred on December 30, 1975. The term "Surplus" as used herein shall mean the difference between the actual Conditional Sale Indebtedness incurred and \$50,000,000 (U.S.); and the term Repayment Date as used herein shall mean

the earliest of (1) the Closing Date which shall be specified in a written notice given to the Vendor by the Railroad to be the last Closing Date hereunder, (2) June 30, 1976, or (3) the date of any Default (as defined in Article 8 hereof) as to which the Vendor has actual knowledge.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after December 30, 1975, and prior to June 30, 1976 (hereinafter called the Cut-off Date), as shall be fixed by the Vendor by written notice delivered to the Railroad and to the Owner at least five business days prior to the Closing Date designated therein; *provided, however*, that the Equipment settled for pursuant to this Agreement on any Closing Date shall correspond to the units of railroad equipment settled for on such date pursuant to the Purchase Agreement. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

On or prior to each Closing Date, the Railroad shall deliver or cause to be delivered to the Vendor the following documents, in form and substance satisfactory to the Vendor and to its special Canadian and special United States counsels hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsels:

(a) the Certificate or Certificates of Acceptance in respect of the Equipment in such Group;

(b) a certificate of an officer of the Railroad dated the Closing Date stating that (A) the Equipment in such Group described and specified in the Certificate or Certificates of Acceptance is new standard-gauge railroad equipment first put into service no earlier than January 23, 1975, and (B) the Purchase Price in U.S. dollars for such Equipment is not in excess of the aggregate original purchase price (converted to U.S. dollars at the rate of .98929836 U.S. Dollar per one Canadian Dollar) of such Equipment paid in full by the Railroad to the respective Builders thereof;

(c) a bill or bills of sale from the Owner, having endorsed thereon a guarantee by the Railroad, transferring all right, title and interest of the Owner in and to the Equipment in such Group to the Vendor and warranting to the Vendor that at the time of delivery of such Equipment to the Vendor, the Vendor had legal title to the Equipment described therein and good and lawful right to sell such Equipment and that title to such Equipment was, at the time of such delivery, free from all claims, liens, security interests and other encumbrances of any nature whatsoever except those created by this Agreement, together with copies, certified by the Railroad, of all intervening bills of sale since the date each unit was initially constructed and sold by the Builder thereof;

(d) an opinion of counsel for the Owner to the effect that (A) the Owner is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (B) the Purchase Agreement has been duly authorized, executed and delivered by the Owner and, assuming due authorization, execution and delivery by the Vendor, is a legal and valid instrument binding upon and enforceable against the Owner in accordance with its respective terms, (C) the bill or bills of sale executed by the Owner have been duly authorized, executed and delivered by the Owner and are valid and effective to transfer to the Vendor all right, title and interest in and to the Equipment in such Group, free of all claims, liens, security interests or other encumbrances of any nature, whether arising from, through or under the Owner, the Railroad, the Builders, or otherwise and (D) compliance by the Owner with the terms of the Interim Lease Agreement and the Purchase Agreement and the execution and delivery of the bill or bills of sale from the Owner to the Vendor does not, and will not conflict with, or result in any breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of, any

lien or encumbrance upon any of the property of the Owner, pursuant to the provisions of the Certificate of Incorporation or By-Laws of the Owner or any agreement or other instrument to which the Owner is a party or by which it is bound;

(e) an invoice or invoices (in U.S. dollars) with respect to the Equipment in such Group from the Owner to the Vendor, approved by the Railroad, together with a certificate by the Railroad that such invoices do not exceed the original invoices therefor delivered by the respective Builders of the Equipment;

(f) executed counterparts of the Interim Lease Agreement, stamped to certify filing and recordation thereof as provided in Paragraph 2 thereof, together with such other evidence of deposit, filing, recordation and publication of notice thereof as shall be satisfactory to the special counsels for the Vendor;

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that no Default (as defined in Article 8 hereof) shall have occurred and is then continuing;

(h) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in subparagraphs (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (xi), (xii) and (xv) of the last paragraph of this Article 4 (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Purchase Agreement and this Agreement by parties thereto other than the Railroad or the Owner) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and compliance by the Railroad with the terms of the Interim Lease Agreement and this Agreement does not, and will not conflict with, or result in any breach of any of the provisions of, or constitute a default under, or result in the creation or imposition of, any lien or encumbrance upon any of the property of the Railroad, pursuant to the provisions of the Certificate of Incorporation or By-Laws of the Railroad or any agreement or other instrument to which the Railroad is a party or by which it is bound; and

(i) such other documents which the special counsels may reasonably request in connection with the transactions contemplated by this Agreement, including certified copies of all corporate proceedings.

The obligation of the Vendor hereunder to purchase from the Owner and to conditionally sell each Group of the Equipment to the Railroad

as provided in this Agreement is hereby expressly conditioned upon the Vendor having received (a) the closing documents as set forth above in this Article 4 and (b) favorable opinions, dated as of the Closing Date for such Group, from Messrs. McCarthy & McCarthy, special Canadian counsel for the Vendor as to the matters set forth in subparagraphs (ii) through (ix), inclusive (xi), (xii) and (xv), of this paragraph and from Messrs. Cravath, Swaine & Moore, special United States counsel for the Vendor as to the matters set forth in subparagraphs (i), (iii), (iv), (v), (vi), (vii), (ix), (x), (xiii), (xiv) and (xv) of this paragraph:

(i) no approval of any governmental authority is necessary for the valid execution and delivery of, and performance of all obligations and duties set forth in, the Finance Agreement (or, if any such authority is necessary, it has been obtained) and, assuming due authorization, execution and delivery by the parties thereto (other than the Vendor), the Finance Agreement has been duly authorized, executed and delivered and is a legal, valid, binding and enforceable instrument;

(ii) the Interim Lease Agreement has been duly authorized, executed and delivered by the Railroad and the Owner and (except as terminated in accordance with its terms) is a legal, valid and binding instrument, enforceable in accordance with its terms:

(iii) the Purchase Agreement has been duly authorized, executed and delivered by the Vendor and the Owner and is a legal, valid and binding instrument, enforceable in accordance with its terms;

(iv) this Agreement has been duly authorized, executed and delivered by the Railroad and the Vendor and is a legal, valid and binding instrument enforceable against the Railroad in accordance with its terms;

(v) the Vendor is vested with all the rights, titles, interests, powers and privileges purported to be granted and sold to it pursuant to the Purchase Agreement;

(vi) the Vendor has good and lawful title to the units of the Equipment in such Group free from all claims, liens, security interests and other encumbrances (other than those created by this Agreement);

(vii) no approval of the Canadian Transport Commission or the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of, and per-

formance of all obligations and duties set forth in, the Interim Lease Agreement, the Purchase Agreement or this Agreement or, if any such authority is necessary, it has been obtained;

(viii) the bill or bills of sale from the Railroad to the Owner have been duly filed and recorded where required by law and the Interim Lease Agreement has been duly deposited in the Office of the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada (and notice of such deposit has been duly published or adequate provision has been made therefor, in The Canada Gazette as provided in said Section 86) and no other filing or recordation is necessary for the protection of the rights of the Owner or of the Vendor in Canada or in any province or territory thereof;

(ix) this Agreement has been duly deposited in the Office of the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada (and notice of such deposit has been duly published, or adequate provision has been made therefor, in The Canada Gazette as provided in said Section 86) and duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other registration, deposit, filing or recordation is necessary for the protection of the rights of the Vendor in Canada or in any province or territory thereof, in any state of the United States of America or in the District of Columbia;

(x) registration of the Finance Agreement, the Purchase Agreement, this Agreement or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(xi) no income tax is payable under Part XIII of the Income Tax Act of Canada on any payments hereunder made by the Railroad to the Vendor, and the Railroad is not required to withhold any such tax from such payments.

(xii) the Railroad does not enjoy any special immunity or status in Canada that would, in respect of any action with respect to this Agreement or the Equipment, provide the Railroad with a defense that is not available to others; the Railroad under Canadian law may be sued in contract and in tort in the Canadian courts in the same manner as any other corporation or individual; and, under Canadian law, the Vendor has the right to repossess the Equipment in accordance with the provisions of Article 17 hereof.

(xiii) the opinions of counsel for the Owner and for the Railroad delivered pursuant to this Article 4 are each satisfactory in scope,

form and substance to special United States counsel for the Vendor and, in the opinion of said special counsel, the Vendor is justified in relying thereon.

(xiv) the certificates of interest delivered pursuant to the Finance Agreement have been duly authorized, executed and delivered by the trustee under the Finance Agreement.

(xv) such opinion shall also cover such other matters as may reasonably be requested by the Vendor.

In giving the opinions specified in this Article 4 counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified hereinabove, counsels for the Vendor may rely upon the opinions of counsel for the Owner and for the Railroad as to title to the Equipment at the time of delivery thereof under the bill or bills of sale from the Owner to the Vendor and under Purchase Agreement. In giving its opinion, special United States counsel may rely as to any matter governed by the laws of Canada or any Province or Territory thereof, on the opinion of special Canadian counsel for the Vendor and special Canadian counsel may rely as to any matter governed by the laws of the United States or any State thereof, on the opinion of special United States counsel for the Vendor and upon certificates of the Railroad as to the location of the Equipment.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, provincial, federal or foreign taxes (excepting net income, gross receipts [except Canadian withholding taxes and/or gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay

promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor to the Equipment or result in a lien upon any part of the Equipment; *provided, however*, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or its title to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement and shall be deemed to be payable by the Railroad as part of the purchase price of the Equipment; *provided, however*, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Vendor shall and hereby does retain full title to the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except, in the case of locomotives, any communications, signal and automatic control equipment or devices having a similar use which have been added to any unit of Equipment by the Railroad the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Canadian Transport Commission, and, if applicable, the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body) and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and condi-

tions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein and title thereto to the Railroad, or upon its order, free of all liens, claims, interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the right, interest, property and title of the Vendor in and to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. *Marking of the Equipment.* The Railroad hereby agrees that it will cause each unit of the Equipment to be kept numbered with its identifying road number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and that it will, as promptly as possible and in any event on or before December 31, 1977, cause

each unit of Equipment to be marked, and thereupon will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Owned by" followed by the name and address of the Vendor followed by the words "as Trustee", or other appropriate ownership markings approved by the Vendor. The Railroad hereby agrees that it will, on or prior to March 31, 1978, certify to the Vendor that the Railroad has marked each unit with ownership markings as hereinabove provided. The Railroad agrees that it will replace promptly any such ownership markings and identifying road numbers which may be removed, defaced or destroyed. The Railroad will not change the identifying road number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. *Casualty Occurrences; Replacement of Equipment and/or Prepayment; Investments; Insurance.* In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by a governmental entity, other than a requisition for use by the Canadian or United States Government, and the loss of possession exceeds a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to

which, pursuant to this Article 8, a payment shall have been made to the Vendor and/or replacement equipment shall have come under and be made subject to this Agreement) hereunder shall exceed \$100,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after the Railroad has knowledge of such Casualty Occurrence, file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence and either (i) pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such certificate or (ii) cause replacement equipment, having a value at least equal to such aggregate Casualty Value, to come under and be subject to this Agreement, in substitution for the units of Equipment having suffered a Casualty Occurrence, all as hereinafter provided; *provided, however*, that on or prior to the date five years after the last closing Date under Article 4 hereof, no such payment may be made to the Vendor if the aggregate of the sum of such payments, all principal payments made pursuant to Article 4 hereof and all other payments made to the Vendor pursuant to this Article 8 would exceed 25% of the original aggregate principal amount of the Conditional Sale Indebtedness, in which case the Railroad must cause replacement equipment to come under and be subject to this Agreement as provided in this Article 8.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied, on or before the next instalment date for the payment of Conditional Sale Indebtedness occurring more than 180 days following the date of such payment to the Vendor, to prepay instalments of Conditional Sale Indebtedness or toward the cost of replacement equipment, or both, and in the event that no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of the Conditional Sale Indebtedness as aforesaid. In case any money is applied pursuant to this Article 8 to prepay Conditional Sale Indebtedness, it shall be so applied without premium to reduce the instalments of Conditional Sale Indebtedness thereafter falling due *pro rata* in proportion to the principal amount of each such instalment remaining unpaid.

Any unit of replacement equipment shall consist of a unit of standard gauge railroad equipment (other than passenger or work equipment

of types other than locomotives) first put into service no earlier than January 23, 1975, and having a remaining useful life (as evidenced by a certificate of an officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the cost thereof paid by the Vendor (or, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be numbered and marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment, shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement and the Vendor's disclaimer of warranties provided in Article 2 hereof shall extend to such replacement unit or units. Title to all such replacement units shall be free and clear of all claims, liens, security interests and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record and/or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement.

Whenever the Railroad shall cause replacement equipment to come under and be subject to this Agreement or shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file with the Vendor:

(1) a bill of sale therefor in like form as provided in subparagraph (c) of the tenth paragraph of Article 4 hereof;

(2) a certificate of a Vice President, an Assistant Vice President or the Treasurer or Chief Accounting Officer of the Railroad certifying (a) that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) first put into service no earlier than January 23, 1975 of this Agreement, and has been numbered and marked as required by the provisions of this Article 8, (b) as to the cost of such replacement unit (and, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof), (c) that the cost thereof to the Vendor (or, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof) does not exceed the lesser of the fair market value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, and (d) that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(3) an opinion of counsel for the Railroad that the Vendor has good and lawful title to such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default or event which with the lapse of time and/or demand or failure to take action provided for in Article 16 hereof could constitute an event of default (any such event of default or event being hereinafter called a Default) shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal, premium and interest or (ii) certificates of deposit of, or bankers' accept-

ances, accepted by, domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000 and capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than 90 days from the date of such investment (such investments being hereinafter called Investments). Any such obligations shall from time to time be sold and/or redeemed and the proceeds re-invested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad.

The Vendor will have available on December 30, 1975, a sum equal to \$50,000,000 (U. S.) for the purchase of the Equipment from the Owner. If all of the Equipment is not so purchased on December 30, 1975, the Railroad may request the Vendor to invest such funds in Investments. If the proceeds (including accrued interest received) on the sale or maturity of any Investments made by the Vendor at the request of the Railroad pursuant to the preceding paragraph of this Article 8 or the second sentence of this paragraph shall be less than the cost thereof (including accrued interest paid), the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of such Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required

to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, maintain an appropriate insurance fund in respect of self-insurance of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. *Maintenance; Compliance with Laws and Rules.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense, normal wear and tear excepted.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Canadian Transport Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. *Reports, Financial Statements and Inspections.* On or before March 31 in each year, commencing with the calendar year 1977, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of

the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. On or before March 31, 1978, the Railroad shall furnish to the Vendor a certified report or reports, as provided in Article 7 of this Agreement, with respect to the Railroad having marked each unit of the Equipment with the ownership markings as provided in said Article 7. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

So long as any Conditional Sale Indebtedness shall be unpaid, the Railroad will deliver to the Vendor (i) as soon as available, and in any event within 30 days of its presentation to the Parliament of Canada, copies of the Annual Report of the Railroad, containing the balance sheet of the Railroad as of the end of such year and the statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and certified by the chartered accountants or government auditors appointed therefor by the Parliament of Canada; (ii) promptly upon its release to the public, copies of each other report submitted to the Parliament of Canada by government auditors or by the government-appointed chartered accountants in connection with any annual, quarterly, interim or special audit made by them of the books of the Railroad; (iii) immediately upon becoming aware of the existence of a Default (or defined in Article 8 hereof), a written notice which specifies the nature of the claimed Default and what action the Railroad is taking or proposes to take with respect thereto; (iv) immediately upon becoming aware that notice has been given or any action taken with respect to a claimed Default, a written notice specifying the notice given or action taken and the nature of the claimed Default and what action the Railroad is taking or proposes to take with respect thereto; and (v) with reasonable promptness, such other data as from time to time reasonably may be requested by the Vendor.

If while any of the Conditional Sale Indebtedness shall be unpaid, the Railroad shall not be required to make an annual report to the Parliament of Canada, or such annual report shall not be certified by government auditors or chartered accountants appointed by the Parliament therefor, the Railroad will cause to be prepared and will deliver to the Vendor (i) as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Railroad and in any event within 45 days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries as of the end of each such quarter and consolidated statements of income and of surplus of the Railroad and its consolidated subsidiaries for each such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form, the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by a principal financial officer of the Railroad; (ii) as soon as practicable after the end of each fiscal year of the Railroad, and in any event within 120 days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries at the end of such year, and consolidated statements of income and of surplus of the Railroad and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by a favorable opinion thereon of independent certified public accountants of the United States, or chartered accountants of Canada, of recognized national standing selected by the Railroad, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; (iii) as soon as available, copies of each financial statement or financial report required to be submitted by the Railroad to its shareholders; and (iv) with reasonable promptness, such other data as from time to time reasonably may be requested by the Vendor.

Each set of annual financial statements delivered pursuant to this Article 10 shall be accompanied by a certificate of the President, a Vice President, the Treasurer or an Assistant Treasurer of the Railroad stating that he has reviewed the relevant terms of this Agreement and he made, or caused to be made under his supervision, a review of the transactions or conditions of the Railroad from the beginning of the accounting period covered by the income statements being delivered therewith to the date of the certificate and that such review has not disclosed the existence during such period of any Default or if any such Default existed or exists, specifying the nature and period of existence thereof and what action the Railroad has taken or proposes to take with respect thereto.

All reports, statements and certificates delivered pursuant to this Article 10 shall be furnished in such number of copies as reasonably may be requested by the Vendor.

The Railroad will permit the Vendor, its agents and representatives and any representative of its principals and beneficiaries to examine all books and accounts, records and reports and other papers of the Railroad or any subsidiary, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, employees and the aforesaid accountants or auditors (and the Railroad hereby authorizes such accountants and auditors to so discuss its affairs) all at such reasonable times and as often as may be reasonably requested, to the full extent permitted by law.

The financial statements of the Railroad heretofore delivered to the Vendor do not, nor does this Agreement or any written statement furnished by the Railroad to the Vendor in connection with the negotiation of the sale of the Conditional Sale Indebtedness, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Railroad has not disclosed to the Vendor in writing which materially affects adversely nor, so far as the Railroad can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Railroad and its subsidiaries or the ability of the Railroad to perform this Agreement.

ARTICLE 11. *Possession and Use.* The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Vendor to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, the Owner or their successors or assigns which, if unpaid, might become a claim, lien, charge, encumbrance or security interest on or in the Equipment, or any unit thereof, equal or superior or adverse to the Vendor's title therein; *provided, however,* that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property, title or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such claims, liens, charges, encumbrances or security interests upon the Equipment shall be secured by and under this Agreement and shall be deemed to be payable by the Railroad as part of the Purchase Price of the Equipment.

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

ARTICLE 13. *Railroad's Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all

losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of ownership by the Vendor of the Equipment, the use and operation thereof by the Railroad during the period when said title remains in the Vendor or the transfer of said title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. *Railroad's Covenants to the Vendor Regarding Patent Indemnities.* The Railroad hereby agrees that it will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article, material, design, system, process, formula or combination which infringes or is claimed to infringe on any patent or other right. Such indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor.

The Railroad hereby agrees that all or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the

assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

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

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five business days after payment thereof shall be due hereunder; or

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

(c) any proceedings shall be commenced by or against the Railroad for any relief under the Railway Act of Canada, the Bankruptcy Act of Canada or the Winding-up Act of Canada, as now constituted or as said Acts may be hereafter amended, or under any law relating to the relief of debtors, readjustments of indebtedness, reorganizations, receiverships, arrangements, compositions, extensions, moratoriums, insolvency, bankruptcy, liquidation or winding-up (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30

days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage (for a period not exceeding 270 days after all of the units of Equipment have been assembled on such lines or premises), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and/or users; *provided, however,* that the Railroad shall not be liable,

except in the case of negligence of the Railroad or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Vendor or any prospective purchaser, lessee, and/or user, the rights of inspection granted under this sentence. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however,* that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further,* that if the Railroad or

any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may

bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under

the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

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

ARTICLE 18. *Applicable State and Provincial Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable law of the Dominion of Canada or United States) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale

or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada and notice of such deposit to be duly published in The Canada Gazette as provided in said Section 86 and to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of the special counsels for the Vendor, of the title of the Vendor to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses of the Vendor incident to this Agreement and to the Purchase Agreement (including the fees and expenses of the Vendor), and any instrument supplemental or related hereto or thereto, including all fees and expenses of the special United States and special Canadian counsels for the Vendor and for any party acquiring interests in the Conditional Sale Indebtedness and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in the Conditional Sale Indebtedness.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at P. O. Box 8108, Montreal, Quebec H3C 3N3, Canada, Attention of Treasurer (or, during a postal strike, em-

bargo or other interruption affecting mail delivery to the Railroad, at 935 Lagauchetiere Street West, Montreal, Quebec, Canada, Attention of Treasurer) ;

(b) to the Vendor, at P. O. Box 2258, Baltimore, Maryland 21203, U.S.A., Attention of Corporate Trust Department (or, if not by mail, to its address at Two Hopkins Plaza, Baltimore, Maryland, U.S.A., Attention as aforesaid) ; and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

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

ARTICLE 22. *Article Headings; Effect and Modification of Agreement.* The Table of Contents hereto and all article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. *Law Governing.* The Railroad warrants that its chief place of business and its chief executive offices are located in the Province specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario; *provided, however,* that the parties shall be entitled to all rights conferred by Section 86 of the Railway Act of Canada and by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for conven-

ience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

CANADIAN NATIONAL RAILWAY
COMPANY.

By

[Signature]
Vice-President

[CORPORATE SEAL]

Attest:

[Signature]

Assistant Secretary

MERCANTILE-SAVE DEPOSIT AND
TRUST COMPANY, as Trustee,

By

[Signature]
Assistant Vice President

[CORPORATE SEAL]

Attest:

[Signature]

Corporate Trust Officer



PROVINCE OF QUEBEC, }
CITY OF MONTREAL, } SS.:

On this *24th* day of December, 1975, before me personally appeared *Mr. E. J. Denyar*, to me personally known, who, being by me duly sworn, says that he is a Vice-President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Commissioner for Oaths

My Commission expires *July 3, 1979*

G. ERIC URQUHART
COMMISSIONER FOR OATHS
COMMISSAIRE À L'ASSERMENTATION
DISTRICT - MONTREAL

STATE OF MARYLAND, }
CITY OF BALTIMORE, } SS.:

On this *22nd* day of December, 1975, before me personally appeared *James H. Clark*, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

[NOTARIAL SEAL]

My Commission expires July 1, 1978

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1978

SCHEDULE A—SPECIFICATIONS OF THE EQUIPMENT

| Builder | Type | Builder's Specification (Contract Number) | Quantity | Railroad's Road Numbers | Unit Purchase Price (\$U.S.) | Total Purchase Price (\$U.S.) |
|--|---|---|----------|--------------------------------|------------------------------|-------------------------------|
| General Motors of Canada (Diesel Division) | SD-40-2, 3,000 H.P., 6 Axle, 6 Motor, Diesel Locomotives with pacemaker controls and Dynamic Brakes | GM Specification DD-8087 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 21 | CN5241 to CN5261 inclusive | \$513,520.52 | \$10,783,930.92 |
| General Motors of Canada (Diesel Division) | SD-40-2, 3,000 H.P., 6 Axle, 6 Motor Diesel Locomotives | GM Specification DD-8087 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 17 | CN5262 to CN5278 inclusive | 481,044.59 | 8,177,758.03 |
| General Motors of Canada (Diesel Division) | GP-40-2, 3,000 H.P., 4 Axle, 4 Motor Diesel Locomotives | GM Specification 8091 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 65 | CN9568 to CN9632 inclusive | 419,919.64 | 27,294,776.60 |
| Marine Industries Ltd. | 89'4" 70-ton Double Hitch Piggy Back Flat Cars AAR Class FC | CN Specification F-50-13 and Addendum No. 1 dated November, 1973, General Arrangement Drawing No. 8H-39200-A and CN Specification SS-1974 | 128 | CN682164 to CN682291 inclusive | 29,246.36 | 3,743,534.08 |
| Total | | | | | | \$49,999,999.63 |

INTERIM LEASE AGREEMENT

Dated as of December 5, 1975,

BY AND BETWEEN

CANADIAN NATIONAL REALTIES, LIMITED

AND

CANADIAN NATIONAL RAILWAY COMPANY

INTERIM LEASE AGREEMENT dated as of December 5, 1975, by and between CANADIAN NATIONAL REALTIES, LIMITED, a corporation duly incorporated under the laws of Canada (hereinafter called the Owner), and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Railroad).

WHEREAS the Owner has purchased from the Railroad the railroad equipment described in Schedule A hereto (hereinafter called the Equipment); and

WHEREAS, pending completion of permanent financing arrangements by the Owner, the Railroad desires to lease the Equipment from the Owner and the Owner desires to lease the Equipment to the Railroad;

NOW, THEREFORE, the parties hereto do hereby agree as follows:

1. In consideration of the premises, the Owner hereby leases to the Railroad the Equipment for the period terminating on December 31, 1975, or on the date of sale of the Equipment by the Owner to a party other than the Railroad, whichever is the earlier. On such termination date, this Agreement shall automatically be canceled and terminated without further action by or notice to any party concerned.

2. Title to the Equipment shall remain in the Owner and the right and interest of the Railroad therein is and shall be solely that of possession, custody and use as lessee under this Agreement. The Railroad, without expense to the Owner, will promptly cause this Agreement to be duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit to be duly given in the Canada Gazette in accordance with said Section 86. In addition, the Railroad shall do such other acts as may be required by law, or reasonably requested by the Owner, for the protection of the Owner's title to and interest in the Equipment.

3. The Railroad agrees that it has not permitted and will not permit any liens or encumbrances of any kind whatsoever to attach to the Equipment; and that it will

(a) indemnify and save harmless the Owner from any and all claims, expenses, or liabilities of whatsoever kind in respect of the Equipment; and

(b) pay any and all taxes, fines, charges, and penalties that may accrue or be assessed or imposed upon the Equipment or the Owner because of its ownership or because of the use, operation, management or handling of the Equipment by the Railroad during the terms of this Agreement.

The obligations of the Railroad which are contained in this Paragraph 3 shall survive the termination of this Agreement and shall be enforceable against the Railroad by the Owner's successors and assigns.

4. The Railroad will, at its own expense, keep and maintain the Equipment in good order and running condition and will at its option repair or replace or promptly pay to the Owner the purchase price in cash of those units of Equipment which may be damaged or destroyed by any cause during the term of this Agreement.

5. As rental for the Equipment, the Railroad agrees to pay to the Owner on the date of termination of this Agreement, in cash, the sum of \$50.00 (Canadian funds) per day for each day from the date of execution hereof to the date of termination hereof.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed and their respective seals to be affixed hereto and duly attested by duly authorized officers pursuant to lawful authority as of the date first above written.

CANADIAN NATIONAL REALTIES,
LIMITED,

By _____
Vice-President

Attest:

Assistant Secretary

CANADIAN NATIONAL RAILWAY
COMPANY,

By _____
Vice-President

Attest:

Assistant Secretary

PROVINCE OF QUEBEC, }
 CITY OF MONTREAL, } SS.:

On this day of , 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice-President of CANADIAN NATIONAL REALTIES, LIMITED, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Commissioner for Oaths

PROVINCE OF QUEBEC, }
 CITY OF MONTREAL, } SS.:

On this day of , 1975, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice-President of CANADIAN NATIONAL RAILWAY COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Commissioner for Oaths

**SCHEDULE A to the Interim Lease Agreement between Canadian National Realities,
Limited and Canadian National Railway Company dated as of December 5, 1975**

SPECIFICATIONS OF THE EQUIPMENT

| <u>Builder</u> | <u>Type</u> | <u>Builder's Specification (Contract Number)</u> | <u>Quantity</u> | <u>Railroad's Road Numbers</u> |
|--|---|--|-----------------|--|
| General Motors of Canada (Diesel Division) | SD-40-2, 3,000 H.P., 6 Axle, 6 Motor, Diesel Locomotives with pacemaker controls and Dynamic Brakes | GM Specification DD-8087 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 21 | CN5241 to CN5261 inclusive |
| General Motors of Canada (Diesel Division) | SD-40-2 3,000 H.P. 6 Axle, 6 Motor Diesel Locomotives | GM Specification DD-8087 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 17 | CN5262 to CN5278 inclusive |
| General Motors of Canada (Diesel Division) | GP-40-2 3,000 H.P. 4 Axle, 4 Motor Diesel Locomotives | GM Specification 8091 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 65 | CN9568 to CN9632 inclusive |
| Marine Industries Ltd. | 894" 70-ton Double Hitch Piggy Back Flat Cars AAR Class FC | CN Specification F-50-13 and Addendum No. 1 dated November, 1973, General Arrangement Drawing No. 8H-39200-A and CN Specification SS-1974 | 128 | CN682164 to CN682291 inclusive |

PURCHASE AGREEMENT

Dated as of December 1, 1975

BETWEEN

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Trustee,

AND

CANADIAN NATIONAL REALTIES, LIMITED

PURCHASE AGREEMENT (hereinafter called the Purchase Agreement) dated as of December 1, 1975, between CANADIAN NATIONAL REALTIES, LIMITED (hereinafter called the Seller), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Trustee (hereinafter called the Purchaser) for certain institutional investors (hereinafter called the Investors) under a Finance Agreement dated as of December 1, 1975 (hereinafter called the Finance Agreement), in the form annexed hereto.

WHEREAS the Seller agrees to sell and deliver to the Purchaser and the Purchaser agrees to purchase the units of new standard-gauge railroad equipment (hereinafter referred to as the Equipment) described in Schedule A hereto, first put into service no earlier than January 23, 1975, subject to the terms and conditions set forth herein; and

WHEREAS the Equipment is in the possession of the CANADIAN NATIONAL RAILWAY COMPANY (hereinafter called the Railroad), an affiliate of the Owner, pursuant to an interim-lease agreement (hereinafter called the Interim Lease Agreement), dated as of December 5, 1975, between the Owner and the Railroad in the form annexed to the Finance Agreement; and

WHEREAS the Purchaser intends to enter into a Conditional Sale Agreement dated as of December 1, 1975 (hereinafter called the Conditional Sale Agreement), with the Railroad providing for the conditional sale of the Equipment to the Railroad, in substantially the form annexed to the Finance Agreement;

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

ARTICLE 1. *Sale and Purchase.* Subject to the terms and conditions hereinafter set forth, the Seller will sell and deliver the Equipment as hereinbelow provided, and the Purchaser will pay to the Seller the Purchase Price (as hereinafter defined) of the Equipment.

ARTICLE 2. *Delivery of Equipment; Risk of Loss.* The Owner shall cause the Equipment to be delivered as provided in Article 3 of the Conditional Sale Agreement or as the Purchaser may otherwise

direct. Until acceptance of each of the units by the Railroad under and pursuant to the Conditional Sale Agreement, the Seller assumes with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price; Conditions to Closing; Payment of Purchase Price.* The Purchase Price to be paid by the Purchaser to the Seller for each Unit of the Equipment is set forth in Schedule A hereto. On the Closing Date for each Group (as defined in the Conditional Sale Agreement) of Equipment, the Purchaser shall, subject to compliance with all of the terms and conditions of the Finance Agreement and the Conditional Sale Agreement (including, without limitation, Article 4 of the Conditional Sale Agreement), pay, out of the proceeds of the funds deposited with it pursuant to the Finance Agreement, to the Seller an amount in cash equal to the Purchase Price of the Equipment accepted by the Railroad pursuant to Article 3 of the Conditional Sale Agreement.

The obligation of the Purchaser hereunder to make any payment provided for in this Agreement is hereby expressly conditioned upon the Purchaser having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Purchaser shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Purchaser shall not make payment for any unit or units of the Equipment, the Purchaser shall reassign to the Seller, without recourse to the Purchaser, all right, title and interest of the Purchaser in and to the units of the Equipment with respect to which payment has not been made by the Purchaser; and the Purchaser shall have no other or further obligation to the Seller in respect thereof.

ARTICLE 4. *Notice.* Any notice hereunder to the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Seller, at P.O. Box 8108, Montreal, Quebec H3C 3N3, Canada, Attention of Treasurer [or, during a postal strike, embargo

or other interruption affecting mail delivery to the Seller, at 935 Lagachetiere Street West, Montreal, Quebec, Canada, Attention of Treasurer];

(b) to the Purchaser, at P.O. Box 2258, Baltimore, Maryland 21203, U.S.A., Attention of Corporate Trust Department [or, if not by mail, to its address at Two Hopkins Plaza, Baltimore, Maryland, U.S.A., attention as aforesaid];

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

ARTICLE 5. *Effect and Modification of Agreement.* This Agreement and the Schedule and annexes attached hereto exclusively and completely state the rights and agreements of the Seller and the Purchaser with respect to the Equipment and supersede all purchase agreements, purchase orders and other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Seller and the Purchaser.

ARTICLE 6. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario.

ARTICLE 7. *Execution; Counterparts.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date specified in the introductory paragraph of this Agreement, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, 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 hereto affixed and duly attested, all as of the date first above written.

CANADIAN NATIONAL REALTIES,
LIMITED,

By _____
Vice-President

[CORPORATE SEAL]

Attest:

Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Trustee,

By _____
Assistant Vice President

[CORPORATE SEAL]

Attest:

Corporate Trust Officer

**SCHEDULE A to the Purchase Agreement between Mercantile-Safe Deposit and Trust Company and
Canadian National Realities, Limited, dated as of December 1, 1975**

SPECIFICATIONS OF THE EQUIPMENT

| <u>Builder</u> | <u>Type</u> | <u>Builder's Specification (Contract Number)</u> | <u>Quantity</u> | <u>Railroad's Road Numbers</u> | <u>Unit Purchase Price (\$U.S.)</u> | <u>Total Purchase Price (\$U.S.)</u> |
|--|--|--|-----------------|--|---|--|
| General Motors of Canada (Diesel Division) | SD-40-2, 3,000 H.P., 6 Axle 6 Motor, Diesel Locomotives with pacemaker controls and Dynamic Brakes | GM Specification DD-8087 dated 3 January, 1972 and CN Specifica- tion R-30-36-S dated July, 1974 | 21 | CN5241 to CN5261 inclusive | \$513,520.52 | \$10,783,930.92 |
| General Motors of Canada (Diesel Division) | SD-40-2 3,000 H.P. 6 Axle, 6 Motor Diesel Locomotives | GM Specification DD-8087 dated 3 January, 1972 and CN Specifica- tion R-30-36-S dated July, 1974 | 17 | CN5262 to CN5278 inclusive | 481,044.59 | 8,177,758.03 |
| General Motors of Canada (Diesel Division) | GP-40-2 3,000 H.P. 4 Axle, 4 Motor Diesel Locomotives | GM Specification 8091 dated 3 January, 1972 and CN Specification R-30-36-S dated July, 1974 | 65 | CN9568 to CN9632 inclusive | 419,919.64 | 27,294,776.60 |
| Marine Industries Ltd. | 89 1/4" 70-ton Double Hitch Piggy Back Flat Cars AAR Class FC | CN Specification F-50-13 and Addendum No. 1 dated November, 1973, General Arrangement Drawing No. 8H-39200-A and CN Specification SS-1974 | 128 | CN682164 to CN682291 inclusive | 29,246.36 | 3,743,534.08 |
| | | | | | | <u>\$49,999,999.63</u> |