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1 45478

RECORDED COPY

January 22, 1988

JAN 25 1988 - 9 15 AM

INTERSTATE COMMERCE COMMISSION

1-22-88  
10.00

BY HAND

Noreta R. McGee, Secretary  
Interstate Commerce Commission  
12th and Constitution Avenue, NW  
Washington, DC 20423

Attention: Documents for Recording

Dear Secretary McGee:

I have enclosed an original and one counterpart of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

The document is a lease, a primary document dated September 1, 1987.

The names and addresses of the parties to the document are:

Lessor: PLM Equipment Growth Fund  
Canada, Ltd.  
990-700 4th Avenue, S.W.  
Calgary, Alberta  
Canada T2P 3J4

Lessee: Canadian National Railway Company  
935 de La Gauchetiere Street, West  
Montreal, Quebec  
Canada H3B 2M9

*Counterpart - Peter F. in Langdon*

**HAMEL & PARK**

Noreta R. McGee, Secretary  
January 22, 1988  
Page Two

A description of the equipment covered by the document follows:

Identifying Marks:

CN 383549 - 383595, inclusive

A fee of \$10.00 is enclosed.

Please return the original and any extra copies not needed by the Commission for recordation to William H. Bradford, Jr., Hamel & Park, 888 -16th Street, NW, Washington, DC 20006.

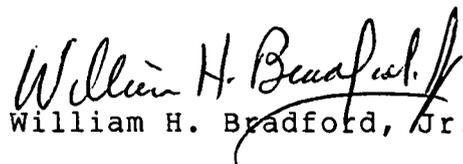
A short summary of the document to appear in the index follows:

Lease between PLM Equipment Growth Fund Canada, Ltd., Lessor, 990-700 4th Avenue, S.W., Calgary, Alberta, Canada T2P 3J4, and Canadian National Railway Company, Lessee, 935 de La Gauchetiere Street, West, Montreal, Quebec, Canada H3B 2M9, 47 covered hopper railroad cars, AAR designation LO, dated September 1, 1987.

Very truly yours,

HAMEL & PARK

By:

  
William H. Bradford, Jr.

WHB:pb  
Enclosures

cc: W. P. Winslow, Q.C.

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

William H. Bradford, Jr.  
Hamel & Park  
888 16th Street N.W.  
Washington, D.C. 20006

Dear

Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/22/88 at 3:15PM, and assigned recordation number(s) 15478.

Sincerely yours,

*Narita L. McLee*  
Secretary

Enclosure(s)

LEASE AGREEMENT

JAN 22 1988 - 2 15 PM

This Lease Agreement made as of September 1, 1987, between PLM Equipment Growth Fund Canada Ltd., an Alberta corporation as agent for certain principals ("Lessor") and Canadian National Railway Company ("Lessee").

1. SCOPE

- 1.1 Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, on a net lease basis, forty-seven (47) covered hopper cars as described in Exhibit A attached hereto. Said covered hopper cars shall be in A.A.R. interchange condition and shall comply in all respects with the requirements and specifications set out in Exhibit A. Covered hopper cars subject to this Lease Agreement shall hereinafter be referred to as "Car(s)".
- 1.2 All Cars shall be tendered to lessee for delivery and acceptance which shall be evidenced by certificates of acceptance pursuant to Paragraph 3.3. Subject to Paragraph 3.3, all Cars shall be accepted by Lessee by September 30, 1987 except as Lessor and Lessee may otherwise agree in writing.

2. TERM

Subject to the renewal and purchase options contained in Paragraphs 18 and 19, this Lease Agreement shall be for a term of years, hereinafter referred to as "Lease Year(s)", the first of which shall commence on January 1, 1988 (the "Commencement Date") and the last of which shall terminate at the expiration of the tenth Lease Year. All of the terms and provisions of this Lease Agreement shall apply and be in full force and effect with respect to Cars delivered to Lessee prior to the Commencement Date.

3. DELIVERY AND ACCEPTANCE

- 3.1 All Cars shall be delivered by Lessor to Lessee at a mutually agreeable interchange point on Lessee's trackage. Lessor agrees to bear freight and transportation charges to such point. Lessor shall provide Lessee with written notice of such delivery as soon as practicable prior to such delivery. Lessee shall be responsible for any loss or damage to the Cars after such delivery to the said interchange point.
- 3.2 Lessee has inspected, at Sioux City, Iowa, a sample of covered hopper cars and, subject to the satisfactory completion of the repairs contemplated under Exhibit A, Lessee shall accept the covered hopper cars so inspected and the balance of the covered hopper cars; provided, however, that Lessee shall inspect the covered hopper cars upon completion of such repairs and may, within six (6) days of delivery of such covered hopper cars, reject any thereof, by written notice to Lessor, only if, in the reasonable opinion of Lessee, such covered hopper cars are not in conformity with the requirements and specifications of Exhibit A after

completion of such repairs. Lessee shall provide up to thirty (30) days free storage from the date of such notice to Lessor for any covered hopper cars rejected hereunder and upon written notice from Lessor shall transport any such rejected covered hopper cars free of charge to a mutually agreeable interchange point on Lessee's trackage.

- 3.3 Acceptance of Cars by Lessee shall be evidenced by certificates of acceptance issued by a duly authorized representative of Lessee within three (3) days of inspection of the Cars by Lessee in the form attached as Exhibit B, herein referred to as "Certificate(s) of Acceptance", the issuance of which shall constitute conclusive evidence of delivery and acceptance of the Cars identified therein. Failure to reject any Cars as provided in Paragraph 3.2 will constitute conclusive evidence of the delivery and acceptance of such Cars.
- 3.4 Lessor and Lessee shall cooperate with each other to facilitate delivery and acceptance of Cars contemplated herein.
- 3.5 In the event that any Car is destroyed or damaged beyond economic repair in the reasonable opinion of Lessee prior to delivery thereof by Lessor pursuant to Paragraph 3.1 and prior to payment therefor, Lessor shall not be obligated to furnish a replacement and this Lease Agreement shall terminate with respect to such destroyed or damaged Car. This Lease Agreement shall otherwise remain in full force and effect with respect to the balance of the Cars.

#### 4. CANADIAN DOMESTICATION

Lessee shall have the right to assign the Cars to exclusive Canadian domestic service; provided, however, that any and all costs of Canadian domestication, including without limitation, Canadian customs duty payable pursuant to such domestication shall be borne by Lessor.

#### 5. CONSIDERATION

- 5.1 Lessee shall pay rental to Lessor as follows:
  - 5.1.1 Interim rental on a pro-rata basis at the rate of three hundred dollars (\$300.00) per Car per month during the period between the date of acceptance pursuant to Paragraph 3.3 of each Car hereunder and the Commencement Date; such interim rental shall be payable on the Commencement Date;
  - 5.1.2 Monthly rental at the rate of three hundred dollars (\$300.00) per Car commencing on the Commencement Date and terminating at the expiration of the tenth Lease Year.
- 5.2 All amounts payable under Paragraphs 5.1 and 8.1 shall be paid in U.S. dollars. All amounts payable under Paragraph 5.1.2 are payable in advance on the first business day of each month (the "Rental Payment Date") and shall be sent by mail not less than fifteen (15)

days prior to the Rental Payment Date or by wire transfer in immediately available funds; provided, however, that in the event that for any reason any such amounts are not received by Lessor by the Rental Payment Date, Lessor shall provide Lessee with written notice of such event and Lessee shall make such payment within two (2) business days by wire transfer in immediately available funds. For purposes of this Lease Agreement, the term "business day" shall mean any day other than Saturday, Sunday and any other day on which banking institutions in Calgary, Alberta and Montreal, Quebec are obligated to be closed. Any prepayment of rent shall be applied to rent payments in inverse order of maturity.

5.3 Notwithstanding anything to the contrary contained herein, any nonpayment of rentals, settlements for Casualty Occurrences under Paragraph 8.1 and reimbursement of Impositions under Paragraph 9.1, due to Lessor under this Lease Agreement shall result in the obligation on Lessee promptly to pay interest calculated and compounding monthly at the rate of 1% per month (equivalent to an effective rate of 12.68% per annum) as well as before or after default and judgment at the same rate for the period of time during which they are overdue.

5.4 All amounts (other than rentals, settlements for Casualty Occurrences under Paragraph 8.1 and reimbursement of Impositions under Paragraph 9.1) due to Lessor hereunder are payable on demand.

#### 6. MARKINGS, RECORD KEEPING, RECORDING, INSPECTIONS

6.1 Lessee will cause each Car to be restencilled with Lessee's running marks within series CN 383549-383595. In the event that Lessee changes the identifying number of the Cars or any other markings of ownership of the Cars, a statement of new identifying numbers or markings to be substituted therefor shall be (i) furnished to Lessor, (ii) filed, recorded and deposited by Lessee in all public offices where this Lease Agreement shall have been filed, recorded and deposited and (iii) Lessee shall furnish Lessor with written confirmation to the effect that such statement has been so filed, recorded and deposited. Except as provided above, Lessee will not allow the name of any person, association or corporation to be placed on any Car as a designation that might be interpreted as a claim of ownership; provided, however, that the Cars may be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates or any authorized sublessee.

6.2 Subject to Lessor providing Lessee with the appropriate information, Lessee shall cause each Car to be registered in the Official Equipment Register and in the Universal Machine Language Equipment Register (UMLER), and any change therein must be mutually agreed by the parties. Lessee shall maintain such records as shall be required from time to time by any applicable regulatory agency or any Association of American Railroads ("AAR") railroad interchange agreement or rule. Lessee shall, at its own expense, cause this Lease Agreement and any assignment hereof to be filed and recorded

with the Interstate Commerce Commission in accordance with 49 U.S.C. Section 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor for the purpose of proper protection, to Lessor's satisfaction, of Lessor's rights, title and interests in the Cars, or for the purpose of carrying out the intention of this Lease Agreement. Lessee will promptly furnish to Lessor evidence of all such filing, registering, depositing and recording.

6.3 Lessee shall, upon becoming aware thereof, immediately notify Lessor of accidents involving any Car which must be reported under A.A.R. Rule 107 or any Canadian rule of similar application or of any attempt to attach, seize or sell any Car, giving Lessor such details as Lessor shall reasonably request. Lessee shall defend Lessor's title upon any such attempt to attach, seize or sell any Car directly attributable to or arising from any action or inaction by Lessee.

6.4 During the term of this Lease Agreement, Lessor its officers, employees and agents, shall have reasonable access to the Cars to permit physical inspection thereof and to records pertaining thereto upon reasonable prior written notice to the Chief Mechanical Officer or Chief of Transportation of Lessee depending upon the nature of the inspection; provided, however, that:

6.4.1 Such inspections shall be at the sole risk and expense of Lessor, except in the case of gross negligence or willful misconduct of Lessee or of its employees or agents, and subject to the foregoing Lessor shall be responsible for any damage, injury to, or the death of any persons exercising on behalf of Lessor or any prospective assignee of Lessor, the rights of inspection granted hereunder;

6.4.2 Lessor shall exert its best efforts to prevent such inspections from interfering with the normal operation and movement of the Cars; and

6.4.3 Subject to Paragraph 6.4.1, Lessor shall indemnify and save harmless Lessee from and against any liability for damage to property or bodily injury including that resulting in death sustained by any of the employees or agents of Lessor arising during the course of such inspections.

## 7. MAINTENANCE, ALTERATIONS, IMPROVEMENTS, ADDITIONS

7.1 Lessee shall, at its sole cost and expense maintain and repair Cars in accordance with the A.A.R. Interchange Rules and the rules and regulations of the Canadian Transport Commission and other Canadian governmental authorities having jurisdiction with respect thereto.

7.2 Lessee shall have the right, if not in default hereunder, at its expense and without the prior written consent of or notice to Lessor, to make any addition, alteration or improvement to any of the Cars; provided, however, that:

7.2.1 Any such addition, alteration or improvement shall not impair the value of such Car;

7.2.2 Lessee shall have the right, up to the termination of this Lease Agreement, to remove any such alteration, improvement or addition, provided that upon removal of any such alteration, improvement or addition, the Car shall be in A.A.R. interchange condition suitable for load and removal of such alteration, improvement or addition will not impair the value of such Car below the value thereof as stated in the Schedule of Casualty Values set forth in Exhibit C corresponding to the date of termination of this Lease Agreement, ordinary wear and tear excepted; and

7.2.3 Any such alteration, improvement or addition as to which Lessee has not exercised the foregoing right of removal shall become a permanent part of the Car to which it is made and title thereto shall vest in Lessor.

7.3 In the event that any alteration, improvement or addition is made pursuant to any laws, regulations, requirements or rules of any governmental authority or of the A.A.R., then such alteration, improvement or addition shall be made at Lessee's expense and shall become a permanent part of the Car to which it is made and title thereto shall vest in Lessor.

#### 8. CASUALTY OCCURRENCES

8.1. In the event that during the term of this Lease Agreement or any renewal hereof, any Cars are lost, stolen, destroyed or, in the sole opinion of Lessee, damaged beyond economic repair, which events shall hereinafter be referred to as "Casualty Occurrence(s)", Lessee shall give written notice to Lessor of such Casualty Occurrence(s), and Lessee shall pay settlement for same as set forth in Exhibit C. Lessee's rental obligations with respect to any Car subject to a Casualty Occurrence shall cease upon the giving of written notice of such Casualty Occurrence. Payment of the foregoing settlement amounts shall be made as of the next Rental Payment Date which is more than twenty (20) days after notice is given of such Casualty Occurrence. Upon receipt of such payment by Lessor, this Lease Agreement shall terminate with respect to such Car.

8.2 Lessee shall be entitled to the proceeds of any claim or right of Lessor or Lessee against third persons for damage or loss with respect to any Car or the use or operation thereof, including settlements pursuant to the A.A.R. Interchange Rules, and Lessee

shall be subrogated to all Lessor's rights of recovery therefor against any other person, firm or corporation. Lessor hereby authorizes Lessee, in Lessee's name, to make settlement of, and receive payment and receipt for, any and all such claims on behalf of Lessor, and Lessor agrees to execute such further instruments, and do such other acts as may be reasonably necessary or appropriate more fully to evidence Lessee's authority or to effect such subrogation.

8.3 Lessor, upon receipt of settlement pursuant to Paragraph 8.1, shall execute and deliver to lessee a bill of sale transferring title to Cars suffering such Casualty Occurrence in the form attached as Exhibit D.

## 9. TAXES

9.1 Lessee agrees to pay as required by applicable law all present or future Impositions (as hereinafter defined). Lessee also agrees to indemnify and hold Lessor harmless from all taxes, assessments, duties, license and registration fees and other governmental charges including interest and penalties (hereinafter collectively referred to as "Impositions") imposed, levied or assessed by any federal, provincial or local government or taxing authority in Canada, or, if as a result of the operation, possession or use of any Car by or through Lessee in any foreign country, by any government or taxing authority in a foreign country, against such Car or upon or measured by any interest therein, or upon or with respect to the purchase, ownership, delivery, leasing or possession thereof by Lessor, or upon or with respect to the use, possession or operation thereof by Lessee, or on account of or measured by the rentals, earnings or gross receipts arising pursuant to this Lease Agreement (including any payment or indemnity under this Lease Agreement), provided that Lessee shall not be required to pay the same (or any amount by way of indemnity of Lessor or otherwise pursuant to this Paragraph 9) if and so long as it shall in good faith and with due diligence and by appropriate legal or administrative proceedings contest the validity, applicability or amount thereof (but only so long as such proceedings shall stay the collection thereof and shall not involve any risk of the sale, forfeiture or loss of any Car or any interest therein). If a claim is made against Lessor for any Impositions then Lessor shall notify Lessee promptly and, if so requested by Lessee, shall at Lessee's expense contest the validity and amount of any Impositions which it may be required to pay and in respect of which it is entitled to reimbursement by Lessee under this Paragraph 9 so long as the rights or interests of Lessor hereunder or in such Car will not be materially endangered thereby.

9.2 Notwithstanding the provisions of Paragraph 9.1, Lessee shall have no obligation thereunder as to:

9.2.1 any Impositions on, based on or measured by the net income of Lessor; and

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- 9.2.2 any Impositions which are or may become imposed by Canada or rental or similar payments being made under the Lease Agreement to a non-resident of Canada (as defined in the Income Tax Act (Canada)).

## 10. REPRESENTATIONS AND WARRANTIES

### 10.1 Lessor represents and warrants that:

- 10.1.1 Lessor shall at the Commencement Date be the owner of the Cars and has full right, title and authority to lease Cars as provided in this Lease Agreement.
- 10.1.2 So long as Lessee shall not be in default under this Lease Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease Agreement.
- 10.1.3 At the end of the tenth (10th) Lease Year, or any renewal period thereof as described in Paragraph 18, Lessor will have full right, title and interest in the Cars to convey to Lessee clear and unencumbered title thereto and ownership thereof, and to permit Lessee to exercise the purchase options described in Paragraph 19.
- 10.1.4 No consents are required to be obtained by Lessor in connection with the transactions contemplated by this Lease Agreement, and if such consents are required, they have been obtained from the parties from whom such consents must be obtained.

### 10.2 Lessee represents and warrants as follows:

- 10.2.1 Lessee is a duly incorporated and validly existing corporation under the laws of Canada, with full corporate power and authority to own its properties and to carry on its business as presently conducted and to enter into and perform its obligations under this Lease Agreement.
- 10.2.2 This Lease Agreement has been duly authorized, executed and delivered by Lessee and constitutes a legal and valid agreement binding upon Lessee and enforceable in accordance with its terms;
- 10.2.3 No approval is required from any public regulatory body with respect to the entering into or performance of this Lease Agreement by Lessee, or if any such approval is required, it has been properly obtained;
- 10.2.4 There are no actions, suits or proceedings pending or, to the knowledge of Lessee, threatened against Lessee or its properties or affecting this Lease Agreement or the transactions contemplated hereby which could, if adversely

determined, materially and adversely affect the carrying out of such transactions.

## 11. USE OF CARS

- 11.1 The parties agree that Lessee intends to place the Cars in Canadian domestic service; provided, however, that Lessee may at any time and at its sole discretion withdraw the Cars from such service, and such action shall not constitute a default under this Lease Agreement;
- 11.2 Lessee agrees that while the Cars are in physical possession or under the control of Lessee each of the Cars shall be used and operated in compliance with the laws of the jurisdiction in which it is located and with all lawful acts, rules, regulations and orders of any government bodies or officers having power to regulate or supervise the use thereof, except that Lessee may in good faith, at its expense and by appropriate proceeding or other reasonable manner, contest the application of such act, rule, regulation or order. Lessee shall operate the Cars in accordance with its management practices as to railroad cars in its ownership.
- 11.3 Lessee shall not, without the prior written consent of Lessor (which shall not be unreasonably withheld), create any claim, lien, security interest or encumbrance with respect to any Car or to any alteration, improvement or addition to any Car, and shall promptly discharge same should it arise; provided, however, that:
- 11.3.1 Lessee may in good faith and by appropriate proceeding or other reasonable manner contest such claim, lien, security interest or encumbrance;
- 11.3.2 Lessee's obligation hereunder shall not arise if any such claim, lien, security interest or encumbrance arose solely through the action or inaction of Lessor;
- 11.3.3 Lessor shall reimburse or compensate Lessee for expenses or losses resulting from any such claim, lien, security interest or encumbrance referred to in Paragraph 11.3.2.

## 12. DEFAULTS AND REMEDIES

- 12.1 Any of the following events shall constitute an event of default by Lessee:
- 12.1.1 Non-payment of any amount required to be paid by Lessee pursuant to Paragraphs 5.1 and 8.1 within the time frames provided in this Lease Agreement, provided that such default shall continue unremedied for five (5) business days; provided, however, that there shall be no event of default under this Paragraph 12.1.1 as long as Lessee is in compliance with the provisions of Paragraph 5.2;

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- 12.1.2 Failure to cure a breach by Lessee of any material term, covenant or condition of this Lease Agreement (other than as provided in Paragraph 12.1.1) within thirty (30) days following Lessor's written notice to Lessee of such default;
- 12.1.3 The filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of debtors, or the filing of any such petition or action against Lessee not dismissed within sixty (60) days;
- 12.1.4 Appointment of any receiver or trustee to take possession of a substantial portion of Lessee's properties not set aside within sixty (60) days;
- 12.1.5 Levy upon, seizure, unauthorized assignment or sale of any Car resulting from acts of Lessee not voided or otherwise cured within sixty (60) days.
- 12.2 Upon the occurrence of any event of default as described in Paragraph 12.1, then, in any such case, Lessor at its option may:
- (a) proceed by appropriate court action or actions either at law or in equity, to specifically enforce performance by Lessee of the applicable covenants of this Lease Agreement or to recover damages for the breach thereof; or
- (b) by notice in writing to Lessee terminating this Lease Agreement, whereupon all rights of Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease Agreement had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess, enjoy, sell, lease or otherwise dispose of the same in such manner as Lessor may in its sole discretion determine, with or without notice to Lessee, free from any right of Lessee, or its successors or assigns, to use the Cars for any purposes whatever and without any duty to account to Lessee in respect thereof, but Lessor shall, nevertheless, have a right to recover from Lessee any and all amounts which under the terms of this Lease Agreement may be then due or which may have accrued to the date of such termination (computing the rental due to Lessor for any number of days less than a full month by multiplying such rental for such full month by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full month) and also to recover forthwith from Lessee (i) as liquidated damages for loss of the bargain and not as a penalty, a sum, with respect to all Cars, which equals the Casualty Value of all

the Cars as of the Rental Payment Date next preceding the date of termination of this Lease Agreement, and (ii) any damages and expenses in addition thereto, including, without limitation, transportation costs, reasonable attorneys' fees and court costs, which Lessor shall have sustained by reason of breach of any covenant or covenants of this Lease Agreement other than for the payment of rental or arising from the exercise by Lessor of any remedies hereunder. Notwithstanding anything to the contrary contained in this clause (b), it is understood and agreed that upon and/or after payment of the amount to be paid by Lessee to Lessor under subclause (i) of this clause (b) Lessor shall refund to Lessee an amount up to (but not in excess of) the amount received by Lessor from Lessee under subclause (i) of this clause (b) from the net proceeds, if any, received by Lessor from any sale, lease or disposition of the Cars (after deducting all costs and expenses incurred in connection therewith).

12.3 The remedies in this Lease Agreement provided in favor of 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. Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments, settlements for Casualty Occurrences under Paragraph 8.1, reimbursement of Impositions under Paragraph 9.1 and amounts recoverable under Paragraph 12.2, due to Lessor, and agrees to make such rental payments, settlements, reimbursements and recoveries regardless of any offset or claim which may be asserted by Lessee or on its behalf.

### 13. INDEMNITIES

Except as otherwise provided in Paragraphs 13.1 and 13.2 hereof, Lessee shall indemnify and save harmless Lessor from and against all loss, expense or liability (including legal and other fees) howsoever arising directly or indirectly from the lease, use or operation of any Car or any commodity loaded or transported therein during the term hereof by whomsoever caused, whether or not caused by negligence and whether or not such Car is within Lessee's physical possession or subject to its control; provided, however, that Lessee shall not be required to indemnify Lessor under this Paragraph for:

13.1 gross negligence or willful misconduct on the part of Lessor, its employees or agents;

13.2 any patent infringement claims or liabilities.

The indemnity under this Paragraph 13 shall survive termination of this Lease Agreement only to the extent that any such loss, expense or liability is attributable to any Car or commodity loaded or transported

therein while such Car is subject to this Lease Agreement. Acceptance of a Car by Lessor, which acceptance shall be in writing, upon expiry of the term hereof will preclude any claims for loss, expense or liability on the part of Lessor occasioned to such Car by commodities transported therein after such acceptance. The provisions of this Paragraph 13 are subject to the requirements of Paragraph 6.4. Upon the payment in full by Lessee of any indemnities as contained in this Paragraph 13, Lessee shall be subrogated to any right of Lessor in respect of the matters against which indemnity has been given. Any payments received by Lessor from any person (except Lessee) as a result of any matter with respect to which Lessor has been indemnified by Lessee pursuant to this Paragraph 13, shall be paid over to Lessee to the extent necessary to reimburse Lessee for indemnification payments previously made in respect of such matter.

#### 14. RETURN OF CARS UPON TERMINATION

Subject to Paragraphs 18 and 19, upon termination of this Lease Agreement as to any Car, whether under Paragraph 12.2 (b), at the end of the tenth Lease Year or otherwise, Lessee shall, within thirty (30) days written notice from Lessor, surrender possession thereof to Lessor at an interchange point on Lessee's trackage in Canada as mutually agreed by Lessor and Lessee. The Cars surrendered hereunder shall be delivered to Lessor on a "last load move." Transportation costs so incurred shall be at the expense of Lessee. All Cars so returned shall be in A.A.R. interchange condition, ordinary wear and tear excepted. Lessee shall make or cause to be made all repairs necessary to restore any Car to such condition. All cars so returned shall be cleaned and restencilled, as directed by Lessor, at the expense of Lessee. Any lettering on the Cars made pursuant to Paragraph 6.1 shall be removed at the expense of Lessee. Lessor, by its officers, employees and agents, shall have reasonable access to maintenance and repair records pertaining to the Cars upon reasonable prior written notice to the Chief Mechanical Officer of Lessee, and may, at its own expense, copy such records as it deems necessary. Upon thirty (30) days written notice by Lessor to Lessee, Lessee shall provide at its own risk storage on its trackage for any terminated Car for up to ninety (90) days at Lessee's customary rates in order to permit Lessor to arrange disposal thereof. If any Casualty Occurrence occurs while any terminated Car is being so stored, Lessee shall promptly pay to Lessor settlement for same in accordance with the Schedule of Casualty Values set forth in Exhibit C.

#### 15. LEASE ASSIGNMENT; SUB-LEASE

Lessee may (i) assign or transfer its leasehold interest under this Lease Agreement in the Cars or possession of the Cars to any railway company incorporated under the laws of Canada (which shall have duly assumed the obligations of Lessee hereunder) into or with which Lessee shall have become amalgamated, merged or consolidated and which shall have acquired the property of Lessee as an entirety or substantially as an entirety; or (ii) without the prior written consent of Lessor sublease any Car to any party for a period (including renewals) not exceeding one year; or (iii) sublease any Car to any party for a period (including renewals) of more

than one year with the prior written consent of Lessor, such consent not to be unreasonably withheld; provided, however, that the rights of such sublessee are made expressly subordinate to the rights and remedies of Lessor under this Lease Agreement and no such sublease shall purport to extend beyond termination of the Lease Agreement. In the event of any such assignment or sub-lease, Lessee shall continue to be fully liable for all its obligations hereunder (including its obligation to pay rent under Paragraph 5). This Lease Agreement shall be fully assignable by Lessor; provided, however, that Lessor shall provide prior written notice to Lessee of such assignment.

## 16. NOTICES

16.1 Any notice required or permitted to be given hereunder shall be given in writing either by telex or by mail and if mailed shall be sent, postage prepaid, addressed as follows:

If to Lessor: PLM Railcar Management Services  
Canada Limited  
990 700 4th Avenue S.W.  
Calgary, Alberta  
Canada T2P 3J4  
Attn: President

Telex No.: 038-26565

If to Lessee: Canadian National Railway Company  
935 de La Gauchetiere St. W.,  
Montreal, Quebec  
Canada H3B 2M9  
Attn: Treasurer

Telex No.: 055-61899

Any party hereto may change the address to which notice is to be mailed by written notice thereof to the others.

16.2 All payments made to Lessor shall be sent to: P. O. Box 45, Station M, Calgary, Alberta, Canada T2P 2G9.

## 17. MISCELLANEOUS

17.1 Subject to Paragraph 15, this Lease Agreement shall be binding upon, and inure to the benefit of, the parties, their respective successors and assigns.

17.2 The waiver of any right accruing to any party by failure of that party to exercise that right in a given instance, or delay in exercising that right, shall not be deemed a waiver of that right in future instances of a similar nature or affect any other right power or remedy available to that party.

*MAP*

17.3 Nothing contained herein shall be construed in any way whatsoever so as to constitute or establish a partnership, joint venture or contract of employment between the parties.

#### 18. RENEWAL OPTIONS

18.1 Lessee shall have the option, if not in default hereunder, to extend the term of this Lease Agreement, for all but not fewer than all of the Cars, upon the terms and conditions of this Lease Agreement, commencing with the termination of the initial ten (10) year term of this Lease Agreement, for a five year renewal period during which the monthly rental shall be two hundred and twenty-five dollars (\$225.00) U.S. per Car per month.

18.2 The renewal option described in Paragraph 18.1 shall be exercised by Lessee giving Lessor written notice thereof not less than one hundred and eighty (180) days prior to the termination of the initial ten year term of this Lease Agreement.

#### 19. PURCHASE OPTIONS

19.1 Lessee shall have the option, if not in default hereunder, to purchase all but not fewer than all of the Cars for a purchase price equal to twelve thousand five hundred dollars (\$12,500.00) U.S. per Car payable at the termination of the tenth (10th) Lease Year of the Lease Agreement.

19.2 The purchase option described in Paragraph 19.1 shall be exercised by Lessee giving Lessor written notice thereof not less than one hundred and eighty (180) days prior to the termination of the initial ten (10) year term of this Lease Agreement.

19.3 Upon payment of the purchase price under the purchase option described in Paragraph 19.1, Lessor shall execute and deliver to Lessee a bill of sale for such Cars in the form of Exhibit D.

#### 20. INSURANCE

Lessee will, at all times prior to the return of the Cars to Lessor in accordance with the terms of this Lease Agreement and during any storage period, at its own expense, cause to be carried and maintained public liability and property damage insurance in respect of the Cars against the risks and in the amounts, if any, customarily insured against by Lessee in respect to similar equipment owned or leased by it. Notwithstanding anything to the contrary in this Paragraph 20, Lessee shall be permitted to provide for customary deductibles and/or self insurance.

#### 21. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE AGREEMENT

21.1 Any provision of this Lease Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability

without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

21.2 This Lease Agreement exclusively and completely states the rights of Lessor and Lessee with respect to the leasing of the Cars and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for Lessor and Lessee.

22. EXECUTION

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

23. GOVERNING LAW

This Lease Agreement shall be subject to and construed in accordance with the laws of the Province of Ontario.

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed on the day and year first above written.

LESSOR:

PLM EQUIPMENT GROWTH FUND CANADA LTD.

By: Robert S. Zickman

Title: Secretary

LESSEE:

Approved  
as to form only  
[Signature]  
Attorney

CANADIAN NATIONAL RAILWAY COMPANY

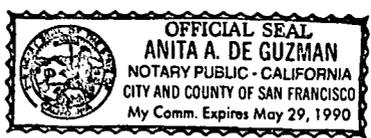
By: [Signature]  
Vice President

Title: [Signature]  
ASSISTANT SECRETARY

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STATE OF CALIFORNIA )  
 ) ss  
CITY OF SAN FRANCISCO )

On this January 11, 1988, before me personally appeared Robert S. Reichman, to me personally known, who, being by me duly sworn, says that he is the Secretary of PLM Equipment Growth Fund Canada Ltd., that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.



(Notarial Seal)

*Anita A. Guzman*  
Notary Public in and for  
the State of California

MY COMMISSION EXPIRES:

PROVINCE OF QUEBEC )  
 ) ss  
*DISTRICT*  
*AB* CITY OF MONTREAL )

On this 14<sup>th</sup> day of January, 1988, before me personally appeared Paul J. Polist, to me personally known, who, being by me duly sworn, says that he is the Vice-President of Canadian National Railway Company, that one of the seals affixed to the foregoing instrument is the seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

*L. Burton*  
COMMISSIONER FOR OATHS  
PROVINCE OF QUEBEC  
L. BURTON  
Commissioner for Oaths  
Commissaire à l'Assermentation  
District-Montreal  
Expires July 10, 1989

EXHIBIT A

DESCRIPTION OF REQUIREMENTS AND SPECIFICATIONS FOR CARS

1. Car Identification

Present Car Marking	Number of Cars	CN Car Markings
CR	47	CN 383549-383595 (Inclusive)

2. Car Description

UMLER Value	\$16,939.00 U.S. Funds (Rebuilt Value)
Date Rebuilt	August, 1987 through September, 1987
Car Rebuilder and Location	PLM Railcar Maintenance Company Sioux City, Iowa, U.S.A.
AAR Mechanical Designation	LO

3. Car Specifications

Lessee has been provided with detailed specifications and drawings for the Cars.

4. General Condition and Car Modifications

All Cars will be in suitable mechanical condition, repaired to the specifications referred to in item 3 above and to AAR, FRA or RTC requirements prior to being tendered for final inspection and acceptance. Car components worn to AAR condemnable limit or otherwise defective will be changed out or repaired and all safety applicances will be within acceptable limits, all as prescribed by AAR, FRA or RTC.

*MAP*

## EXHIBIT A - Page 2

Without limiting the generality of the foregoing, specific attention will be paid to the following items:

### Draft and Truck Components

The draft and truck components are to be inspected and repaired if necessary, in accordance with the Field Manual of the A.A.R. Interchange Rules. Broken truck springs are to be renewed and missing coupler wear plates are to be reapplied.

### Brakes

Both the air brake and hand brake are to be inspected and repaired if necessary, in accordance with the Field Manual of the A.A.R. Interchange Rules.

### Body Construction

#### Sides and Ends

The sides and ends are to be free of cuts or dents that could hinder the containment of loads or cause a loss in its protection from the elements of weather. Excessive dents are to be straightened. Cuts are to be repaired by welding patch plates to the outside of the side sheet.

#### Centre Sills

All centre sills are to be inspected. If cracks are detected they are to be repaired.

#### Hatch Covers

Any broken or cracked hatch covers are to be repaired.

#### Gates

All gate mechanisms are to be in good operating condition. Any missing parts must be replaced and bent or broken parts must be repaired or replaced. Gates must open and close with moderate amount of force.

*MAP*

EXHIBIT A - Page 3

Wheels

Wheels worn to A.A.R. condemnable limits or which have A.A.R. condemnable defects are to be replaced.

All above work to be carried out in an A.A.R. approved manner by Lessee at Lessor's expense at A.A.R. billing rates.

*MAP*

EXHIBIT B

CERTIFICATE OF ACCEPTANCE

To: PLM Railcar Management Services Canada Ltd.  
990 700 4th Avenue S.W.  
Calgary, Alberta  
Canada T2P 3J4

Canadian National Railway Company (Lessee)  
935 de La Gauchetiere Street West  
Montreal, Quebec  
Canada, H3B 2M9  
Attention: Chief of Motive Power & Car Equipment.

The undersigned, a duly authorized inspector of Lessee, under Lease Agreement dated as of September 1, 1987, with Lessor, does hereby certify that:

Under authority of Lessee, I have inspected and accepted delivery at Symington Yard, Winnipeg, Manitoba, of the units of railroad equipment specified in Schedule A hereto attached and made a part hereof (Cars), as conforming in all respects to the terms and provisions of said Lease Agreement.

Under authority of Lessee, I further certify that by virtue of my said acceptance of said Cars the same have, on the dates and at the place stated, come under lease to Lessee pursuant to the terms and provisions of said Lease Agreement.

---

Authorized Inspector

*MSP*

EXHIBIT B - Page 2

Schedule "A"

Description of Cars referred to in the foregoing Certificate of Acceptance:

<u>Previous Car Number(s)</u>	<u>CN Car Number(s)</u>	<u>Date(s) of Delivery Acceptance</u>
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*MAT*

EXHIBIT C

SCHEDULE OF CASULTY VALUES

NOTE: The Casualty Value payable shall be in U.S. dollars and shall be the amount corresponding to the month in which notice of a Casualty Occurrence is given pursuant to Paragraph 8.1, or in which the Lease Agreement is terminated pursuant to Paragraph 12.2(b), as the case may be.

<u>Month Number</u>	<u>Casualty Value</u>	<u>Month Number</u>	<u>Casualty Value</u>
1	\$24,645	41	\$22,026
2	\$24,591	42	\$21,947
3	\$24,537	43	\$21,866
4	\$24,482	44	\$21,785
5	\$24,427	45	\$21,703
6	\$24,371	46	\$21,620
7	\$24,315	47	\$21,536
8	\$24,258	48	\$21,451
9	\$24,201	49	\$21,366
10	\$24,143	50	\$21,279
11	\$24,084	51	\$21,192
12	\$24,025	52	\$21,104
13	\$23,965	53	\$21,015
14	\$23,905	54	\$20,925
15	\$23,844	55	\$20,835
16	\$23,783	56	\$20,743
17	\$23,720	57	\$20,650
18	\$23,658	58	\$20,557
19	\$23,594	59	\$20,463
20	\$23,530	60	\$20,367
21	\$23,465	61	\$20,271
22	\$23,400	62	\$20,174
23	\$23,334	63	\$20,075
24	\$23,267	64	\$19,976
25	\$23,200	65	\$19,876
26	\$23,132	66	\$19,775
27	\$23,063	67	\$19,672
28	\$22,994	68	\$19,569
29	\$22,924	69	\$19,465
30	\$22,853	70	\$19,359
31	\$22,782	71	\$19,253
32	\$22,710	72	\$19,145
33	\$22,637	73	\$19,037
34	\$22,563	74	\$18,927
35	\$22,489	75	\$18,817
36	\$22,413	76	\$18,705
37	\$22,338	77	\$18,592
38	\$22,261	78	\$18,478
39	\$22,184	79	\$18,362
40	\$22,105	80	\$18,246

*MAP*

EXHIBIT C - Page 2

SCHEDULE OF CASUALTY VALUES

<u>Month Number</u>	<u>Casualty Value</u>	<u>Month Number</u>	<u>Casualty Value</u>
81	\$18,129	101	\$15,515
82	\$18,010	102	\$15,370
83	\$17,890	103	\$15,223
84	\$17,769	104	\$15,076
85	\$17,647	105	\$14,926
86	\$17,523	106	\$14,776
87	\$17,398	107	\$14,623
88	\$17,272	108	\$14,470
89	\$17,145	109	\$14,314
90	\$17,016	110	\$14,157
91	\$16,887	111	\$13,999
92	\$16,755	112	\$13,839
93	\$16,623	113	\$13,677
94	\$16,489	114	\$13,514
95	\$16,354	115	\$13,349
96	\$16,218	116	\$13,183
97	\$16,080	117	\$13,015
98	\$15,941	118	\$12,845
99	\$15,800	119	\$12,673
100	\$15,658	120	\$12,500

*MHP*

EXHIBIT D

Bill of Sale

\_\_\_\_\_ (hereinafter called the "seller", in consideration of the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) paid by CANADIAN NATIONAL RAILWAY COMPANY, a Canadian corporation (hereinafter called the "BUYER"), at or before the execution and delivery of these presents, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the BUYER, its successors and assigns all of its rights, title and interest in the following property:

(insert description of Equipment)

TO HAVE AND TO HOLD the above described property unto the BUYER, its successors and assigns, for its and their own use and behoof, forever.

The SELLER hereby warrants unto the BUYER that the Seller has legal title to the aforesaid property free and clear of all encumbrances which result from claims against SELLER whether or not related to the ownership of such property.

THE AFORESAID PROPERTY IS BEING SOLD HEREUNDER ON AN "AS-IS" BASIS AND "WITH ALL FAULTS". THE SELLER MAKES NO WARRANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS LIABILITY FOR LOST PROFIT OR FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR COMMERCIAL LOSSES AND ALL OTHER OBLIGATIONS OR LIABILITIES.

IN WITNESS WHEREOF, the SELLER has caused this instrument to be executed in its name by its officers thereunto duly authorized and its corporate seal to be hereunto affixed the \_\_\_\_\_ day of \_\_\_\_\_.

(Corporate Seal)

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

*MAP*

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