

Equipment Lease

Dated as of November 1, 1973

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INTERSTATE COMMERCE COMMISSION

AMONG

EXCHANGE NATIONAL BANK OF CHICAGO,

*as Trustee under a Trust Agreement
dated as of November 1, 1973,
as Lessor*

AND

BRITISH COLUMBIA RAILWAY COMPANY,

as Lessee

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Attachments to Lease

SCHEDULE A Description of Equipment

SCHEDULE B—Certificate of Acceptance under Equipment Lease

SCHEDULE C-1—Schedule of Casualty Value

SCHEDULE C-2—Schedule of Casualty Value

THIS EQUIPMENT LEASE dated as of November 1, 1973 between EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee (the "Lessor") under a Trust Agreement dated as of November 1, 1973 (the "Trust Agreement") with COMMERCIAL CREDIT CAPITAL CORPORATION, a Delaware corporation (the "Trustor") and BRITISH COLUMBIA RAILWAY COMPANY, a corporation duly incorporated under the laws of the Province British Columbia, Canada (the "Lessee").

WITNESSETH:

WHEREAS, the Lessor and the Lessee have entered into an Acquisition Agreement dated the date hereof (the "Acquisition Agreement") with HAWKER SIDDELEY CANADA LTD., a corporation duly organized under the laws of Canada (the "Manufacturer") providing for the manufacture, sale and delivery to, and the acquisition by the Lessor of the railroad equipment (collectively the "Equipment" and individually as "Item of Equipment") described in Schedule A attached hereto and made a part hereof; and

WHEREAS, the Lessor and the Lessee have entered into an Acquisition Agreement, dated the date hereof (the "Acquisition Agreement") with the Manufacturer, providing for the manufacture, sale and delivery to the Lessor of the Items of Equipment described in Schedule A hereto; and

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement, dated the date hereof (the "Conditional Sale Agreement"), with the Manufacturer, providing for the payment of the Purchase Price (as defined in the Acquisition Agreement) of the Equipment and the obligations of the Lessor and Lessee with respect thereto;

WHEREAS, by instrument of Agreement and Assignment dated the date hereof, the Manufacturer has assigned or will assign its right, security title and interest under the Conditional Sale Agreement to The First Pennsylvania Banking and Trust Company, as Assignee (the "Assignee") and the Lessor and Lessee have or will acknowledge and consent to such assignment and the conditions with respect thereto; and

WHEREAS, the Lessee desires to lease all of the Items of Equipment or such lesser number as are delivered to and accepted under the Acquisition Agreement on or prior to the outside delivery date set forth in Schedule A to said Agreement, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Manufacturer and its assigns under the Conditional Sale Agreement.

SECTION 1. Delivery and Acceptance of Equipment

The Lessor will cause each Item of Equipment to be tendered to the Lessee at one of the places of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Item of Equipment is found to conform to the specifications therefor, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and to the Manufacturer thereof a certificate of acceptance (hereinafter called "Certificate of Acceptance") substantially in the form attached hereto as Schedule B, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 2. Rentals and Payment Dates.

2.1. *Rentals for Equipment.* The Lessee agrees to pay in U.S. dollars the Lessor the following Rent for each Item of Equipment leased hereunder:

(a) *Interim Rental.* For each Item of Equipment the amounts provided for such Item of Equipment in Schedule A hereto.

(b) *Fixed Rental.* For each Item of Equipment thirty-six (36) semiannual installments of Fixed Rental each payable in arrears in the amount provided for such Item of Equipment in Schedule A hereto.

The Fixed Rental provided for in said Schedule A has been computed on the basis of an assumption that the Conditional Sale Indebtedness referred to in Section 3.2(b) of the Conditional Sale Agreement will be payable to the Manufacturer, or its assignee pursuant to Section 13.2 of the Conditional Sale Agreement, with interest at the rate of 8% per annum. The Lessor and Lessee agree that in the event the interest rate payable in respect of said Conditional Sale Indebtedness shall vary, **(upon written agreement of Lessor and Lessee) the Fixed Rental shall be appropriately increased or reduced to maintain the Lessor's effective rate of return hereunder.**

References to Schedule A in this Section 2.1 (and the amounts of Daily Interim Rental and Periodic Rent to be paid pursuant to said Schedule) shall mean either Schedule A-I or A-II as specified in Section 21.5 hereof.

2.2. *Rental Payment Dates.* The amounts of Interim Rental for each Item of Equipment shall be due and payable on the dates provided for such Item in Schedule A hereto. The installments of Fixed Rental for all Items of Equipment shall be due and payable on the twentieth day of August and February in each year commencing August 20, 1974 to and including February 20, 1992.

2.3. *Place of Rent Payment.* Subject to Section 16 hereof, all payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by wire transfer of Federal funds, or by such other means as shall be acceptable to the Lessor or its assigns, at the address of the Lessor set forth in Section 21.1 hereof, or at such other place as the Lessor or its assigns shall specify in writing.

2.4. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against Manufacturer or against the Assignee, or against any entity having a beneficial interest in the obligations to be performed under the Conditional Sale Agreement; 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 or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

SECTION 3. *Term of the Lease.*

The term of this Lease as to each Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 hereof, shall

terminate, subject to Section 20 hereof, on February 20, 1992 (but in no event prior to the date for payment of the 36th installment of Fixed Rental, with the privilege of renewal provided for in Section 20 hereof.

SECTION 4. *Title to the Equipment.*

4.1. *Retention of Title.* The Lessor is acquiring full legal title to the Equipment as Vendee under the Conditional Sale Agreement (but only upon compliance with all the terms and conditions thereof) and, it is understood that Lessee shall acquire no right, title or interest to the Equipment except hereunder notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2. *Duty to Number and Mark Equipment.* The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

“Leased as Lessor by EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement with COMMERCIAL CREDIT CAPITAL CORPORATION, as Trustor, and subject to a Security Interest recorded, among other places, with the I.C.C.”

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of the assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor (unless required to reflect payment of taxes) and in accordance with a statement of new road numbers to be substituted therefor, which request for consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

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

SECTION 5. *Disclaimer of Warranties.*

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby 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 the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer.

SECTION 6. *Lessee's Indemnity.*

6.1. *Scope of Indemnity.* The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2. *Tax Indemnification.* The Lessee acknowledges that the Trustor, as Trustor of the Grantor Trust which is the Lessor shall be entitled as of December 27, 1973 provided Trustor has advanced the Vendee's Commitment (as defined in the Acquisition Agreement) to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended (hereinafter called the "Code") to an owner of the property including (without limitation) the seven percent investment tax credit computed on the purchase price of each Item of Equipment pursuant to Section 38 and related Sections of the Code in connection with the acquisition and continued ownership of the Equipment for a period of seven years or longer ("Investment Credit") and depreciation of the purchase price of each Item of Equipment under any of the methods enumerated in Section 167(b) of the Code using the Asset Guideline Class 00.25 (Railroad Cars and Locomotives) (12 year ADR) as prescribed in Revenue Procedure 72-10 and in accordance with Section 167(m) of the Code with the variations allowed by applicable regulations, commonly referred to as Asset Depreciation Range Guidelines ("ADR Deduction"). It is understood and agreed that this Section 6.2 is for the benefit of Trustor and that Lessor, as Agent of the Trustor, and as Trustee under the Grantor Trust, as well as Trustor, is vested with the right, power and authority to enforce this Section 6.2. As of the date of the signing of this Lease, it is contemplated that the Lessor will join in the filing of a consolidated federal income tax return. Since the effect of this Section 6.2 will vary depending on the manner in which the federal tax report is prepared by Trustor, this Section 6.2 will become operative whether Trustor files a separate return or is a member of an affiliated group filing a consolidated income tax return.

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 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 thereof. Lessee agrees to keep and make available for inspection and copying by Lessor or Trustor such records as will enable Lessor or Trustor to determine whether it is entitled to the full benefit of the Investment Credit and the ADR Deduction with respect to the Items of Equipment.

The Lessee represents and warrants that (i) none of the Items of Equipment constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the ownership of the Items of Equipment is transferred by the Manufacturer, each Item of Equipment will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time ownership of the Items of Equipment is transferred by the Manufacturer, each Item of Equipment 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 Trustor or Lessor and (iii) the Lessee will not at any time during the term of this Lease, use, or fail to use any unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

If at any time (i) the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Trustor, all or any portion of the Investment Credit with respect

to any Item of Equipment, or (ii) there shall have been enacted any amendment to the Internal Revenue Code of 1954, as amended, prior to December 27, 1973, which could operate to reduce or eliminate the Investment Credit with respect to any Item of Equipment, the Lessee shall, to the extent any assessment against the Trustor is made by the Internal Revenue Service and paid by the Trustor with respect to the Investment Credit claimed, lost, or disallowed, or not available to be claimed, promptly upon written notice pay to the Trustor as liquidated damages (for the loss of a bargain and not as a penalty) an amount equal to the sum of:

(a) the quotient of (i) the difference between 7% of the Trustor's qualified investment in the Item of Equipment (or the total Investment Credit previously allowed the Trustor with respect to such Item of Equipment) and the Investment Credit with respect to the Item of Equipment which is allowed to the Trustor (before taking into account any limitation on the amount of such credit based upon the Trustor's Federal Income Tax liability or the tax liability of the affiliated group of which Trustor is a member or the Federal Income Tax liability of the Trustor should Trustor file a separate income tax return) plus the amount of any federal tax penalties attributable to any act or omission of the Lessee required to be paid by the Trustor divided by (ii) that percentage which is the difference between (1) 100% and (2) the sum of (x) the highest effective federal income tax and/or excess profits tax rate generally applicable to domestic corporations (including therein the effect of any applicable surtax, surcharge and/or any federal tax or charges related to net income or excess profits, or related to any tax on net income or excess profits) for the taxable year of the Trustor in which the payment of liquidated damages are herein required (hereinafter referred to as the "federal tax rate") plus (y) the highest effective generally applicable rate of tax imposed by the State of Maryland on corporate net income and/or excess profits for the taxable year of the Trustor in which the payment of liquidated damages is herein required multiplied by that percentage which is the difference between 100% and the federal tax rate for such year, plus

(b) the amount of any tax deficiency interest which is required to be paid by the Trustor and is attributable to the period prior to the Lessee's payment to the Trustor of the liquidated damages.

If at any time (i) the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Trustor, all or any portion of the ADR Deduction with respect to any Item of Equipment, or (ii) there shall have been enacted any amendment to the Internal Revenue Code of 1954 as amended, prior to December 27, 1973 which would operate to reduce or eliminate the ADR Deduction with respect to any Item of Equipment, or (iii) at any time during the original term of this Lease the Trustor is required by the Internal Revenue Service to substitute a longer useful life for tax depreciation purposes than Asset Guideline Class 60.25 (12 year ADR), then the rental rate applicable to such Item of Equipment set forth in Section 2 of this Lease (including any necessary adjustment, increase or decrease, as applicable, to the Casualty Loss Values as provided for under Section 11.3 of this Lease) shall, on and after the next succeeding rental date after written notice to the Lessee by the Trustor of the occurrence of any such event, be increased by such amount for such Item of Equipment, which, in the reasonable opinion of the Trustor, will cause the Trustor's net rate of return over the term of the Lease in respect of such Item of Equipment to equal the net rate of return that would have been available if such event had not occurred and the Lessee shall forthwith pay to the Trustor the amount of any interest which may be assessed by the United States against the Trustor attributable to the occurrence of such event and which has been paid by the Trustor. If all or any portion of the ADR Deduction shall be permanently lost or disallowed or not available to be claimed, then, in order to carry out the intent of this Section 6.2 there shall be made all necessary retroactive adjustments in the rentals and casualty values theretofore paid, which adjustments as relates to the ADR Deductions permanently lost, disallowed or not available to be claimed, shall be paid by the Lessee to Lessor or Trustor by means of one lump-sum payment.

If the Trustor shall have lost or shall not have, or shall have lost the right to claim, or if there shall have been disallowed to the Trustor all or any portion of the Investment Credit or ADR Deduction with respect to Items of Equipment as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Item of Equipment, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 11.3 hereof; or

(ii) a transfer by the Trustor or Lessor of legal title or equitable interest therein to such Item of Equipment, the disposition by the Lessor or Trustor of any interest in such Item of Equipment or the reduction by the Lessor or Trustor of their interest in the rentals from such Item of Equipment under the Lease (except the subjection of such Item of Equipment to the Conditional Sale Agreement or the payment of rentals and other amounts hereunder to the Vendor as specified in **Section 4.1** hereof), unless, in each case, an Event of Default shall have occurred and be continuing; or

(iii) the amendment of the Conditional Sale Agreement or the Trust Agreement prior to an Event of Default hereunder without the prior written consent of the Lessee hereunder; or

(iv) the failure of the Trustor or Lessor, as appropriate, to properly claim the tax benefits in its Federal Income Tax Return; or

(v) the failure of the Trustor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such tax benefits, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Trustor (provided that the Lessee shall upon demand of the Trustor pay to the Trustor the expenses of any such contest as a condition of prosecuting the same); or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (v) by the Trustor without the prior written consent of the Lessee; or

(vi) any change in the tax law subsequent to December 27, 1973; or

(vii) the failure of the consolidated federal income tax return of the affiliated group of which Trustor is a member, or Trustor's tax return in the event Trustor files a separate income tax return, to reflect sufficient liability for tax against which to credit such investment credit or sufficient income to benefit from the ADR Deduction, as applicable; or

(viii) any interim financing or credit arrangements with respect to 80% or more of the purchase price of the Equipment prior to December 27, 1973;

then, the lessee shall not be required to pay any liquidated damages under this Section 6.2 and the rental rate shall not be so adjusted under this Section 6.2 as relates to that Investment Credit and/or ADR Deductions so lost, disallowed, or not available to be claimed as a result of any of the above eight enumerated events.

In the event a claim shall be made by the Internal Revenue Service through the issuance of a Revenue Agent's Report or Issue Memorandum with respect to the disallowance of the Trustor's Investment Credit or ADR Deduction in respect of any Item of Equipment the Trustor agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time provided, that: (i) within 30 days after notice by the Trustor to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Trustor, at its sole option, may forego any and all administrative appeals, proceedings, hearings, and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Trustor shall elect, or contest such claim in the Tax Court of the United States, considering however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Trustor with an opinion of independent tax counsel satisfactory to the Trustor to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Trustor in a manner satisfactory to Trustor for any liability or loss

which the Trustor may incur as the result of contesting such claim and shall have agreed to pay the Trustor on demand all costs and expenses which the Trustor may incur in connection with contesting such claim, including, without limitation (a) reasonable attorneys' and accountants' fees and (b) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, the Trustor agrees promptly to notify the Lessee in writing of such claim and agrees not to make any payments with respect to the tax claimed for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Trustor, and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim. At all times the Trustor reserves the right to direct its tax counsel not to take or to cease taking all legal or other appropriate action deemed reasonable by such counsel in order to sustain all or any part of any bona fide claim herein, whereby, such action by Trustor will relieve Lessee of its obligation under this Section 6.2 in respect to the paid claim(s) or that part of the paid claim(s) not so contested.

If the Trustor's right to claim such portion of the Investment Credit and/or ADR Deduction with respect to an Item of Equipment wherein the Lessee has made any lump-sum payment relating to the loss, disallowance or unavailability to Trustor of such Investment Credit or ADR Deduction, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Trustor shall release, waive, compromise or settle any claim without the written consent of the Lessee and Lessor (either event hereinafter called a "Final Settlement") then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the Trustor shall reimburse Lessee in an amount equal to:

(a) the liquidated damages (other than the amount representing the interest assessed against and paid by the Trustor, which has not been reimbursed to Trustor by Lessee) paid by the Lessee which are attributable to the Investment Credit or ADR Deduction allowed as a result of such Final Settlement; plus,

(b) interest from the date the liquidated damages are paid to the Trustor at the rate of six percent (6%) per annum on the Investment Credit or ADR Deduction allowed as a result of such Final Settlement.

If the Trustor's right to claim all or any part of the full ADR Deduction with respect to an Item of Equipment, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Trustor shall release, waive, compromise or settle any claim without the written consent of the Lessee (both events hereinafter called a "Final Settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Item of Equipment shall be adjusted by such amount for such Item of Equipment which, in the reasonable opinion of the Trustor, will cause the Trustor's net rate of return over the remaining term of the Lease in respect of such Item of Equipment computed in accordance with the fifth paragraph of this Section to be equal to the net rate of return that would have been available if adjusted initially by taking into account such final settlement when computing the net rate of return in accordance with the fifth paragraph of this Section, and the Trustor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Item of Equipment pursuant to the fifth paragraph of this Section and the rental rate applicable to such Item of Equipment computed in accordance with this paragraph and (B) any interest paid by the Lessee to the Trustor pursuant to the fifth paragraph of this Section over (ii) the difference between (a) an amount equal to interest at the rate of $8\frac{1}{2}\%$ per annum on the amount of any federal income tax paid by the Trustor on account of the disallowance or inability to claim ADR

Deduction on such Item and (b) the amount of any interest to which the Trustor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Trustor promptly on demand.

6.3 *Foreign Source Income.* (a) If for any taxable year of Trustor ending as of December 31, 1978 or prior thereto, a determination is made as defined by Section 1313(a) of the Internal Revenue Code of 1954 (hereafter referred to as the Code) as amended, or due to any action or omission of the lessee, or due to the use or omission to use the Equipment leased hereunder, more than 30% of the lease year's taxable income (derived by Lessor from the rents payable such rents being generated from Lessee's use of the Equipment) is income from sources without the United States under Section 862 of the Code, then Lessee shall pay to Lessor a sum computed in accordance with Subsection (b) of this Section 6.3.

(b) The liquidated damages attributable to any Final Determination provided for in Subsection (a) hereof shall be an amount equal to the sum of:

(1) That portion of the credit under Section 901 of the Code for foreign taxes paid or accrued against taxes imposed by the Code ("foreign tax credit") which is lost, disallowed, or not available to be claimed by Trustor or an affiliated group of which the Trustor joins **in the** filing of a consolidated federal income tax return determined by subtracting (a) from (b):

(a) The foreign tax credit which would be available to be claimed on the basis that thirty percent (30%) of the taxable income generated by the beneficial ownership of the Equipment and the Rents payable under the Lease is from sources without the United States under Section 862 of the Code.

(b) The foreign tax credit available to be claimed as a result of more than thirty percent (30%) of the taxable income generated by the beneficial ownership of the Equipment and the Rents payable under the Lease being considered as from sources without the United States under Section 862 of the Code.

(2) The Tax Equivalent with respect to the receipt of (1) above. Such tax equivalent shall be determined by dividing the amount for which the determination is made by that percentage which is the difference between (A) one hundred percent and (B) the highest effective Federal Income tax and/or excess profits tax rate generally applicable to domestic corporations for the taxable year of the Lessor in which such Final Determination is made. (The determination under the preceding sentence is called herein the "Tax Equivalent") plus,

(3) The amount of any Federal tax deficiency interest applicable to such **determination** which is required to be paid by the Lessor.

(c) In the event liquidated damages under Subsection (b) are paid by the Lessee to the Lessor and if there is a subsequent final determination that any portion of the credit under Section 901 of the Code with respect to which such payments have been made is available as a carryover or carryback under Section 904(d) of the Code, then the Lessor shall, in the event the Final Determination results in a carryback, pay to the Lessee that portion of the liquidated damages attributable to the portion of the credit available as a carryback plus interest at the rate of six percent per annum from the date such Final determination is made. In the event the determination for purposes of this Section 6.3 results in any

portion of the credit with respect to which the payments have been made being available as a carryover, then the Lessor shall pay to the Lessee that portion of the liquidated damages attributable to the portion of credit available as a carryover within thirty (30) days after such portion may be claimed as credit.

6.4 *Revenue Ruling.* (a) The Lessor and Lessee covenant and agree that each will promptly take all such actions and prepare and file all such documents as may be required by Messrs. Pedersen & Houpt or Trustor as necessary or desirable, in their opinion to obtain the rulings requested in the Tax Ruling Applications. The Ruling Applications were submitted to the Internal Revenue Service by two separate letters dated November 27, 1973, executed on behalf of Trustor by Pedersen & Houpt, and Trustor has been furnished with copies of such applications.

(b) In the event that the Internal Revenue Service shall not issue prior to June 1, 1974, in form and substance satisfactory to the Lessor, Trustor and Lessee the Tax Ruling requested, or any **adverse ruling is issued or no ruling will have been issued** which relates to the determination of whether the Lessor Trustor is entitled to claim the investment tax credit then Lessee unconditionally and irrevocably agrees to elect either one of the following:

(1) to purchase all of the Trustor's right, title and interest in and to the Trust Estate the Trust Agreement and the Conditional Sale Agreement at a price computed as an amount **Casualty Value per schedule C 1** less amount of the debt secured by the Conditional Sale Agreement **equal to** accrued to the date of such payment; in the event of such termination, Lessee shall pay rental to the date of such termination; or

(2) pay increased rental (subject to the second paragraph of Section 2.1(b) hereof) in accordance with Schedule A-II to this Lease.

The above election shall be made by Lessee in writing to the Lessor within 30 days of June 1, 1974 or after receipt of notice that no ruling will be issued or an adverse ruling is issued regarding the investment tax credit.

(c) In the event that no ruling will be issued by the Internal Revenue Service and the Lessee elects to come within subparagraph 2 above, the rentals so paid which are in excess of the rentals as originally scheduled shall be deposited in escrow with Lessor to be held by Lessor until such time as there is a final determination as specified in Section 6.2 that the tax benefits specified in Section 6.2 for the benefit of Lessor and/or Trustor are not available. Upon such a determination, the rentals shall be recomputed in a manner provided in Section 6.2 and the sums due and owing to Lessor and/or Trustor shall be paid to Lessee. If the escrowed funds are insufficient, Lessee shall upon demand, pay the balance to Lessor. Lessor shall at the direction of the Lessee invest the sums so paid into escrow in securities as may be designated by Lessee; however, such securities shall either be direct obligations of the United States of America or obligations for which the faith of the United States of America is pledged to provide for the payment of principal and interest, maturing not more than one year from the date of such investment; or certificates of deposit of commercial banks in the United States of America with capital and surplus of \$50,000,000; or such securities shall have a rating of "A" or better by a recognized rating service; or shall be prime commercial paper. Lessee shall **take the risk** of loss with respect to any such investment. In the event of any net loss (realized or unrealized) determined by taking into account all other realized income from such investment on demand Lessee shall reimburse Lessor to the extent of such loss immediately upon Lessor's demand. Lessee shall pay all of Lessor's reasonable expenses in connection with such investment **s .**

(d) In the event it is determined that the Internal Revenue Service will not issue a favorable ruling that this transaction is a Lease and Lessor and Lessee are unable to agree (i) on changes in the transaction required to obtain a favorable ruling that this transaction constitutes a Lease or (ii) on any corresponding increase in the rental rate (resulting from any changes in the Lease required to obtain a favorable ruling) necessary to preserve Lessor's and/or Trustor's expected rate of return on the investment, then Lessee must terminate the Lease and **proceed as provided in Section 6.4(b) Subparagraph (1)**.

(e) Failure to obtain the Ruling shall not relieve Lessor **or Trustor** from his responsibilities with respect to claiming such deductions and credits as may be required under the provisions of Section 6.2 hereof.

(f) If within four years after the filing of the claim to the tax benefits as required under Section 6.2, no claim is made by the Internal Revenue Service through the issuance of a Revenue Agent's Report or Issue Memorandum with respect to the disallowance of the tax benefits so claimed, Lessor shall refund to Lessee that portion of the escrowed amounts relating to the tax benefits so claimed.

6.5 Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or 15 as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. Rules, Laws and Regulations.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the Canadian Transport Commission and the United States Department of Transportation and the current Interchange Rules and supplements thereto of the Mechanical Division Association of American Railroads) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements.

SECTION 8. Use and Maintenance of Equipment.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

SECTION 9. Liens on the Equipment.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of

Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

SECTION 10. *Filing, Payment of Fees and Taxes.*

10.1. *Filing.* Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease, the Conditional Sale Agreement and the first assignment thereof to be duly filed, recorded or deposited in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may request for the protection of its title or the security interest of the Assignee and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, the Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action.

10.2. *Payment of Taxes.* The Lessee, or the Lessor at the Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (excluding any tax measured by the Lessor's net income and any gross receipts or gross income taxes in substitution for or by way of relief from the payment of taxes measured by such net income, provided that the Lessee agrees to pay that portion of any such tax on or measured by rentals payable hereunder or the net income therefrom which is in direct substitution for, or which relieves the Lessee from, a tax which the Lessee would otherwise be obligated to pay under the terms of this Section), together with any penalties or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the Lessor or the Lessee; provided, however, that the Lessee shall not be required to pay or discharge any such tax or assessment (i) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment; however, the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge, or (ii) subject to Section 10.2(i) hereof, as to assessments against or in the name of anyone other than the Lessee, until 20 days after written notice thereof shall have been given to the Lessee. **Notwithstanding the foregoing the Lessee shall not be required to pay and discharge any taxes imposed by reason of Lessor's acquisition of this lease by reason of section 4911 et seq of the code.**

SECTION 11. *Insurance, Payment for Casualty Occurrence or Equipment Unserviceable for Use.*

11.1. *Insurance.* The Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies against risks customarily insured against by other railroad companies on similar equipment. Such insurance may provide that losses shall be adjusted with the Lessee. All proceeds of insurance received by the Lessor and the Assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and the Assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and the Assignee with

respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

11.2. *Duty of Lessee to Notify Lessor.* In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which by its terms does not exceed the Term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor in regard thereto.

11.3. *Payment for Casualty Loss.* When the aggregate Casualty Value (as herein defined) of Items of Equipment having suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this Section 11) shall exceed \$30,000, the Lessee, on the next succeeding rental payment date, shall pay to the Lessor the rental installment due on such rental payment date for such Items of Equipment plus a sum equal to the Casualty Value (as provided in Schedule C hereto) of such Item or Items of Equipment as of the date of such payment; provided that notwithstanding the foregoing the Lessee shall on the last rental payment date of each calendar year pay to the Lessor a sum equal to the Casualty Value of any Item or Items of Equipment which have suffered a Casualty Occurrence, not later than 30 days prior to such last rental payment date **for which no payment has previously been made to the Lessor pursuant to this Section 11.3.** References to Schedule C in this Section 11.3 (and the amounts to be paid as determined by said Schedule) shall mean either Schedule C-I or C-II as specified in Section 21.5 hereof.

11.4. *Rent Termination.* Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment and the rental installment due on such payment date, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. *Disposition of Equipment.* The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item or Items of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item or Items of Equipment.

11.6. *Casualty Value.* The "Casualty Value" of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the original cost to the Lessor of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. *Risk of Loss.* The Lessee shall bear the risk of and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. *Eminent Domain.* In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 12. *Annual Reports.*

12.1. *Duty of Lessee to Furnish.* On or before May 1 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor, the Trustor and the Lessor's assigns an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment 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 or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

On or before May 1 in each year, commencing with the year 1975 the Lessee shall furnish in writing to Lessor a statement setting forth the percentage of use in Canada of the Equipment leased hereunder.

12.2. *Lessor's Inspection Rights.* The Lessor, the Trustor and the Assignee each shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or the Trustor or, as the case may be, the Assignee the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 13. *Return of Equipment Upon Expiration of Term.*

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 180 days and transport the same at any time within such 180 day 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. All movement and storage of each such Item is to be at the risk and expense 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 such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment 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 to so assemble, deliver, store and transport the Equipment.

SECTION 14. *Default.*

14.1. *Events of Default.* Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 hereof or in Section 11 hereof and such default shall continue for five business days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any other proceeding shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder), and, if instituted against the Lessee, are consented to or are not dismissed within 60 days after such proceedings shall have been commenced, unless all the obligations of the Lessee under this Lease shall have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given a status comparable to obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever is earlier;

14.2. *Remedies.* If any Event of Default has occurred and is continuing, the Lessor, at its option, may:

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

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment 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 Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts 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 a fraction of which the numerator is such accrued number of days in such full rental period 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 Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such present worth to be computed in each case on a basis of a 4.184% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses including reasonable attorney's 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.

14.3. *Cumulative Remedies.* 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 any of 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 of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

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

14.5. *Termination by Assignee of Conditional Sale Agreement.* Anything in this Lease to the contrary notwithstanding, if the Assignee of the Conditional Sale Agreement shall, upon the occurrence of an Event of Default as defined therein, state in a written notice to the Lessor and Lessee that this Lease terminates, this Lease shall, immediately upon receipt by Lessee of such notice, terminate as to all the Items of Equipment and the rights of the Lessee hereunder shall at all times and in all respects be subject and subordinate to the rights and remedies of the Assignee under the Conditional Sale Agreement.

SECTION 15. *Return of Equipment Upon Default.*

15.1. *Lessee's Duty to Return.* If the Lessor or the Assignee shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad for a period not exceeding 180 days at the risk of the Lessee; and

(c) Transport the Equipment, at any time within such 180 days' period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2. *Specific Performance.* The assembling, delivery, storage and transporting of the Equipment 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 Equipment.

15.3. *Lessor Appointed Lessee's Agent.* Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

SECTION 16. *Assignments by Lessor.*

This Lease and all rent and other sums due and to become due hereunder have been assigned to the Assignee pursuant to Section 24 of the Conditional Sale Agreement, and all rent and other sums due and to become due hereunder shall be paid to the Assignee at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention: Corporate Trust Department, or at such other place as the Assignee shall

specify in writing. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Assignee, the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the Assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

SECTION 17. *Assignments by Lessee; Use and Possession.*

17.1. *Lessee's Rights to the Equipment.* 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 Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. 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 Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. *Use and Possession on Lines Other Than Lessee's Own.* So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which Equipment of the Lessee is regularly operated, and also to permit the use of Items of Equipment upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3. *Merger, Consolidation or Acquisition of Lessee.* Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation affiliated with the Lessee or to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

SECTION 18. *Opinion of Lessee's Counsel.*

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will deliver to the Lessor ten counterparts of the written opinion of counsel for the Lessee (who may be special outside counsel to the Lessee) addressed to the Lessor and to the Assignee, in scope and substance satisfactory to the Lessor and to the Assignee, to the effect that:

- (a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of British Columbia (Province of Canada);

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states, provinces or territories in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease, the Acquisition Agreement of even date herewith among the Lessor, the Lessee and the Manufacturer and the Finance Agreement of even date herewith among the Lessee, the Assignee and certain institutional investors have each been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

(d) No filing, recording or depositing or notices in respect of the Lease is necessary to protect the Lessor's title to the Equipment in Canada;

(e) No approval, consent or withholding of objection is required from any Canadian regulatory body with respect to the entering into or performance by the Lessee of said Acquisition Agreement, said Finance Agreement the Agreement and Assignment of even date herewith (the "Agreement and Assignment"), among the Lessor, the Lessee, the Manufacturer and The First Pennsylvania Banking and Trust Company, or this Lease;

(f) The execution and delivery by the Lessee of said Acquisition Agreement, said Finance Agreement, said Agreement and Assignment and this Lease do not violate any provision of any law, any order of any court or Canadian governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except as contemplated and permitted hereby; and

(g) As to any other matter which the Lessor shall reasonably request.

SECTION 19. *Interest on Overdue Rentals and Amounts Paid by Lessor.*

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to 12% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. *Options to Renew.*

Provided that the Lessee is not in default, the Lessee shall have the following renewal options:

(a) At the expiration of the original term of this Lease, the Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Equipment then leased hereunder for one additional renewal term of five years upon and subject to the terms and conditions herein contained for the original term of this Lease, excepting only that the semiannual Fixed Rental payable for and during such renewal terms shall be an amount equal to fifty percent (50%) of the rental rate payable during the original term of this Lease. Such renewal term shall commence immediately upon the expiration of the original term. The Lessee shall give the Lessor written notice not less than 120 nor more than 180 days prior to the end of the original term of its election to exercise the renewal option provided for by this Section 20(a).

In the event that the Lessee does not exercise its renewal option herein contained, the Lessor may by written notice delivered to the Lessee not less than 90 days prior to the end of the original term of this Lease require the Lessee to purchase at the end of the original term of this Lease all but not fewer than all the Items then subject to this Lease for a purchase price equal to 15% of the purchase price of the Equipment.

(b) The Lessee shall have the further option to renew and extend this Lease as to all, but not less than all, of the Equipment then leased hereunder for one additional renewal term of two years upon and subject to the terms and conditions herein contained for the original term of this Lease, excepting only that the semiannual Fixed Rental payable for and during such renewal term shall be an amount equal to thirty-three and one third percent ($33\frac{1}{3}\%$) of the rental rate payable during the original term of this Lease. Such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice not less than 120 nor more than 180 days prior to the end of the then current renewal term of its election to exercise the renewal option provided for by this Section 20(b).

(c) The Lessee shall have further options to renew and extend this Lease as to all, but not less than all, of the Equipment then leased hereunder for additional renewal terms of two years each upon and subject to the terms and conditions herein contained for the original term of this Lease, excepting only that the semiannual Fixed Rental payable for and during such renewal terms shall be an amount in no event less than the "fair rental value" (as hereinafter defined) of such Equipment. Each such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice not less than 180 nor more than 240 days prior to the end of the then current renewal term of its election to exercise any renewal option provided for by this Section 20(c).

The "fair rental value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair rental value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise any renewal option, the fair rental value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair rental value is not so determined within 30 days after receipt by the Lessor of the Lessee's election to exercise any renewal option provided for in this Section 20(c), the same shall be determined by American Appraisal Company. At any date not less than 180 days prior to the expiration of any extension of the original term, the Lessee may at its option withdraw and rescind its election to exercise the renewal option provided for in this Section 20(c) without further liability to the Lessor.

SECTION 21. *Miscellaneous.*

21.1. *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: EXCHANGE NATIONAL BANK OF CHICAGO
130 South LaSalle Street
Chicago, Illinois
Attention: Harold Z. Novak
Senior Vice President and
Trust Officer

with a copy of any such notice to:

COMMERCIAL CREDIT CAPITAL CORPORATION
300 St. Paul Place
Baltimore, Maryland 21202
Attention: President

If to the Lessee: BRITISH COLUMBIA RAILWAY COMPANY
1095 West Pender Street
Vancouver, British Columbia, Canada
Attention: Controller

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

21.2. *Execution in Counterparts.* This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

21.3. *Governing Law.* This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable statute, rule or regulation of the Dominion of Canada or the United States of America.

21.4. *Limitations of Liability.* It is expressly understood and agreed by and between the Lessor, the Trustor and the Lessee and their respective successors and assigns, that this Lease **is executed by Exchange National Bank of Chicago**, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Exchange National Bank of Chicago hereby warrants that it possesses full power and authority to enter into and perform this Lease); and it is expressly understood and agreed that, except in the case of gross negligence or wilful misconduct of the Lessor or the Trustor, nothing herein contained shall be construed as creating any liability on the Lessor or the Trustor, individually or personally, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee; and that so far as Lessor or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease.

21.5. *Amendment and Substitution of Schedules.* Attached hereto are copies of Schedule A-I and Schedule C-I (the "Original Schedules") and Schedule A-II and Schedule C-II (the "Alternate Schedules"). From and after the date of execution hereof, references herein to Schedules A and C respectively, shall mean Schedule A-I and Schedule C-I, respectively, and the Daily Interim Rental and Fixed Rent and the Casualty Value shall be determined as set forth in said Original Schedules; provided, however, in the event that, on or before June 1, 1974, the Lessor shall notify the Lessee (a copy of which notice shall be furnished to the Assignee) that the Trustor does not have a favorable ruling affirming that Trustor is not entitled in determining its Federal income tax liability to claim the Investment Tax Credit, then from and after the giving of such notice, all references herein to Schedule A and Schedule C, respectively, shall mean Schedule A-II and Schedule C-II, respectively, and the Daily Interim Rental and Fixed Rent and the Casualty Value shall be determined as set forth in said Alternate Schedules. Any aggregate increase in Daily Interim Rent shall be paid in the next following Periodic Rent payment date.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

(CORPORATE SEAL)

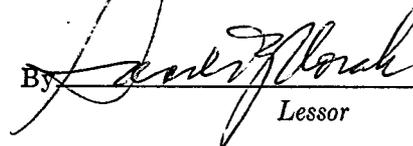
ATTEST:



Assistant Trust Officer

EXCHANGE NATIONAL BANK OF CHICAGO,
as Trustee under a Trust Agreement dated
November 1, 1973

By



Lessor

Senior Vice President

BRITISH COLUMBIA RAILWAY COMPANY

By

Its

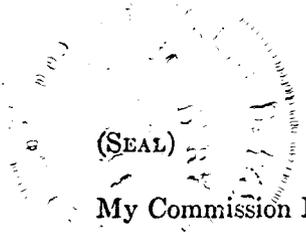


STATE OF ILLINOIS }
COUNTY OF COOK } SS

On this 17 day of DECEMBER, 1973, before me personally appeared HAROLD Z. NOVAK, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of Exchange National Bank of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Phyllis B. Payton

Notary Public



(SEAL)
My Commission Expires:

My Commission Expires Jan. 21, 1976

PROVINCE OF ONTARIO)
JUDICIAL DISTRICT OF YORK) SS

On this 11th day of December, 1973, before me personally appeared ROBERT DEAN MILLER, to me personally known, who, being by me duly sworn, says that he is the Comptroller of BRITISH COLUMBIA RAILWAY COMPANY, that said instrument was signed 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.

Edwin Shannon

SCHEDULE A-I
(to Equipment Lease)

MANUFACTURER: Hawker Siddeley Canada Ltd.

PLANT OF MANUFACTURER: Trenton, Nova Scotia, Canada

DESCRIPTION OF EQUIPMENT: Two Hundred (200) 52'8", 70-ton Bulkhead Flat Cars bearing Road Numbers in the series B.C.I. T 16150 to 16700, both inclusive.

Purchase Price: Can. \$14,839.53 per Item (Can. \$2,967,906 for two hundred Items)

DELIVER TO: British Columbia Railway Company

PLACE OF DELIVERY: Manufacturer's plant or such other place as may be agreed upon by Manufacturer and Lessee

ESTIMATED DELIVERY DATES: December, 1973

OUTSIDE DELIVERY DATE: December 27, 1973

DAILY INTERIM RENTAL: The "borrowed funds rate" shall mean the rate per annum determined by adding one half of one per cent to the prime daily commercial rate at The Chase Manhattan Bank, N.A. from time to time in effect.

Using the borrowed funds rate determine the semiannual factor necessary to amortize an eighteen year loan; divide such factor so determined by 180. The quotient so determined shall constitute the Daily Interim Rental Factor.

The amount of Daily Interim Rent shall be the product of such Daily Interim Rental Factor times the Purchase Price of the Equipment then subject to the Lease.

Daily Interim Rent shall be payable on December 27, 1973 for the period from and including the date of acceptance of each Item of Equipment pursuant to Section 1 of the Lease to but not including December 27, 1973; and shall be payable on February 20, 1974 for the period from and including December 27, 1974 to but not including February 20, 1974.

FIXED RENTAL PAYMENTS: Thirty-six (36) semiannual rental payments in arrears each equal to 3.9818% of the price of each Item of Equipment.

LESSEE: British Columbia Railway Company

ASSIGNEE OF MANUFACTURER: The First Pennsylvania Banking and Trust Company

All above Can. dollar figures are based on assumed conversion exchange of Can. \$1.00 equal to U.S. \$1.00. All rentals hereunder shall be calculated upon the U.S. Dollar equivalent to the Purchase Price as of December 27, 1973 (to the extent not paid by the Lessee) and be payable in U.S. Dollars.

SCHEDULE A-II
(to Equipment Lease)

MANUFACTURER: Hawker Siddeley Canada Ltd.

PLANT OF MANUFACTURER: Trenton, Nova Scotia, Canada

DESCRIPTION OF EQUIPMENT: Two Hundred (200) 52'8", 70-ton Bulkhead Flat Cars bearing Road Numbers in the Series B.C.I.T. 16150 to 16700 both inclusive.

Purchase Price: Can. \$14,839.53 per Item (\$2,967,906 for two hundred Items)

DELIVER TO: British Columbia Railway Company

PLACE OF DELIVERY: Manufacturer's plant or such other place as may be agreed upon by Manufacturer and Lessee

ESTIMATED DELIVERY DATES: November-December, 1973

OUTSIDE DELIVERY DATE: December 27, 1973.

DAILY INTERIM RENTAL: The "borrowed funds rate" shall mean the rate per annum determined by adding one half of one per cent to the prime daily commercial rate at The Chase Manhattan Bank, N.A. from time to time in effect.

Using the borrowed funds rate determine the semiannual factor necessary to amortize an eighteen year loan; divide such factor so determined by 180. The quotient so determined shall constitute the Daily Interim Rental Factor.

The amount of Daily Interim Rent shall be the product of such Daily Interim Rental Factor times the Purchase Price of the Equipment then subject to the Lease.

Daily Interim Rent shall be payable on December 27, 1973 for the period from and including the date of acceptance of each Item of Equipment pursuant to Section 1 of the Lease to but not including December 27, 1973; and shall be payable on February 20, 1974 for the period from and including December 27, 1974 to but not including February 20, 1974.

FIXED RENTAL PAYMENTS: Thirty-six (36) semiannual rental payments in arrears each equal to 4.5674% of the price of each Item of Equipment.

LESSEE: British Columbia Railway Company

ASSIGNEE OF MANUFACTURER: The First Pennsylvania Banking and Trust Company

All above Can dollar figures are based on assumed conversion exchange of Can. \$1.00 equal to U.S. \$1.00. All rentals hereunder shall be calculated upon the U.S. Dollar equivalent to the Purchase Price as of December 27, 1973 (to the extent not paid by the Lessee) and be payable in U.S. Dollars.

**CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE**

TO: EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement dated November 1, 1973, as Vendee and Lessor ("Vendee-Lessor")

HAWKER SIDDELEY CANADA, LTD. ("Manufacturer")

I, a duly appointed inspector and authorized representative of BRITISH COLUMBIA RAILWAY COMPANY ("Lessee") and of the above named Vendee-Lessor, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee under the Equipment Lease dated as of November 1, 1973 between the Vendee-Lessor and the Lessee and on behalf of the Vendee-Lessor under the Conditional Sale Agreement dated as of November 1, 1973 among Hawker Siddeley Canada Ltd. (the "Manufacturer"), the Vendee-Lessor and the Lessee, of the following Items of Equipment ("Equipment"):

TYPE OF EQUIPMENT: 52'8", 70-ton Bulkhead Flat Car(s)

MANUFACTURER: HAWKER SIDDELEY CANADA, LTD.

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF ITEMS:

NUMBERED:

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Item of Equipment the following legend in letters not less than one inch in height:

"Leased as Lessor by Exchange National Bank of Chicago, as Trustee under Trust Agreement with Commercial Credit Capital Corporation, as Trustor, and subject to a Security Interest recorded, among other places, with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for warranties it has made with respect to the Equipment.

*Inspector and Authorized
Representative of Vendee-Lessor
and Lessee*

**SCHEDULE B
(to Equipment Lease)**

BRITISH COLUMBIA RAILWAY

SCHEDULE OF CASUALTY VALUE (assuming availability of Investment Tax Credit)

The Casualty Value of an Item of Equipment payable on any rental payment date shall mean an amount equal to the per cent of total cost to the Lessor of such Item, including all taxes and delivery charges, set forth opposite such Rental Payment Date in the following schedule:

Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)	Percentage of Total Cost Payable As Casualty Value
August 20, 1974.....	109.85
February 20, 1975.....	109.77
August 20, 1975.....	109.46
February 20, 1976.....	108.96
August 20, 1976.....	108.25
February 20, 1977.....	102.87
August 20, 1977.....	101.79
February 20, 1978.....	100.53
August 20, 1978.....	99.08
February 20, 1979.....	92.96
August 20, 1979.....	91.17
February 20, 1980.....	89.26
August 20, 1980.....	87.23
February 20, 1981.....	80.61
August 20, 1981.....	78.37
February 20, 1982.....	76.03
August 20, 1982.....	73.59
February 20, 1983.....	71.06
August 20, 1983.....	68.43
February 20, 1984.....	65.75
August 20, 1984.....	63.00
February 20, 1985.....	60.19
August 20, 1985.....	57.33
February 20, 1986.....	54.40
August 20, 1986.....	51.41
February 20, 1987.....	48.35
August 20, 1987.....	45.23
February 20, 1988.....	42.04
August 20, 1988.....	38.78
February 20, 1989.....	35.45
August 20, 1989.....	32.05
February 20, 1990.....	28.58
August 20, 1990.....	25.03
February 20, 1991.....	21.40
August 20, 1991.....	17.72
February 20, 1992.....	15.00

SCHEDULE C-I
(to the Equipment Lease)

BRITISH COLUMBIA RAILWAY

SCHEDULE OF CASUALTY VALUE (assuming unavailability of Investment Tax Credit)

The Casualty Value of an Item of Equipment payable on any rental payment date shall mean an amount equal to the per cent of total cost to the Lessor of such Item, including all taxes and delivery charges, set forth opposite such Rental Payment Date in the following schedule:

<u>Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Total Cost Payable As Casualty Value</u>
August 20, 1974.....	
February 20, 1975.....	
August 20, 1975.....	
February 20, 1976.....	
August 20, 1976.....	
February 20, 1977.....	
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August 20, 1990.....	
February 20, 1991.....	
August 20, 1991.....	
February 20, 1992.....	

SCHEDULE C-II

(to the Equipment Lease)