

RECORDATION NO. 7674

OCT 9 1974

INTERNATIONAL COMMERCE COMMISSION

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**LEASE OF RAILROAD EQUIPMENT**

between

**FIRST SECURITY BANK OF UTAH, N.A.,**  
*as Owner Trustee*

and

**GRAND TRUNK WESTERN RAILROAD COMPANY**

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**Dated as of June 15, 1974**

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**LEASE OF RAILROAD EQUIPMENT** dated as of June 15, 1974, between FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Lessor), not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with FIRST SECURITY LEASING COMPANY or its successors and assigns (hereinafter called the Beneficiary) and GRAND TRUNK WESTERN RAILROAD COMPANY (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter referred to as the Builder), wherein the Builder agrees to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Builder proposes to assign its interest in the Conditional Sale Agreement to Trust Company of Georgia, as Agent (hereinafter referred to as the Vendor); and

WHEREAS, the Lessor has entered into an Accessory Installation Agreement dated as of June 15, 1974 (hereinafter called the Accessory Installation Agreement), with the Lessee and Evans Products Company, wherein the Lessor agrees to have installed the accessories described in Schedule A hereto (hereinafter called the Accessories); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment and the Accessories, or such lesser number of each as are delivered and accepted on or before December 31, 1974, and settled for under the Conditional Sale Agreement or the Accessory Installation Agreement, as the case may be, on or prior to January 15, 1974 (such units being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), of which the Lessee is a wholly-owned subsidiary, has agreed, subject to receipt of the approval of The Governor General in Council, to guarantee to the Lessor and the Vendor, as provided in a Guaranty Agreement dated as of June 15, 1974 (hereinafter called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums payable

by, and the due and punctual performance of all other obligations of, the Lessee under this Lease;

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

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

The Lessor will cause each Accessory to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Accessory is delivered to the Lessor and installed on a Unit under the Accessory Installation Agreement. Upon such tender, the Lessee will cause an authorized inspector of the Lessee to inspect the same, and if such Accessory is found to be in good order and in accordance with the specifications set forth in the Accessory Installation Agreement (and modifications, if any, previously approved by the Lessee), to accept delivery of such Accessory and will cause such inspector or an authorized representative of the Lessee to execute and deliver to the Lessor and to the Supplier a certificate or certificates of acceptance and installation for such Accessory (hereinafter called a Certificate of Accessory Installation), whereupon such Accessory, shall be deemed to have been

delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease and included within the term Unit as used herein. In no event shall the Lessee place any Accessory in service or otherwise use any Accessory prior to the Lessee's acceptance of installation of such Accessory hereunder.

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

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease an interim and 30 consecutive semiannual payments. The interim payment is payable on the business day next preceding January 15, 1975. The 30 semiannual payments are payable on the business day next preceding January 15 and July 15 of each year commencing July 15, 1975. The interim payment shall be an amount equal to

(i) with respect to each Unit (excluding the Accessory to be installed thereon) subject to this Lease from and including the date such Unit is settled for under the Conditional Sale Agreement to January 15, 1975, a rate of 9.7% per annum on the percentage of the Purchase Price of such Unit calculated pursuant to subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement, such rate to be computed on the basis of a 360 day year of twelve 30 day months, plus for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to January 15, 1975, the Interim Rate multiplied by the percentage of the Purchase Price of such Unit calculated pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement, and

(ii) with respect to each Accessory subject to this Lease for each day elapsed from and including the date such item is settled for under the Accessory Installation Agreement to January 15, 1975, the Interim Rate multiplied by the Accessory Cost (as defined in the Accessory Installation Agreement) of each such item.

The Interim Rate shall be equal to the daily equivalent (calculated on the basis of a 360 day year) of the interest rate payable by the Beneficiary

pursuant to the terms of a Loan Agreement or Loan Agreements entered into for the purpose of funding the Beneficiary's investment under Article 3 of the Conditional Sale Agreement to January 15, 1975. The 30 semiannual payments shall each be in an amount equal to 5.26817% of the Purchase Price of each Unit at the time subject to this Lease. The term "Purchase Price" as used in this Agreement shall mean the sum of the Purchase Price (as defined in the Conditional Sale Agreement) for each Unit (without Accessory) plus the Accessory Cost for the Accessory installed on each such Unit.

The Lessor irrevocably instructs the Lessee (and the Lessee hereby agrees) that all payments provided for in this Lease to be made to the Lessor shall be paid to the account of the Lessor, care of the Vendor, 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham, and such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder, with any balance being paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatement, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and,

subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

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

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

“TRUST COMPANY OF GEORGIA,  
25 Pryor Street,  
Atlanta, Georgia 30302  
AGENT—SECURITY OWNER”

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

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may cause the Units to be lettered with the names or initials or

other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than (i) any United States federal income tax and, to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability, any Canadian [Dominion or Provincial] or Mexican income tax, payable by the Lessor in consequence of the receipt of payments provided herein and (ii) the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), now or hereafter levied or imposed upon or in connection with or measured by (i) this Lease or (ii) any sale, rental, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. At the option of the Lessor, such payment of impositions by the Lessee shall be made directly to the appropriate taxing authority. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the Lessor. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor pursuant to Article 5 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Builder and the Vendor pursuant to said Article 5.

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

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

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the unpaid rental for such Unit due and payable on such date plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of such rental payment date in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue thereafter and the terms of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the unpaid rental for such Unit due and payable and the Casualty Value of any Unit, execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit or for any Unit abandoned pursuant to § 13 hereof.

The Casualty Value of each Unit as of any semiannual rental payment date shall be that percentage of the Purchase Price applicable to such Unit set forth in the schedule set out below opposite the number of such rental payment date (such numbers commencing with the rental payment due on July 15, 1975 and "Interim" referring to the payment due on January 15, 1975):

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim.....	90.7878%	16.....	66.5932%
1.....	91.3736	17.....	63.4891
2.....	91.5742	18.....	60.2569
3.....	91.4634	19.....	56.8936
4.....	91.0241	20.....	53.0478
5.....	90.3037	21.....	49.7934
6.....	89.2688	22.....	46.0621
7.....	87.9601	23.....	42.2054
8.....	86.3535	24.....	38.2945
9.....	84.4832	25.....	34.3996
10.....	82.3595	26.....	30.5979
11.....	80.0827	27.....	26.8633
12.....	77.6612	28.....	23.2682
13.....	75.1002	29.....	19.3846
14.....	72.4002	30.....	15.0000
15.....	69.5635		

Notwithstanding the foregoing, the Casualty Value of each Unit as of any such rental payment date occurring after the expiration of the original term of this Lease shall be the lesser of 15% of the Purchase Price applicable to such Unit or the Fair Market Value of such Unit prior to such occurrence determined in accordance with the provisions of § 12 hereof.

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in §9 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and

acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third .....	13.4615%
Fifth.....	8.9744
Seventh.....	4.4872

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

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

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1975, the Lessee will cause to be furnished to the Lessor and the Vendor in such number of counterparts or copies as may reasonably be requested an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other

information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Lessor's Representations and Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name and for the account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 13 of the Conditional Sale Agreement and Annex A thereto. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.**

The Lessor represents and warrants as follows:

(i) At the time of delivery of each Unit under this Lease, the Lessor shall have such title to such Unit as is derived from the Builder, unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all claims, liens and encumbrances which may result from claims against the

Lessor not arising out of the ownership thereof which will prevent the performance of this Lease in accordance with its terms; and

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

The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease; *provided, however*, that this Lease shall be subordinated to the rights of the Vendor under the Conditional Sale Agreement but neither the Lessor nor the Vendor shall have the right to terminate or impair the Lessee's possession or use of the property subject to this Lease so long as the Lessee shall not be in default under this Lease; and, subject to the foregoing, covenants that the Lessor has not done and will not do (or suffer to be done by any person claiming through or against the Lessor) any act which interferes with or impairs (x) the Lessee's possession and use in accordance with the terms of this Lease of the Units or (y) the title to the Units which may be transferred or conveyed to the Lessee under the provisions of §§ 6 and 12 of this Lease and that any title so conveyed shall then be free of any lien, claim or encumbrance of the Vendor.

The Lessor covenants and agrees not to alter, amend or modify the Conditional Sale Agreement without the prior written consent of the Lessee, which consent shall not be unreasonably withheld.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply, and will cause every sublessee or user of the Units to comply, in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional

or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

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

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (including, but not limited to, Accessories) shall be considered accessions to such Unit (except such as can be removed without damage to, and without impairing the originally intended function or use of, such Unit, including without limitation, racks or partitions other than the Accessories or replacements thereof and except such DF-2-load restraining equipment as is excluded from the Accessory Installation Agreement pursuant to the terms thereof [such racks, partitions or DF-2-load restraining equipment other than the Accessories subject to this Lease or replacements thereof being hereinafter called Temporary Alterations]), and at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the Temporary Alterations from the Units and restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into

or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership including strict liability of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person; *provided, however*, that the Lessee shall not be required to indemnify the Lessor or the Vendor under this paragraph for negligence on the part of the Lessor or the Vendor unless such negligence is attributed to the Lessor or the Vendor solely by reason of their respective interests in the Units. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which, and to an event occurring after such Unit, shall have been returned to the Lessor pursuant to § 10 or 13 hereof or after this Lease with respect to such Unit has otherwise terminated; *provided, however*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

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

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

- A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days;
- B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

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

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

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal

to any portion of the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax yield under this Lease to be equal to the net after tax yield that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction authorized with respect to a Unit under Section 167 of said Internal Revenue Code utilizing the lower limit of the "asset depreciation range" of 12 years for the Units prescribed in accordance with Section 167(m) of said Code for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 1972 IRB 8, taking into account an estimated Gross Salvage Value of 10% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Unit reduced by 10% of the Purchase Price as provided in Section 167 (f) of the Code (hereinafter called the Depreciation Deduction), and the interest deduction (hereinafter called the Interest Deduction) for all interest accrued on the Conditional Sale Indebtedness computed in accordance with Section 163 of said Code, which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

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

or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

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

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

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

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

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

any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

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

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

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

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or the Guarantor or any affiliated or subsidiary corporation thereof upon the lines of railroad owned or operated by the Lessee or the Guarantor

or any affiliated or subsidiary corporation thereof or upon lines of railroad over which the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof has trackage or other operating rights or over which railroad equipment of the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement (including, but not limited to, Article 12 thereof).

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or (ii) to sublease any Unit to such subsidiary or affiliated corporations of the Lessee or the Guarantor as are at the time such sublease is executed domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreement and the Lessor under this Lease. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.

Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not make or permit any use of any Unit which shall result in such Unit failing to constitute "Section 38 property" within the meaning of Section 48a of the Internal Revenue Code of 1954, as amended, any successor section thereto or any regulations promulgated by the Internal Revenue Service thereunder.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the expiration of the original term or the first renewal term

of this Lease elect (i) to purchase any or all Units then covered by this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term, and/or (ii) extend the term of this Lease in respect of all, but not fewer than all, Units then covered by this Lease and not being purchased pursuant to clause (i) of this sentence, for a five-year period commencing on the scheduled expiration of the original term or such renewal term of this Lease, as the case may be, at a rental payable in 10 semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the end of such term.

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

If on or before four months prior to the expiration of the original term or any renewal term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee. In the event the Lessee elects to purchase the Units, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Units.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any renewal term of this Lease, the Lessee will (unless the Units are sold to the Lessee or unless this Lease is then being renewed), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or if, after the expiration of this Lease, the Lessor shall elect to abandon to the Lessee any Unit, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice.

§ 14. *Opinions of Counsel for the Lessee, the Guarantor, the Lessor and the Manufacturer.* On the Closing Date (as that term is defined in the Conditional Sale Agreement), as a condition to the obligation of the Lessor to continue thereafter to lease the Units to the Lessee hereunder, the Lessee will deliver to the Lessor and the Vendor counterparts, addressed to the

Lessor and the Vendor, in scope and substance satisfactory to the Lessor and the Vendor and their respective counsel, of:

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

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

B. this Lease, the Finance Agreement and the Accessory Installation Agreement have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal and valid agreements binding upon the Lessee and enforceable in accordance with their terms;

C. this Lease, the assignment of this Lease to the Vendor, the Accessory Installation Agreement, the Conditional Sale Agreement and the Agreement and Assignment dated as of June 15, 1974 (hereinafter called the Assignment), between the Builder and the Vendor have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units in any State of the United States of America and the District of Columbia;

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

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

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter

cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's or the Vendor's right, title and interest therein (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof); and

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

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

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

C. upon due deposit of this Lease, the assignment of this Lease to the Vendor, the Conditional Sale Agreement, the Accessory Installation Agreement, and the Assignment in the office of the Registrar General of Canada and upon the giving of notice of such deposit in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC), no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor in and to the Units in the Dominion of Canada or any Province or Territory thereof;

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

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

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

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

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

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

(ii) of the written opinion of counsel for the Builder to the effect that at the time of delivery thereof to the Lessor under the Conditional Sale Agreement, each Unit was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under this Lease).

In giving the opinions specified in this § 14, 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. On the first Closing Date the Lessee agrees to furnish to the Lessor a certificate as to the economic useful life and residual value of the Units subject to this Lease in form and substance satisfactory to the Lessor.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date

hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation):

(i) the full 7% Investment Credit (as defined in § 9 hereof) allowed by Section 38 and related sections of the Code;

(ii) the Depreciation Deduction (as defined in § 9 hereof) which is or would be available to the Lessor under Section 167 of the Code; and

(iii) the Interest Deduction (as defined in § 9 hereof) in each taxable year of the Lessor for all interest paid during such year on the Conditional Sale Indebtedness.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that it and each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) none of the Units constitutes property of which construction, reconstruction or erection was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use. As specified in the definition of "Units" contained in the fourth recital to this Agreement, the terms "Unit" and "Units" include the Accessories.

If for any reason (including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder or any other reason, whether similar or dissimilar to the foregoing (except as a direct result of the occurrence of any Excluded Event set forth below)), the Lessor shall lose or shall not have, or shall lose the right to claim, or shall suffer a

disallowance of or shall be required to recapture all or any portion of the Investment Credit, the Depreciation Deduction or the Interest Deduction (hereinafter each called a Benefit), then the Lessee shall on each rental payment date occurring after written notice to the Lessee by the Lessor that any Benefit has not been claimed or that the Lessor has received from the Internal Revenue Service a notice of deficiency or other advice with respect to the disallowance, inability to claim or recapture of any Benefit, pay to the Lessor increased rentals in an amount which will cause the Lessor's net after tax return in respect of the Units under this Lease to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States of America against the Lessor attributable to the disallowance, recapture or loss of all or any portion of such Benefit; *provided, however*, that such increased rentals and additional rental shall not be payable if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture, all or any portion of any Benefit with respect to all or part of the Units as a direct result of the occurrence of any of the following events (herein called Excluded Events):

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the applicable Casualty Value pursuant to § 6 hereof;

(ii) a transfer or disposition by the Lessor of any interest in the Units (other than by the assignment of this Lease to the Vendor) if such transfer or disposition is made at a time when no Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim any Benefit in its federal income tax return for the appropriate year, unless such failure occurs after the Lessor shall have requested in writing that the Lessee furnish to the Lessor a written opinion of independent tax counsel (reasonably satisfactory to the Lessor) to the effect that the Lessor has a bona fide claim to such Benefit and the Lessee shall have failed to furnish such opinion of counsel to the Lessor within 30 days after such request;

(iv) the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in

writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability or tax against which to credit the Investment Credit or sufficient income to benefit from the Depreciation Deduction and the Interest Deduction as applicable.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect of which the Lessee would otherwise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased rental and additional rental in respect of any interest and/or penalty, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; *provided, however*, that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor thereof at the prime rate of The Chase Manhattan Bank, National Association (hereinafter called the Prime Rate) in effect on the date of such final

determination. If the Lessor makes such Tax Payment and then sues for a refund such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, the rental payable by the Lessee to the Lessor shall be reduced to the rental rate that would have been in effect if such increase had not been made (or such reduction shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such reduced rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter. In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the increase in rentals therefore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the Prime Rate for the period such increase in rentals was paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such increase and (y) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event that any payment or adjustment is required to be made pursuant to the two immediately preceding paragraphs and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (a) the Lessee shall promptly pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax

Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (b) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon) and previously paid increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

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

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

§ 17. *Additional Covenants and Guaranty of the Lessee.* As an inducement to the Vendor to enter into the assignment of the Conditional Sale Agreement and as an inducement to the Lessor to enter into this Lease,

the Lessee unconditionally guarantees to the Vendor, and covenants with the Lessor to guarantee unconditionally to the Vendor, the due and punctual performance of all obligations of the Lessor and the due and punctual payment of any and all sums payable by the Lessor under the Conditional Sale Agreement including, but not limited to, that portion of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) payable pursuant to subparagraph (b) of the third paragraph of Article 3 thereof (except for the obligations of the Lessor to make payment of the sums payable by the Lessor pursuant to (i) the fifth paragraph and subparagraph (a) of the third paragraph of Article 3 and (ii) Article 19 thereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed, the Lessee agrees punctually to pay or perform the same, irrespective of any enforcement against the Lessor of any of the rights of the Vendor under the Conditional Sale Agreement; *provided, however*, that there shall be no obligation upon the Lessee to make the payments or perform the obligations aforementioned in this § 17 while or for so long as the Lessee shall not be in default under this Lease. The Lessee hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Lease or the Conditional Sale Agreement or any other conduct of the Lessor, the Vendor and/or the Lessee which might otherwise constitute a legal or equitable discharge of a surety or guarantor, and irrespective of the last paragraph of Article 3 of the Conditional Sale Agreement or any other circumstances which might limit the recourse of the Vendor to the Lessor or of the Lessor or the Vendor to the Lessee. The Lessee hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor or the Vendor of any of their respective rights hereunder and no action by the Lessor or the Vendor to enforce any of their respective rights or failure to take, or delay in taking, any such action shall affect the obligations of the Lessee hereunder or under the Conditional Sale Agreement.

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

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

§ 18. *Recording; Expenses.* The Lessor will, at the expense of the Lessor, cause this Lease, any assignment hereof and the Accessory Installation Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited in the office of the Registrar General of Canada; and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada.

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

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

§ 19. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10.7% per annum of the amount of the overdue rentals for the period of time during which they are overdue.

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

if to the Lessor, at 79 South Main Street, Salt Lake City, Utah 84111, attention: Trust Department, Robert Clark, Trust New Business Officer with a copy to Itel Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention: Contracts Administration Department;

if to the Lessee, 131 West Lafayette Boulevard, Detroit, Michigan 48226, attention of the Secretary, with a copy to Canadian National Railway Company, P. O. Box 8100, Montreal, Quebec, Canada H3C 3N4, attention of the Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in a written notice complying with this §20.

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

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

§ 22. *Execution.* This Lease may be executed in several counterparts and such counterparts together shall constitute but one and the same instrument. The counterpart or counterparts delivered to the Vendor pursuant to an assignment of this Lease shall be marked and be the "original" and all other counterparts shall be marked and be "duplicates" thereof.

Although this Lease is dated as of June 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. *Receipt of Documents.* The Lessee hereby acknowledges that it has received copies of the Conditional Sale Agreement, the assignments hereof and thereof to the Vendor and is fully aware of all the terms and conditions of each such agreement.

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

§ 25. *Lessor Acting as Trustee.* The representations, undertakings and agreements herein made on the part of the Lessor are made not in its individual capacity but solely as Trustee and intended for the purpose of binding only the Trust Estate as such term is used in the trust agreement pursuant to which the Lessor is acting as trustee.

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and the Beneficiary and any assignee of the Lessor and the Beneficiary and, where the context so requires (including, but not limited to, certain of the provisions of Sections 5, 9 and 15 hereof), shall refer only to the Beneficiary. For the purpose of computing the net return or the tax obligations of the Beneficiary herein, the term Beneficiary as used herein shall include any affiliated group of corporations which includes the Beneficiary and which files a consolidated Federal income tax return.

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

FIRST SECURITY BANK OF UTAH, N.A.,  
AS OWNER-TRUSTEE

By *W. Star Segmiller*  
Authorized Officer

[ CORPORATE SEAL ]

Attest:

*W. J. Lombardi*  
Authorized Officer

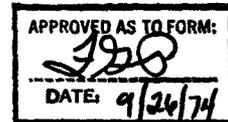
GRAND TRUNK WESTERN RAILROAD  
COMPANY

By *John Bundarian*  
Vice President

[ CORPORATE SEAL ]

Attest:

*E. S. Santani*  
Secretary



STATE OF UTAH }  
COUNTY OF SALT LAKE } SS.:

On this *17th day of September*, 1974, before me personally appeared *W. Starr Seigmiller*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association 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 national association.

Notary Public

*Debbie J. Langefeld*

[NOTARIAL SEAL]  
My Commission expires  
*July 22, 1978*

STATE OF MICHIGAN }  
COUNTY OF WAYNE } SS.:

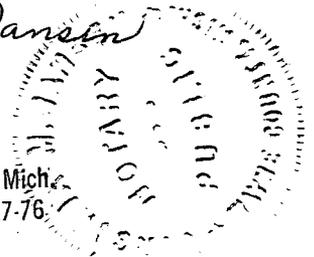
On this *27th day of Sept.*, 1974, before me personally appeared *J. H. Burdakin*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

*Virginia M. Jansen*  
Notary Public,  
Wayne County, Mich.

[NOTARIAL SEAL]  
My Commission expires

VIRGINIA M. JANSEN  
Notary Public, Wayne County, Mich.  
My Commission Expires 10-27-76



## SCHEDULE A

<u>Description</u>	<u>Manufacturer and Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
70-ton 50' 6" Box cars ..... AAR Class XL	Whittaker Corporation, Ber- wick Forge and Fabric- ating Division, Berwick, Pennsylvania	100	GTW309300 to 309399	\$21,635.50	\$2,163,550.00
Accessories will consist of inte- rior load restraining equip- ment .....	Evans Products Company at Plymouth, Michigan	100	—	\$ 1,676.00	\$ 167,600.00
DF-2-Belt Rails				\$23,311.50	\$2,331,150.00

**COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT**  
dated as of June 15, 1974 (hereinafter called "this Assignment"), by and between FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Company) not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns, and TRUST COMPANY OF GEORGIA, acting as Agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), among the Agent and the Investors referred to therein (hereinafter called the Investors).

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter called the Builder), providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Agent, acting under the Finance Agreement, pursuant to an Agreement and Assignment dated as of June 15, 1974; and

WHEREAS the Company and GRAND TRUNK WESTERN RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of June 15, 1974 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

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

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

1. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, payments with respect to the guarantee of the Conditional Sale Agreement by the Lessee provided for in § 17 of the Lease or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Agent in its own name, or the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Company pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Company under the Conditional Sale Agreement. So long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid to the Company or to the order of the Company at such address as the Company shall furnish the Agent in writing. The Agent will promptly notify the Company of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under the Conditional Sale Agreement.

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

3. To protect the security afforded by this Assignment the Company agrees as follows (subject to the limitations set forth in Article 3 and in the last paragraph of Article 22 of the Conditional Sale Agreement):

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Agent, the Company will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void; the Company will hold all Payments received by the Company which are assigned and set over to the Agent by this Assignment in trust for the Agent and will turn them over to the Agent forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the Company to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but

without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

4. The Company does hereby constitute the Agent the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligation under the Conditional Sale Agreement, this Assignment and all rights and powers herein assigned and granted to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Agent's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, created by the Company (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale

Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement as of the date hereof and (e) the Lease and the Conditional Sale Agreement have not been canceled by the Company and to the knowledge of the Company are in full force and effect and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Agent may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Agent deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. Subject to the limitations set forth in Article 3 and in the last paragraph of Article 22 of the Conditional Sale Agreement, the Company covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Agent harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Agent or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, execute, acknowledge and deliver for filing, registry, deposit and recordation any and all further instruments reasonably requested by the Agent in order to confirm or further assure, to the satisfaction of the Agent and its counsel, this Assignment and the provisions hereof under Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, as such Sections have been or shall be amended.

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

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

11. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Agent. Any notice required or permitted to be given by either party hereto to the other party shall be given (i) if to the Company, in accordance with §20 of the Lease and (ii) if to the Agent, in accordance with Article 21 of the Conditional Sale Agreement, at its office at 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham.

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

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

(a) The Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in § 9 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the

performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreement (or either of them) which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreement be deemed, as between the Company and the Agent, to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee.

(b) The Agent for itself and its successors and assigns, hereby agrees with the Company and its successors and assigns, that, except for the direct collection by the Agent of all rentals, profits and other sums payable by the Lessee to the Company pursuant to the Lease and the application thereof as provided in paragraph 1 hereof, the Agent will not, so long as no Event of Default under the Lease or event of default under the Conditional Sale Agreement (or either of them) has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Agent by this Assignment.

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

FIRST SECURITY BANK OF UTAH, N.A.,  
as Owner-Trustee

[ CORPORATE SEAL ]

By *W. John Lamborn*  
Authorized Officer

Attest:

*W. Starr Seegmiller*  
Authorized Officer

TRUST COMPANY OF GEORGIA,

[ CORPORATE SEAL ]

By *R. M. Bell* <sup>as agent</sup>  
Corporate Trust Officer

Attest:

*W. Lamb*  
~~Assistant Secretary~~

STATE OF GEORGIA }  
COUNTY OF *Fulton* } ss.:

On this *9th* day of *September* 1974, before me personally appeared *R. M. Beck*, to me personally known, who, being by me duly sworn, says that he is a Corporate Trust Officer of TRUST COMPANY OF GEORGIA, that the seal affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company 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 trust company.

Notary Public

[NOTARIAL SEAL]  
My Commission expires

NOTARY PUBLIC, GEORGIA STATE AT LARGE  
MY COMMISSION EXPIRES NOVEMBER 1, 1977

*Brenda Barrell*

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this *23rd* day of *Sept.*, 1974, before me personally appeared *W. John Lamborn*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association 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 national association.

Notary Public

[NOTARIAL SEAL]  
My Commission expires

*July 22, 1978*

*Delbert J. Langefeld*

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of June 15, 1974 (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment of Lease and Agreement and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the Investor, a party to the Finance Agreement (a copy of which has been delivered to the Lessee) referred to in the Assignment, to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreement referred to in the Assignment, pursuant to which FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns (hereinafter called the Beneficiary) is financing its purchase of the units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease, and in consideration of other good and valuable consideration, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the Agent, the assignee named in the Assignment, at 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham (or at such other address as may be furnished in writing to the Lessee by the Agent) and, if the Lessee fails for any reason whatsoever to pay to the Agent any Payments, it will pay to the Agent on the respective dates or times set forth in the Lease, amounts equal to the Payments which it shall not theretofore have paid to the Agent; it being hereby agreed that the obligation of the Lessee to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

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

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Agent shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Agent against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or *pari passu* with the right of the Agent to apply such payments or sums equivalent thereto, as provided in the Assignment;

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

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

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

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

[CORPORATE SEAL]

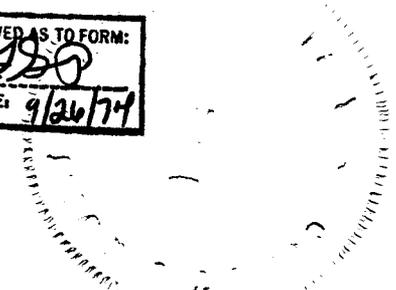
By

*John Burdakin*  
Vice President

Attest:

*E. S. Intarsi*  
Secretary

APPROVED AS TO FORM:  
*JSB*  
DATE: 9/26/74



The foregoing Consent and Agreement is hereby accepted, as of the fifteenth day of June, 1974.

TRUST COMPANY OF GEORGIA,  
as agent,  
By *R. M. Beek*  
Corporate Trust Officer

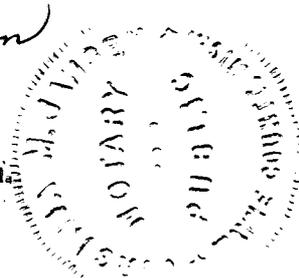
STATE OF MICHIGAN }  
COUNTY OF WAYNE } ss.:

On this *27<sup>th</sup>* day of *Sept. 1974*, before me personally appeared *J. H. Burdakin* to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Notary Public  
*Virginia M. Jansen*  
Notary Public, Wayne County, Mich.  
My Commission expires

VIRGINIA M. JANSEN  
Notary Public, Wayne County, Mich.  
My Commission Expires 10-27-76



**EXHIBIT D**

**GUARANTY AGREEMENT**

**GUARANTY AGREEMENT** dated as of June 15, 1974, among **CANADIAN NATIONAL RAILWAY COMPANY**, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), **FIRST SECURITY BANK OF UTAH, N.A.** (hereinafter called the Lessor), and **TRUST COMPANY OF GEORGIA**, acting as agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), between the Agent and the investor referred to therein (hereinafter called the Investor).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter called the Builder), providing for the sale to the Lessor of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Agent, acting under the Finance Agreement, pursuant to an Agreement and Assignment dated as of June 15, 1974 (hereinafter called the Assignment);

WHEREAS the Lessor and Grand Trunk Western Railroad Company (hereinafter called the Lessee), a wholly-owned subsidiary of the Guarantor, have entered into a Lease of Railroad Equipment dated as of June 15, 1974 (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units and pursuant to which the Lessee guarantees payment of certain sums payable by the Lessor under the Conditional Sale Agreement;

WHEREAS the Lessor has assigned the Lease to the Agent pursuant to a Collateral Assignment of Lease and Agreement dated as of June 15, 1974 (hereinafter called the Collateral Assignment), by and between the Lessor and the Agent, and the Lessee has consented to the assignment of the Lease to the Agent by execution of a Lessee's Consent and Agreement dated as of

June 15, 1974 (hereinafter called the Consent), and in connection with such Consent has agreed to pay to the Agent the Payments (as defined in the Consent) or amounts equal to the Payments;

WHEREAS as an inducement to the Lessor to enter into the Lease with the Lessee and to lease the Units, or any of them, to the Lessee and as an inducement to the Investor, party to the Finance Agreement (a copy of which has been delivered to the Guarantor), to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) pursuant to which the Lessor is financing its purchase of the Units, the Guarantor has agreed to guarantee as hereinafter provided, subject to receipt of the approval of The Governor General in Council, all obligations and covenants of the Lessee under the Lease and the Consent, including the guaranty of the Lessee mentioned in the third paragraph of this preamble; and

WHEREAS the approval of The Governor General in Council to the guaranty hereinafter set out has been received;

NOW, THEREFORE, in consideration of the premises and the execution and delivery of the Lease and the Finance Agreement and of other good and valuable consideration and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally guarantees to the Lessor and the Agent the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, including, without limitation, payments under and by virtue of the guaranty set forth in § 17 of the Lease, due and to be due under the Lease or otherwise in respect of the Units thereunder, and to the Agent the due and punctual payment of all Payments or amounts equivalent to the Payments provided for in the Consent, due and to become due under the Consent, and to the Lessor and the Agent the due and punctual performance of all obligations of the Lessee under the Lease.

2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of the Lease, the Consent or this Agreement or any conduct of the Lessee and/or the Lessor, which might constitute a legal or equitable discharge of a surety or guarantor and irrespective of any

circumstances which might limit the recourse of the Agent or the Lessor to the Lessee. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor of any of its rights hereunder or under the Lease and no action by the Lessor to enforce any of its rights hereunder or under the Lease or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

3. The Guarantor hereby acknowledges that it has received copies of the Lease, the Conditional Sale Agreement, the Assignment, the Accessory Installation Agreement (as defined in the Lease) the Collateral Assignment and the Consent and is fully aware of all the terms and conditions of each such agreement.

4. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties, 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 hereunder to be affixed and duly attested, as of the date first above written.

CANADIAN NATIONAL RAILWAY COMPANY,

By

Vice President

[ CORPORATE SEAL ]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

By

Authorized Officer

[ CORPORATE SEAL ]

Attest:

Authorized Officer

TRUST COMPANY OF GEORGIA,

*as agent,*

By

Corporate Trust Officer

[ CORPORATE SEAL ]

Attest:

Assistant Secretary



