

SIDLEY & AUSTIN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1722 EYE STREET, N.W.

WASHINGTON, D.C. 20006

TELEPHONE 202: 429-4000

TELEX 89-463

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603
312: 853-7000 TELEX 25-4364

2049 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
213: 553-8100 TELEX 18-1391

520 MADISON AVENUE
NEW YORK, NEW YORK 10022
212: 418-2100 TELEX 97-1696

31 ST. JAMES'S SQUARE
LONDON, SW1Y 4JR, ENGLAND
44-1: 930-5596 TELEX 21781

P. O. BOX 190
MUSCAT, SULTANATE OF OMAN
968: 722-4111 TELEX 3266

P. O. BOX 4619
DEIRA, DUBAI - U.A.E.
9714-283194 TELEX 47216

5 SHENTON WAY
SINGAPORE 0106
65: 224-5000 TELEX 28754

P. O. BOX 8650
RIYADH, SAUDI ARABIA
966-1-463-4160 TELEX 204947

SIDLEY & AUSTIN & NAGUIB
AHMED NESSIM STREET, 3
GIZA, CAIRO, EGYPT
202: 729-499 TELEX 93750

December 6, 1985

HAND DELIVERY

Ms. Mildred Lee
Recordation Unit
Interstate Commerce Commission
12th & Constitution, N.W.
Room 2303
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed please find four (4) copies of the Locomotive Sublease Agreement the parties to which are Kennecott Corporation (Lessor), P.O. Box 11248, Salt Lake City, Utah 84147, and Canadian Pacific Limited (Lessee), Windsor Station, Montreal, Quebec, Canada H3C3E4. The locomotives to be leased are General Motors (Electo Motive Division) SD 40-2, 3000 H.P. Diesel Electric Locomotives, unit numbers KCC 101, KCC 102, KCC 103, KCC 104, KCC 105, KCC 106, and KCC 107.

The name, address and phone number of the person requesting the registration of this Lease is:

J.A. LaFleur
Solicitor
Canadian Pacific
Law Department
P.O. Box 6042, Station "A"
Montreal, Quebec H3C3E4
Telephone: (514) 395-7623

Thank you for your assistance.

Very truly yours,

Gerald G. MacDonald
Gerald G. MacDonald

Enclosures

RECORDATION NO. 14857
FILED 1428

DEC 5 1985 3 32 PM

INTERSTATE COMMERCE COMMISSION

C. Austin
— Mrs. Lee

SIDLEY & AUSTIN

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GIZA, CAIRO, EGYPT
202: 729-499 TELEX 93750

December 5, 1985

4857
REGISTRATION NO. FILED 1425
DEC 8 1985 3 20 PM
INTERSTATE COMMERCE COMMISSION

HAND DELIVERY

Ms. Mildred Lee
Recordation Unit
Interstate Commerce Commission
12th and Constitution, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed please find four (4) copies of the Locomotive Sublease Agreement between Kennecott Corporation and Canadian Pacific Limited and a check for \$10 to cover the filing fee. Two of these copies are for filing with the Commission. We would appreciate your time stamping the remaining two copies and returning them to the messenger along with a receipt for the filing fee.

Thank you for your assistance.

Very truly yours,

Gerald G MacDonald

Gerald G. MacDonald

Enclosures

14857

REGISTRATION NO. _____ FILED 1985

DEC 5 1985 3 22 PM

INTERSTATE COMMERCE COMMISSION

LOCOMOTIVE SUBLEASE AGREEMENT

THIS SUBLEASE made and entered into as of this 11th day of NOVEMBER, 1985 by and between Kennecott Corporation, a New York corporation, hereinafter called "Lessor," and Canadian Pacific Limited, a Canadian corporation, hereinafter called "Lessee."

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Original Lease: Lessor herein is the Lessee of a certain Equipment Lease, dated September 1, 1978, by and between First Security Bank of Utah, N.A. and Thomas Cuthbert, not in their individual capacities, but solely as trustees under a Trust Agreement dated as of September 1, 1978 between them and the Beneficial Owners therein named, as Lessor, hereinafter called "Equipment Lease Lessor" and Kennecott Copper Corporation (former name of Kennecott Corporation) as Lessee, hereinafter called "Equipment Lease Lessee," a copy of which Equipment Lease is attached hereto and incorporated herein by this reference. Said Equipment Lease, leases from Equipment Lease Lessor to Equipment Lease Lessee, among other equipment set forth therein, the Locomotives described in the Equipment Schedule Number One attached hereto.

2. Lease: Lessee agrees to lease from Lessor the Locomotives described in Equipment Schedule Number One attached hereto, "as is," together with all replacement parts, additions, repairs and accessories incorporated therein, and/or affixed thereto (the "Locomotives"), upon the terms and conditions herein set forth. This Lease shall be binding only on Locomotives described in Equipment Schedule One duly signed by both Lessor and Lessee. All Locomotives presently bear Kennecott reporting marks. The lessee may stencil its name on the units so long as it removes same upon expiration of this Lease.

3. Original Lease Covenants: Lessee agrees to be subject to and to observe the terms and conditions to be performed by Lessor as Equipment Lease Lessee of the Equipment Lease so far as such terms and conditions apply to the Locomotives herein, but excluding the covenant for payment of rent as set forth in the Equipment Lease. In addition to the requirements of the above sentence and the general terms and conditions set forth herein, Lessee agrees to the following specific terms and conditions:

- (a) The rights of Lessee herein are subject and subordinate to the rights of the Equipment Lease Lessor and any security assignee of the Equipment Lease Lessor as provided in Paragraph 14 of the Equipment Lease.
- (b) Lessee shall file financing statements, as required by the Equipment Lease Lessor of the Equipment Lease.

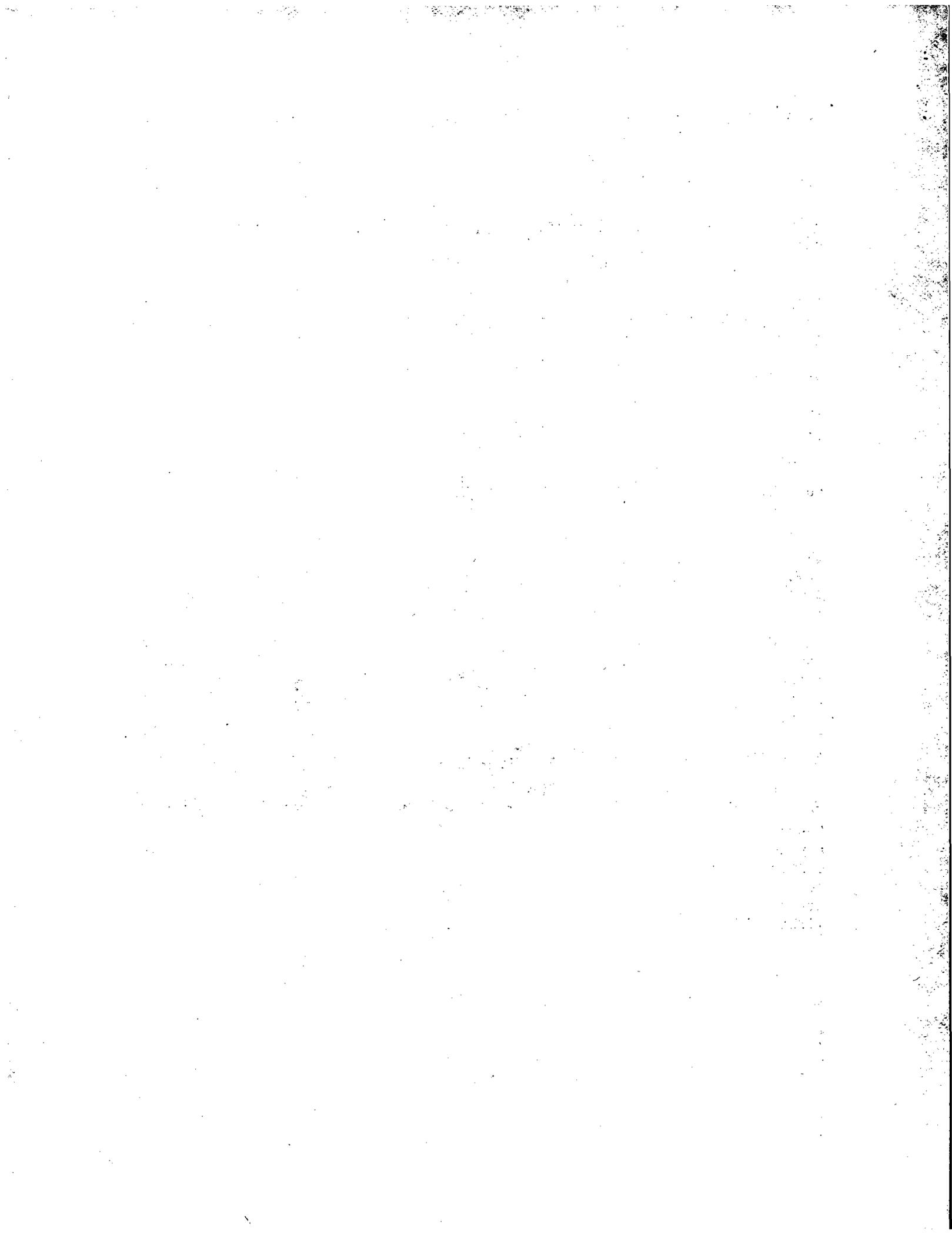
RL

- (c) Lessee agrees, upon request of Lessor, to keep Lessor informed of the location of the Locomotives, including the specific trackage on which the Locomotives are to be used, and of any anticipated changes of location.
- (d) Lessee consents to be subject to the jurisdiction of the courts of the State of Utah in any lawsuit involving the enforcement of Equipment Lease and/or the Locomotives Lease Agreement.
- (e) Lessee shall be subject to approval by Equipment Lease Lessor of the following items:
 - 1) Lessee's financial and credit condition and history;
 - 2) Lessee's general business reputation;
 - 3) Lessee's intended usage of the Equipment; and
 - 4) Any other information which the Equipment Lease Lessor may reasonably request.

4. Rental: Rental will be payable in respect of each of the Locomotives commencing on the date that Lessee places a particular Locomotive in service, which date is hereinafter referred to as the "Rental Commencement Date." Lessee shall use its best efforts to place the units in service as soon as possible. The daily rental shall be \$300.00 (U.S.) per Locomotive, payable monthly.

Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reasons whatsoever, including, but not limited to, abatements, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction of all or any of such Locomotives from whatever cause and of whatever duration, except as otherwise provided herein. Lessee will settle all claims, defenses, setoffs and counterclaims it may have of any nature against the Locomotive manufacturer, including but not limited to defects in the Locomotives and like claims, directly with the Locomotive manufacturer and not set up any such claim, defense, setoff or counterclaim against Lessor or its assigns. Lessee acknowledges that: Lessor is in no way connected to the Locomotive manufacturer; Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives; and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, setoffs or counterclaims it may now or hereafter have against the Locomotive manufacturer.

5. Term: The Term shall be thirty (30) days from the first day of the month following the Rent Commencement Date. Lessee shall provide



Lessor with 30 days' written notice of a request to extend the Term for a period of time to be agreed upon by the Parties.

6. Warranties and Representations: LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXCEPT AS PROVIDED IN THE SECOND PARAGRAPH OF SECTION 15 BELOW, OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE LOCOMOTIVES, PURSUANT TO THIS AGREEMENT TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE WORKMANSHIP IN, THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, TORT OR OTHERWISE, ON ACCOUNT OF ANY DEFECT, WHETHER HIDDEN, LATENT OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVES. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

7. Place of Payment of Rent: Lessee shall direct payment of the monthly rent to the following address:

Kennecott Corporation
Utah Copper Division
P. O. Box 31838
Salt Lake City, Utah 84131-0838
Attention: Controller

8. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of each Locomotive while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect any Locomotive while in the possession of Lessee.

9. Loss or Destruction: Lessee agrees it will be solely responsible for any loss, damage or destruction of any Locomotive leased to it by Lessor after placing in service and while subject to this Lease. In case any of the Locomotives during the term of the Lease period become lost, destroyed or damaged beyond repair from any cause whatsoever, rental with respect to any such Locomotive shall cease immediately, but in such case Lessee agrees to pay Lessor the sum of \$600,000 (U.S.) per Locomotive within thirty (30) days of the event.

10. Liability Insurance: At its own expense, Lessee shall maintain the following insurance with respect to each Item of Leased Equipment: Comprehensive General Liability Insurance with limits of at least \$500,000 bodily injury, including death, and \$500,000/500,000 property damage. Any policies with respect to such insurance shall (1) be with an insurance carrier acceptable to the Lessor and that Lessor's acceptance of any carrier designated by Lessee will not be unreasonably withheld, (2) name the Lessor and the Lessee as assureds, as their interests may appear, and (3) provide for at least 30 days' prior written notice by the insurance carrier to the Lessor in the event of cancellation, expiration or material modification. The Lessee shall, prior to the First Delivery Date and

annually thereafter of the anniversary thereof, furnish appropriate evidence of such insurance.

Effecting or obtaining any insurance coverage required to be carried pursuant to the above does not excuse or relieve Lessee from the due performance and fulfillment of any of its obligations hereunder.

11. Indemnity: Lessee agrees that Lessor shall not be liable to Lessee for, and Lessee shall indemnify and save Lessor harmless from and against any judgments arising from or caused directly or indirectly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Sections 4, 8, 10 and 20 of this Lease, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) except as provided in the second paragraph of Section 15 below, inadequacy of the Locomotives, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or actions, provided, however, that Lessor shall give Lessee written notice of any such claim or demand. This indemnity shall survive the expiration or termination of this Lease.

12. Storage: Upon expiration or termination of this Lease, the Lessee agrees to provide storage for up to ninety (90) days at no expense to Lessor. Lessee will not be liable for any damages, destruction or casualty to any of the Locomotives while located on storage track or tracks unless such be fully caused by the sole negligence or willful misconduct of C.P. Rail or its employees. Either during or at expiration of this storage period, Lessee will transport the Locomotives at no expense or risk to Lessor to a CP interchange point designated by Lessor. The Locomotives shall be returned to Lessor in good operating condition, as specified in Sections 11 and 15, normal wear and tear excepted and free and clear of all mortgages, liens, security interests, charges, claims, other encumbrances, other than liens created or granted by Lessor or Lessee's Lessor. Kennecott will reimburse C.P. Rail, at C.P. Rail's cost, to prepare the Locomotives for storage according to manufacturer's recommendations.

13. Assignment: Lessee shall not assign or sublet its interest, or any part thereof, under this Lease, or permit the use or operation of any Locomotive subject to this Lease by any other persons, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under standard run-through and power pooling arrangements. Lessor may at any time assign all or any portion of the rents due or to become due, and/or the leased property without notice to Lessee and in such event Lessor's transferee as assignee shall have all the rights, powers, privileges and remedies of the Lessor hereunder. Lessee shall have no obligation to pay any assignee, and shall continue to pay Lessor, until such time as notice of such assignment is given to Lessee in accordance with Section 14.

14. Notice: Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid, in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

Canadian Pacific Limited
Windsor Station
Montreal, Quebec
Canada H3C3E4
Attention: Mr. Martin A. Lypka

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

Kennecott Corporation
Utah Copper Division
P. O. Box 31838
Salt Lake City, Utah 84131-0838
Attention: Controller

With a copy to:

Kennecott Corporation
P. O. Box 11248
Salt Lake City, Utah 84147
Attention: Law Department

or to such other address as Lessor may from time to time indicate by written notice to Lessee.

15. Compliance with Law; Repair and Maintenance: Lessee shall comply with the Canadian Transport Commission rules and regulations and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during the Lease period.

The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee shall, at its own cost and expense, maintain and keep the Locomotives in good order, condition and repair, ordinary wear and tear excepted. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor. Lessee may install parts indigenous to Canadian service such as ditch lights, radio base and head and toilets and remove same at lease expiration. Lessor shall be responsible for failure to the crankshaft or main generator for the first thirty (30) days after the Rent Commencement Date; Lessor shall be responsible for 67% of the costs associated with the failure of the crankshaft or main generator for the second thirty (30) days after the Rent Commencement Date; and Lessor shall be responsible for 33% of the costs associated with the failure of the crankshaft or main generator for the third thirty (30) days after the Rent Commencement Date.

Lessee will not permit any liens or encumbrances to be placed in the Locomotives and will promptly take action, at its expense, to remove and discharge any liens that may be placed on the Locomotives.

16. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

17. Authority: The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof. Lessor will pay all commissions and fees to Helm Financial Corporation, who has been retained in connection with this transaction, and will hold Lessee harmless for any such fees or commissions.

18. Late Charges: Delinquent installments of rent shall bear interest at the rate of 1- $\frac{1}{2}$ per month if not prohibited by law, otherwise at the highest lawful contract rate.

19. Filing and Administration: Lessee will promptly cause this Lease to be duly filed, registered or recorded with the Registrar General of Canada for the protection of its title and will furnish Lessor proof thereof. Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register, or re-record whenever require) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

20. Taxes/Duty: Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Locomotives including without limitation amounts payable under Sections 4, 8 and 12 hereof and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any state, federal or local government upon the Locomotives and whether or not the same shall be assessed against or in the name of Lessor or Lessee with the exception of a Canadian Withholding Tax, which is for the account of Lessor. Lessee shall deduct and pay to the Federal Government of Canada the Canadian Withholding Tax. Lessee shall be responsible for payment of any and all Canadian or U.S. Customs Duty Assessments.

21. Default: If the Lessee after five (5) business days' notice shall fail to carry out and perform any of the obligations on its part to be performed under this Agreement, or if a petition, in bankruptcy, for reorganization, for a Trustee, or for a Receiver, shall be filed by or against the Lessee, then, and in any of said events, Lessor shall have all rights available to it at law or in equity, including without limitation the right, immediately to repossess the Locomotives, to remove the Locomotives from Lessee's service, to terminate this Agreement, and recover any

and all damages sustained as a result of Lessee's default. If Lessor shall terminate this Agreement pursuant to this section, Lessee shall remain liable for all unpaid rent and other amounts due hereunder. The rights and remedies herein given or provided by law or in equity.

Should any proceedings be instituted by Lessor for monies due to Lessor hereunder and/or for possession of any or all of the Locomotives or for any other relief, Lessee shall pay Lessor a reasonable sum as attorney's fees. In addition to any remedies provided herein, Lessor shall have all the rights provided to a Lessor under Section 1168 of Title 11 of the United States Code and any successor provision thereto.

22. Miscellaneous: All transportation charges for delivery of the locomotives to the Lessee shall be borne by Lessor. If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement. Lessee shall pay to Lessor the amount of fuel in each Locomotive at Lessee's prevailing fuel rate (U.S. Dollars) with the first monthly rent payment. Lessor will reimburse Lessee for the fuel remaining in each Locomotive at Lease termination at Lessee's prevailing fuel rate. Lessor shall perform the modifications as outlined in Exhibit A.

CANADIAN PACIFIC LIMITED, LESSEE

By

Title

J. Kelwell
Vice-President

R. C. Parry
ASSISTANT SECRETARY

KENNECOTT CORPORATION, LESSOR

By

Title

Raymond W. [Signature]
Vice President

ATTEST: _____

ATTEST: *D. [Signature]*

for [Signature]

APPROVED
AS TO FORM
DLB. (4)
Gen'l. Sec'y.

EQUIPMENT SCHEDULE NUMBER ONE

Locomotive Description: General Motors (Electro Motive Division) SD 40-2,
3000 H.P. Diesel Electric Locomotives.

The Kennecott locomotives numbers are as follows:

Unit Number

KCC 101
KCC 102
KCC 103
KCC 104
KCC 105
KCC 106
KCC 107

APPROVED
AS TO FORM

JLB:CH
Gen'l. Supt.

CANADIAN PACIFIC LIMITED, LESSEE

By: [Signature]
Title: Vice-President [Signature] ASSISTANT SECRETARY

Date: NOV 26 1985

KENNECOTT CORPORATION, LESSOR

By: [Signature]
Title: Vice President
Date: Nov. 14, 1985

EXHIBIT A

Prior to Delivery

1. Installation of ditch lights
2. Installation of FRA glass
3. Air brakes to be certified

RCW

CERTIFICATE OF FILING

This is to certify that the foregoing Locomotive
Sublease Agreement and attached Equipment Schedule Number One
and Exhibit A were filed with the Interstate Commerce Commission
this 5th day of December, 1985.



Gerald G. MacDonald