LAW OFFICES
ALVORD AND ALVORD
200 WORLD CENTER BUILDING
918 SIXTEENTH STREET, N.W.
WASHINGTON, D.C.
20006-2973
(202) 393-2266

OF COUNSEL
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEX
440367 A AND A

TELEFAX
(202) 393-2156

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD+
CHARLES T. KAPPLER
JOHN H. DOYLE#
RICHARD N. BAGENSTOS
JAMES C. MARTIN, JR.#

+ALSO ADMITTED IN NEW YORK
#ALSO ADMITTED IN MARYLAND

16291
RECORDATION NO _____ FILED 1425

APR 17 1989 -1 50 PM

INTERSTATE COMMERCE COMMISSION

April 17, 1989

Ms. Noreta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) fully executed original copies each of 1) Lease of Equipment #8 dated as of February 16, 1989, and 2) Lease Assignment Agreement dated as of March 29, 1989 (primary and secondary documents, respectively, as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177) and Bill of Sale dated as of March 29, 1989 (a primary document, as so defined).

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

Lessor/Assignor/
Seller: SLX Canada Inc.
1500 Bow Valley Square IV
250 - 6th Avenue S.W.
Calgary, Alberta T2P 3H7
CANADA

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

Assignee/
Purchaser: Sun Life Assurance Company of Canada
200 University Avenue, 13th Floor
Toronto, Ontario M5H 3C7
CANADA

A description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached hereto and made a part hereof.

Also enclosed is a check in the amount of $39 payable to the order of the Interstate Commerce Commission covering the required recordation fees.

Kindly return stamped copies of the enclosed documents to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

A short summary of the enclosed documents to appear in the Commission's Index is:

> Lease of Equipment #8 dated as of February 16, 1989 between SLX Canada Inc., Lessor, and Canadian National Railway Company, Lessee; Lease Assignment Agreement dated as of March 29, 1989 between SLX Canada Inc., Assignor, and Sun Life Assurance Company of Canada, Assignee, and Bill of Sale dated as of March 29, 1989 between SLX Canada Inc., Seller, and Sun Life Assurance Company of Canada, Purchaser.

Very truly yours,

Charles T. Kappler

Enclosures

16291 - A
RECORDATION NO. FILED 1425
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INTERSTATE COMMERCE COMMISSION

# LEASE ASSIGNMENT AGREEMENT

THIS AGREEMENT made as of the 29th day of March, 1989.

**BETWEEN**

**SLX Canada Inc.**, a corporation incorporated under the laws of Canada (the "Assignor")

- and -

**Sun Life Assurance Company of Canada** (the "Assignee")

**WHEREAS:**

Assignor has agreed to sell to the Assignee pursuant to an agreement made as of the date hereof (the "Equipment Purchase Agreement") the equipment (the "Equipment") described in Schedule A to the lease of equipment #8 between the Assignor and Canadian National Railway Company ("CN") made as of February 16, 1989, attached hereto as Schedule 1 (the "Lease").

As a condition of entering into the Equipment Purchase Agreement, the Assignee has required an assignment of the Assignor's right, title and interest in and to the Lease and rentals and other amounts payable thereunder.

**WITNESSES** that for valuable consideration, the parties agree as follows:

1. **Assignment.** The Assignor hereby absolutely assigns, transfers and sets over unto the Assignee the Lease and all of the Assignor's right, title, benefits, interest and obligations in, to and under the Lease including, without limitation, all present and future rentals and other amounts payable or to become payable under the Lease from and after February 16, 1989 and together with the benefit of all covenants and all waivers, releases, indemnities and other obligations of CN thereunder, and the Assignor hereby agrees that all amounts hereafter received by or on behalf of the Assignor under the Lease shall be held by it in trust for and shall forthwith be paid over to the Assignee without notice or demand. The Assignee hereby assumes all liabilities and obligations of the Assignor under the Lease arising from and after the date hereof and acknowledges that CN may, under the terms of the Lease,elect to purchase all but not less than all of the Equipment on April 1, 2004.

2. **Assignor's Covenants and Warranties.** The Assignor hereby covenants with and warrants to the Assignee that:

(a) it has full corporate power and authority to enter into this Agreement and has not performed any acts or executed any other instrument which might prevent the Assignor from giving full effect to this Agreement, and the Lease, rentals and other amounts and all right, title and interest of the Assignor therein hereby assigned or intended so to be, are free and clear of all liens, charges, prior assignments or encumbrances of any kind or nature whatsoever, and all approvals, consents or authorizations, if any, necessary with respect hereto and the transactions contemplated herein have been obtained;

(b) this Agreement has been duly and validly authorized, executed and delivered by the Assignor and is a valid and legally binding agreement of the Assignor enforceable against it in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, and other laws affecting creditors' rights generally and to general principles of equity;

(c) the copy of the Lease attached hereto as Schedule 1 is a true and complete copy of the Lease, and the Lease has not been modified or cancelled and the Assignor has not given any waiver, consent or other indulgence thereunder, and the Lease remains in full force and effect according to its original terms, and there is no default now existing under the Lease and, to the best of the knowledge of the Assignor, no event has occurred which, with the giving of notice or lapse of time or both, would constitute an Event of Default thereunder;

(d) the Equipment has not been replaced or substituted for except in accordance with the express terms of the Lease and in such a way as not to diminish in any material respect the aggregate fair market value of the equipment subject to the Lease; and

(e) there has been no pre-payment of rent or any other amounts payable under the Lease, and the Assignor is not holding any sums as cash security for the performance of any obligations by CN under the Lease.

**3. Assignee's Covenants and Warranties.** The Assignee hereby covenants with and warrants to the Assignor that:

(a) it has full corporate power and authority to enter into this Agreement and has not performed any acts or executed any other instrument which might prevent the Assignee from giving full effect to this Agreement, and all approvals, consents or authorizations, if any, necessary with respect hereto and the transactions contemplated herein have been obtained; and

(b) this Agreement has been duly and validly executed and delivered by the Assignee and is a valid and legally binding agreement of the Assignee enforceable against it in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency and other laws affecting creditors' rights generally and to general principles of equity.

**4. Future Assignments.** The Assignee hereby agrees that it shall not assign, transfer or set over the whole or any portion of the Lease and/or its right, title, benefits, interest and obligations thereunder to any third party without first giving the Assignor at least 10 days prior written notice of such assignment, transfer or set over.

**5. Notice.** Any notice or other communication to a party under the provisions of this Agreement shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to the following mailing, telex or telecopier address, as applicable:

(1) to the Assignor,

SLX Canada Inc.
1500 Bow Valley Square IV
250 - 6th Avenue S.W.
Calgary, Alberta
T2P 3H7

Attention: President

Telex: 03-825570 Answerback WCBC CGY
Telecopier: (403) 264-1262

(2) to the Assignee,

Sun Life Assurance Company of Canada
200 University Avenue
13th Floor
Toronto, Ontario
M5H 3C7

Attention: Director, Private Placement

Telecopier: (416) 595-1770

Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. Any party may from time to time notify the other in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of that party for all purposes of this Agreement.

6. **Further Assurances.** The Assignor covenants and agrees that it will at the request of the Assignee at any time or times hereafter do, execute, acknowledge and deliver or cause further acts, deeds, assignments, transfers, conveyances, consents, powers of attorney, assurances or other documents and take all such other actions as may be reasonably required for the assigning, transferring, granting, conveying, assuring and confirming to the Assignee, or for aiding or assisting in the reducing to possession by the Assignee, any of the rights, interests or assets intended to be hereby transferred, conveyed and assigned.

7. **No Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other and shall enure to the benefit of the parties and be binding upon the parties and their respective successors and permitted assigns.

8. **Time of Essence.** Time shall be of the essence of this Agreement.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supercedes all prior negotiations, understandings and agreements between the parties.

**10. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.

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

**IN WITNESS WHEREOF** the parties have duly executed this Agreement on the day first written above.

**SLX CANADA INC.**

By: _____
Bruce C. Barker
Director

By: _____
Paul J. D. Miller
Director

**SUN LIFE ASSURANCE COMPANY OF CANADA**

By: _____
Name
Position Director of Investments

By: _____
Name
Position Assoc Dir Corporate

Schedule 1: Lease #8
Schedule 2: Acknowledgement of CN

SunLife

# LEASE OF EQUIPMENT #8

B E T W E E N:

**SLX CANADA INC.**

as Lessor

- and -

**CANADIAN NATIONAL RAILWAY COMPANY**

as Lessee

**MADE as of February 16, 1989**

MAP

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# LEASE

THIS LEASE OF EQUIPMENT is made as of February 16, 1989

BETWEEN

**SLX CANADA INC.** (hereinafter called the "Lessor"), a company incorporated under the laws of Canada and having an office at 1500 Bow Valley Square IV, 250 6th Avenue S.W., Calgary, Alberta, T2P 3H7, as owner,

- and -

**CANADIAN NATIONAL RAILWAY COMPANY** (hereinafter called the "Lessee"), a corporation continued under the laws of Canada and having an office at 935 de La Gauchetiere West, Montreal, Quebec, H3B 2M9, as lessee.

WHEREAS the Lessor, at the request of the Lessee, has purchased the Units (as hereinafter defined) for the sole purpose of leasing the same to the Lessee hereunder;

AND WHEREAS the Lessee desires to lease from the Lessor, and the Lessor desires to lease to the Lessee, all of the Units that are duly delivered and accepted as provided herein at the rentals and upon the terms and 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 agrees to lease to the Lessee and the Lessee hereby agrees to lease from the Lessor, for the Term, the Units so delivered and accepted as provided herein, upon the following terms and conditions:

## ARTICLE I

## INTERPRETATION

1.1 The following terms, whenever used in this Lease and any Schedules hereto, shall have the following meanings, unless the context otherwise requires:

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"**Arrears**" means the total of all Rentals and other moneys, if any, due and owing by the Lessee hereunder, while unpaid.

"**Banking Day**" means any day except a Saturday, a Sunday or other day on which banks generally are not open for money market and foreign exchange dealings at their principal offices in each of Toronto, Calgary and Montreal.

"**Casualty Notice Date**" has the meaning set forth in Schedule B hereto.

"**Casualty Occurrence**" means an event in which any Unit shall be or become lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation, expropriation or otherwise for a period in excess of ninety (90) days during the Term of this Lease or during the storage and delivery referred to in Section 18.1.

"**Casualty Payment Date**" has the meaning set forth in Schedule B hereto.

"**Dollars**" or "**$**" means lawful money of Canada.

"**Event of Default**" shall have the meaning ascribed thereto in Section 15.1 hereof.

"**Lease**", "this Lease", "herein", "hereof", "hereunder", or other like words shall mean and include this Lease of Equipment together with the Schedules hereto (which form an integral part hereof) and any other agreement supplementary hereto.

"**Lease Commencement Date**" means with respect to each Unit, the date the same shall be deemed to be delivered to and accepted by the Lessee in accordance with Section 2.1 hereof.

"**Lease Rate**" means an implicit discount rate that, at the date of this Lease, causes the aggregate present value of:

(i) the rental payments under this Lease (excluding any payments which are contingent on the extension of, exercise of or non-exercise of a termination or purchase option under this Lease); and

(ii) the purchase option price payable to the Lessor upon the exercise by the Lessee of any purchase option at the end of the Term of this Lease,

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to be equal to the cost of all the Units to the Lessor.

"Lease Termination Date" has the meaning set forth in Schedule B hereto.

"Lessee" has the meaning ascribed thereto in the recitals to this Agreement.

"Lessor" has the meaning ascribed thereto in the recitals to this Agreement.

"Office" means the office of the Lessor referred to in the first paragraph of this Agreement (Attention: President) or such other office as the Lessor may notify the Lessee from time to time in accordance with Section 23.1 hereof.

"Period" means the period from the Rental Commencment Date to April 1, 1989 and, thereafter, each six month period during the Term, commencing on the Rental Commencement Date;

"Prime Rate" means the annual rate of interest established by The Royal Bank of Canada from time to time at its main branch in Toronto as a reference rate then in effect for determining interest rates on Canadian dollar commercial loans made in Canada; any change in such rate is to be effective on the date such change is established.

"Rental" means the rental payable for each Unit subject to this Lease or each Period, as set forth in Schedule B hereto.

"Rental Commencement Date" has the meaning set forth in Schedule B hereto.

"Stipulated Loss Value" means at any particular time the applicable amount determined in accordance with Schedule D hereto.

"Temporary Alterations" has the meaning ascribed thereto in Section 10.2 hereof.

"Term" means the period commencing as to each Unit on the Lease Commencement Date with respect thereto, to and including the Lease Termination Date.

"Units" means the units of equipment described in Schedule A hereto.

1.2 Any reference in this Lease to any act or statute or section thereof shall be deemed to be a reference to such act

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or statute or section as amended, re-enacted, substituted for or replaced from time to time. Any reference in this Lease to an agreement shall be deemed to be, except as otherwise expressly provided, a reference to such agreement as amended, modified or supplemented from time to time.

## ARTICLE II

## DELIVERY AND ACCEPTANCE OF UNITS

2.1 The Units will be tendered to the Lessee by or on behalf of the Lessor. Upon such tender, the Lessee will cause an authorized representative to inspect each Unit, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery substantially in the form attached as Schedule C hereto, whereupon each such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

## ARTICLE III

## RENTALS

3.1 The Lessee shall pay to the Lessor an interim rental payment in an amount and on the date as set out in or determined in accordance with Schedule B.

3.2 From and after the Rental Commencement Date, the Lessee shall pay to the Lessor Rental for each Unit subject to this Lease for each Period, together with the other applicable payments herein provided. Rental in respect of each Period shall be payable in the manner set forth in Schedule B.

3.3 This Lease is a net lease and the Lessee shall not be entitled to any abatement, reduction or set-off against payments hereunder including, but not limited to, abatement, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in the title, condition, operation or fitness for use of, or any damage to or loss of the possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against, use of all or

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any of the Units by the Lessee or any other person, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or any other document or instrument, any breach, fundamental or otherwise, by the Lessor of any representations, warranties or covenants of the Lessor contained herein, 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 Rental payments and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

3.4 Whenever any payment shall be stated to be due on a day which is not a Banking Day, such payment shall be made on the next succeeding Banking Day.

## ARTICLE IV

## IDENTIFICATION MARKS; REGISTRATION

4.1 The Lessee shall cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto. The Lessee shall not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement shall be promptly filed with the Lessor by the Lessee and filed, recorded or deposited at the Lessee's cost and expense in all public offices where this Lease has been or is required to be filed, recorded or deposited.

4.2 Except as above provided, the Lessee shall not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or any permitted sublessee on equipment used by them of the same or a similar type, for convenience of identification of their rights to use the Units as permitted under this Lease.

4.3 The Lessee agrees to make the registrations, filings, deposits and recordings in respect of this Lease and the Units as set forth in Schedule B hereto, at the Lessee's sole cost and expense. The Lessee will promptly furnish to the Lessor evidence of all such filing, registering, depositing and recording.

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## ARTICLE V

## TAXES

5.1 The Lessee agrees to pay and to indemnify and hold the Lessor harmless from, on an after-tax basis, all taxes, assessments, duties, license and registration fees and other governmental charges, including penalties and interest (hereinafter collectively referred to as "Taxes") 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 Unit by or through the Lessee in any foreign country, by any government or taxing authority in a foreign country, against such Unit or upon or measured by any interest therein, or upon or with respect to the purchase, ownership, delivery, leasing or possession thereof by the Lessor, or upon or with respect to the use, possession or operation thereof by the Lessee, or on account of or measured by the rentals, earnings or gross receipts arising pursuant to this Lease (including any payment or indemnity under this Lease), provided that the Lessee shall not be required to pay the same (or any amount by way of indemnity of the Lessor or otherwise pursuant to this Section) 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 Unit or any interest therein). If a claim is made against the Lessor for any Taxes, then the Lessor shall use its reasonable efforts to notify the Lessee promptly and, if so requested by the Lessee, shall at the Lessee's expense contest the validity and amount of any Taxes which it may be required to pay and in respect of which it is entitled to reimbursement by the Lessee under this Section so long as the rights or interests of the Lessor hereunder or in such Unit will not be materially endangered thereby.

5.2 Notwithstanding the provisions of Section 5.1 of this Article V, the Lessee shall have no obligation thereunder as to:

(i) any Taxes on, based on or measured by the net income of the Lessor imposed (i) by Canada, a province or other local taxing authority in Canada or (ii) by any foreign government or any taxing authority or governmental subdivision of a foreign country to the extent allowed as a credit against income taxes imposed by Canada, a province, or other local taxing

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authority taking into account any applicable limitation on the aggregate amount of such credit and after assuming that all other Taxes of the Lessor for the same or prior periods which qualify for such credit are first allowed;

(ii) any Taxes on, based on, or measured by, the net income of the Lessor imposed by any foreign government or any taxing authority or governmental subdivision of a foreign country by virtue of the Lessor being engaged in business in such foreign country through activities unrelated to the transactions contemplated by this Lease to the extent the Lessee's obligation as to such Taxes would otherwise exceed the amount of such Taxes which would be payable if the Lessor were not so engaged in such business; or

(iii) any Taxes which are or may become imposed by Canada on rental or similar payments being made under this Lease to a non-resident of Canada (as defined in the Income Tax Act (Canada));

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

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

## ARTICLE VI

## PAYMENT FOR CASUALTY OCCURRENCES

6.1 The Lessee shall on the Casualty Notice Date in each calendar year during the Term provide written notice to the Lessor of each Unit which has suffered a Casualty Occurrence during the one year period ending 30 days prior to that date. On the Casualty Payment Date of each calendar year during the Term the Lessee shall pay to the Lessor the Stipulated Loss Value, determined as at such date, of each Unit reported by the Lessee to have suffered a Casualty Occurrence during the

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one year period ending 30 days prior to the Casualty Notice Date of such calendar year and of each Unit which was reported to have suffered a Casualty Occurrence in any previous year and for which no Stipulated Loss Value has been paid, plus the Rental due on the Casualty Payment Date in respect of each such Unit, and only after making such total payment the Rental for each such Unit shall cease to accrue and the term of this Lease as to each such Unit shall terminate. The Lessor shall, upon request by the Lessee, after payment by the Lessee of the amounts described in the preceding sentence, deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) substantially in the form of Schedule H hereto for each such Unit executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee such title to such Unit as the Lessor received upon acquiring such Unit, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

Notwithstanding the foregoing, the Lessee shall not be required to make any payment under this section on a Casualty Payment Date unless such payment due exceeds $100,000. However, the Rental in respect of each Unit shall continue to accrue until the Lessee has made the payments as described above.

For greater certainty, the Lessee shall within 90 days of the Lease Termination Date pay to the Lessor the Stipulated Loss Value, determined as at the Lease Termination Date, of each Unit which has suffered a Casualty Occurrence during the Term and in respect of which the Lessee has not previously paid the Stipulated Loss Value pursuant to this Section 6.1.

6.2 The rights and remedies of the Lessor to enforce or recover any of the Rentals or any other amounts which are due and payable hereunder prior to the incurring of the obligation to pay the Stipulated Loss Value of any Unit shall not be affected by reason of the Casualty Occurrence with respect to such Unit.

6.3 Notwithstanding Section 6.1, the Lessee will have the option with respect to one or more Units which have suffered a Casualty Occurrence to give notice to the Lessor that it wishes to replace such Unit(s) ("Replaced Unit(s)") with other Units(s) of equivalent value, age, residual value expectation, utility and condition ("Replacement Unit(s)"), such Replacement Unit(s) to be received by the Lessor as full compensation for the loss of the Replaced Unit(s) and the Lessee shall not be required to pay to the Lessor the Stipulated Loss Value for such Unit(s).

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Notice of the Lessee's election to replace a Unit or to pay the Stipulated Loss Value will be given to the Lessor on the Casualty Notice Date and will specify the Replaced Unit and the Replacement Unit, if the Lessee wishes to avail itself of the replacement option set out in this Section 6.3. The Rental for each Replaced Unit will cease on the relevant Casualty Payment Date at which time Rental for the corresponding Replacement Unit will commence and will be equal to that on the Replaced Unit and will continue without abatement or interruption regardless of the occurrence of the Casualty Occurrence. If any Unit which has suffered a Casualty Occurrence is replaced as provided in this Section, the Lessee will, on the Casualty Payment Date, sign all such documents and do all such things as may be reasonably required by the Lessor to convey good and marketable title to the relevant Replacement Unit to the Lessor free and clear of all hypothecs, mortgages, charges and encumbrances. The Replacement Unit will be deemed to be a Unit for purposes of the Lease and all terms and conditions of the Lease, including those pertaining to the term, will continue to apply to the Replacement Unit as a Unit after the Casualty Payment Date.

## ARTICLE VII

## WAIVERS AND DISCLAIMER OF WARRANTIES

7.1 The Lessee acknowledges that the Units have been selected by the Lessee alone, that neither the Lessor nor its employees or agents is a manufacturer, dealer or distributor of the Units, or expert with respect thereto, that the manufacturer of the Units is not, and has not been, an agent of the Lessor with respect to the Units, and, accordingly, the Lessee without prejudice to any rights which the Lessee may have against the manufacturer of the Units or others, and subject as provided in Section 12.1, hereby releases and forever discharges the Lessor from any and all actions, causes of action, debts, damages, costs, expenses, claims, demands, rights or defences which, at any time now or hereafter may arise out of or in relation to the Units. The Lessee agrees that the Lessee has made or shall in fact make all appropriate and prudent studies in connection with the selection of the Units and all the tests and inspections thereof, as would a careful and prudent purchaser. As to all matters of selection, design, patenting, industrial design, trade marks, construction, condition, safety, suitability, fitness, capacity, performance, durability of the Units and all matters whatsoever with respect to the acceptability of the Units, the Lessee shall look only to, and shall rely solely upon the manufacturer of the Units or others, and not to or upon the Lessor or the Lessor's employees or agents.

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7.2 The Lessor shall have no responsibility or liability under this Lease to the Lessee or any other person with respect to: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any inadequacy of any Units or deficiency or defect therein; or (ii) the delivery, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units are in all the foregoing respects satisfactory to the Lessee, and the Lessee shall not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

7.3 The Lessee acknowledges and agrees that, except to the limited extent otherwise provided herein, there are and will be no agreements, representations, warranties or conditions, expressed or implied, oral or written, legal, equitable, statutory, conventional, collateral or otherwise, on the part of the Lessor respecting or in connection with the Units and that the Lessor has undertaken this transaction strictly in reliance upon the terms, conditions and provisions of this Article VII. Without limiting the generality of the foregoing, the Lessee agrees that any latent defects in or any failure of the Units shall be conclusively deemed not to be or to constitute a fundamental or other breach hereof by the Lessor, or a failure of performance or consideration hereunder on the part of the Lessor.

7.4 If applicable, the Lessee waives to the extent permitted all of the rights, benefits and protection given by Sections 19 to 24 inclusive of the Sale of Goods on Condition Act of the Province of British Columbia.

7.5 If applicable, and to the extent permitted by law, the Lessee hereby waives all its rights, benefits or protection given to it by Sections 47, 49 and 50 of The Law of Property Act and the Seizure Act of the Province of Alberta, insofar as they extend to or relate to this Lease or other security collateral thereto. The Lessee hereby acknowledges that seizure or repossession of the Units referred to in this Lease shall not, by implication of law, extinguish the Lessee's indebtedness under this Lease or other collateral security. The Lessee hereby confers upon the Lessor the right to recover from the Lessee by action on covenant for the payment contained in this Lease or in any other security collateral hereto the full Rental payable under this Lease and all other money from time to time due hereunder or under any other collateral security, notwithstanding any seizure or repossession.

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7.6 The Lessee covenants and agrees with Lessor that The Limitation of Civil Rights Act of the Province of Saskatchewan shall have no application to:

(a) this Lease;

(b) any mortgage, charge or other security for the payment of money made, given or created by this Lease or any agreement or instrument collateral hereto;

(c) any agreement or instrument renewing or extending or collateral to any mortgage, charge or security referred to or mentioned in sub-paragraph (b) of this Section 7.6; or

(d) the rights, powers or remedies of Lessor under this Lease or under any mortgage, charge other security, agreement or instrument referred to or mentioned in sub-paragraphs (b) or (c) of this Section 7.6.

## ARTICLE VIII

## LESSOR'S REPRESENTATIONS AND WARRANTIES

8.1 The Lessor represents and warrants as follows:

(i) at the time of delivery of each Unit under this Lease, the Lessor's title to such Unit will be unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all claims, liens and encumbrances, which may result from claims against the Lessor not arising out of the ownership of the Units and which will prevent the performance of this Lease in accordance with its terms;

(ii) so long as an Event of Default shall not have occurred and then be continuing under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease;

(iii) the Lessor is a corporation duly incorporated and validly subsisting under the laws of Canada, with adequate corporate power to enter into this Lease;

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(iv) this Lease has been duly authorized, executed and delivered by the Lessor and constitutes a legal, valid and binding obligation of the Lessor enforceable in accordance with its terms;

(v) the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound, or contravene any provision of law, statute, rule or regulation to which the Lessor is subject, or any judgment, decree, franchise, order or permit applicable to the Lessor; and

(vi) there are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against the Lessor affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transaction.

THE REPRESENTATIONS AND WARRANTIES OF THE LESSOR SET FORTH IN THIS SECTION 8.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES OF THE LESSOR, WHETHER STATUTORY, WRITTEN, ORAL, OR IMPLIED, AND THE LESSOR HAS NOT MADE AND DOES NOT HEREBY MAKE, NOR SHALL IT BE DEEMED BY VIRTUE OF HAVING LEASED THE UNITS PURSUANT TO THIS LEASE TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, DURABILITY, OPERATING FITNESS, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE UNITS.

8.2 The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease.

## ARTICLE IX

## LESSEE'S REPRESENTATIONS AND WARRANTIES

9.1 The Lessee represents and warrants as follows:

(i) the Lessee is a duly incorporated and validly subsisting 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;

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(ii) this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal, valid and binding obligation of the Lessee enforceable in accordance with its terms;

(iii) no approval is required from any public regulatory body with respect to the entering into or performance of this Lease by the Lessee, or if any such approval is required, it has been properly obtained;

(iv) the entering into and performance of this Lease will not result in any breach of, or constitute a default under any indenture, mortgage, deed of trust, loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound, or contravene any provision of law, statute, rule or regulation to which the Lessee is subject, or any judgment, decree, franchise, order or permit applicable to the Lessee; and

(v) there are no actions, suits or proceedings pending or, to the knowledge of the Lessee, threatened against the Lessee or its properties or affecting this Lease or the transactions contemplated hereby which could, if adversely determined, materially and adversely affect the carrying out of such transactions.

## ARTICLE X

## MAINTENANCE; ALTERATIONS; INSPECTIONS

10.1 The Lessee shall, at its own cost and expense, maintain and repair each Unit in accordance with the maintenance and repair standards applicable to such Unit as set forth in Schedule E hereto and otherwise keep each Unit which is subject to this Lease in good order and repair, ordinary wear and tear excepted.

10.2 The Lessee may, at its expense and without the prior consent or notice to the Lessor, make any alteration, improvement or addition to any of the Units as it may deem desirable in the proper operation of its business provided that such alteration, improvement or addition shall not materially impair the continuing use of such Units. Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit or any part thereof shall be considered accessions to such Unit (except such as are (i) not required by laws referred to in Section 14.1, (ii) not replacements or substitutions of existing parts or equipment

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rather than additions thereto, and (iii) readily removable without material damage thereto and without diminishing the value of or impairing the originally intended function or use of, such Unit (hereinafter called "Temporary Alterations")), and ownership of such accessions (except as aforesaid) free of any lien, charge, security interest or encumbrance shall immediately be vested in the Lessor. The Lessor and the Lessee recognize that Temporary Alterations may be made to any of the Units and may be owned by the Lessee and with the prior written consent of the Lessor (such consent not to be unreasonably withheld) may be financed by persons other than the Lessee. Upon termination of this Lease, the Lessee may, and, at the request of the Lessor, shall at the Lessee's sole cost and expense, remove the Temporary Alterations from the Units and shall restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, ordinary wear and tear excepted. Ownership of any Temporary Alterations not so removed by the Lessee shall pass to and vest in the Lessor.

10.3 The Lessor shall have the right (but no obligation), upon reasonable notice to the Lessee and at the Lessor's sole cost and expense, by its authorized representatives, to inspect the Units at all reasonable times at such location or locations designated by the Lessee, to view the state and condition of the Units and to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease; provided, however, that the Lessee shall not be liable, except in the case of gross negligence of the Lessee or of its employees or agents, for any damage, injury to, or the death of any persons exercising on behalf of the Lessor or any prospective assignee of the Lessor, the rights of inspection granted hereunder.

## ARTICLE XI

## FINANCIAL AND OTHER REPORTS

11.1 The Lessee will furnish to the Lessor, on the later of (i) 90 days after the end of each fiscal year, or (ii) within 30 days of the tabling in the House of Commons of Canada of its annual report, a statement of profit and loss and of surplus for each fiscal year, and a balance sheet as at the end of such year, all in reasonable detail together with the report and opinion of a firm of independent chartered accountants.

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11.2 On or before April 1st in each calendar year during the Term, the Lessee will cause to be furnished to the Lessor in such number of counterparts or copies as may reasonably be requested an accurate statement signed by a responsible officer of the Lessee, as of the preceding December 31,

(i) showing the amount, description and numbers of the Units then leased hereunder and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request, and

(ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by Article IV have been preserved or replaced.

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

## ARTICLE XII

## INDEMNIFICATION

12.1 The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor, and against any expense, loss or liability (including but not limited to solicitors' fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or of the performance of this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, maintenance, condition, purchase, delivery, transhipment, rejection, storage or return of any Unit under this Lease or the occurrence of any Event of Default hereunder or any event which with the giving of notice, or lapse of time, or both, would become an Event of Default. The Lessee further agrees to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person; provided, however, that the Lessee shall not be required to indemnify the Lessor under this Article XII for

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negligence on the part of the Lessor, its employees and agents. The indemnities arising under this Article XII shall survive payment of all other obligations under this Lease, the sale, assignment, transfer or other disposition of this Lease or any of the Units by the Lessor, and the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this Article XII in respect of any charge, claim, expense, loss or liability attributable to an event occurring with respect to a Unit after such Unit shall have been assembled, delivered, stored and transported to the Lessor pursuant to the provisions hereof; provided, however, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or at the time this Lease with respect to such Unit terminated. In case any action, suit or proceeding is brought against the Lessor in connection with any claim indemnified against hereunder, the Lessee may, and upon the request of the Lessor shall, at the Lessee's expense, resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and acceptable to the Lessor and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including, without limitation, solicitors' fees and expenses) as incurred by the Lessor in connection with such action, suit or proceeding.

12.2 Upon the payment in full of any indemnities as contained in this Article XII by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice, or both, would constitute an Event of Default) shall have occurred and be continuing, (i) the Lessee shall be subrogated to any right of the Lessor in respect of the matters against which indemnity has been given and (ii) any payments received by the Lessor from any person (except the Lessee) as a result of any matter with respect to which the Lessor has been indemnified by the Lessee pursuant to this Article XII shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

## ARTICLE XIII

## INSURANCE

13.1 The Lessee shall, at all times prior to the return of the Units to the Lessor in accordance with the terms of this Lease and during any storage period, at its own expense,

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cause to be carried and maintained public liability and property damage insurance in respect of the Units against the risks and in the amounts, if any, insured against by the Lessee in respect of similar equipment owned or leased by it. Notwithstanding anything to the contrary in this Section 13.1, the Lessee shall be permitted to provide for self insurance.

## ARTICLE XIV

## ADDITIONAL COVENANTS OF THE LESSEE

14.1 The Lessee shall comply in all respects with all laws of the jurisdictions in which the Units may be operated and the Lessee shall and does hereby indemnify the Lessor and agrees to hold the Lessor harmless from and against any and all liability that may arise from any infringement or violation of any such laws by the Lessee or any sublessee, or their employees, or any other person. In the event that such laws require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in any case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest with due diligence by appropriate legal proceedings the validity or application of any such law in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property rights of the Lessor hereunder.

## ARTICLE XV

## DEFAULT AND ENFORCEMENT

15.1 If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called "Events of Default") shall occur:

(i) default shall be made in the payment of any part of the Rental provided herein or any payment in respect of Casualty Occurrences and such default shall continue for a period of five (5) Banking Days after written notice from the Lessor;

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(ii) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or sublease of any of the Units;

(iii) 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 specifying the default and demanding that the same be remedied;

(iv) the Lessee shall file any petition or commence any proceedings under any bankruptcy, reorganization, insolvency or moratorium law for the relief of debtors;

(v) any proceedings shall be commenced against the Lessee by way of a scheme of arrangement under the Railway Act (Canada) or for any relief under 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, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or judgment or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier;

(vi) appointment of any receiver to take possession of all or a substantial portion of the Lessee's properties not set aside within thirty (30) days;

(vii) the Lessee shall default, as such term is defined therein, under any other agreement (of any kind whatsoever, including any other lease agreements) it may have with the Lessor whether such agreement now exists or shall hereafter be created and such default shall result in moneys being declared due and payable to the Lessor which would not otherwise be due and payable at that time and such declaration shall not be rescinded or annulled within a period of thirty days after the Lessee has been given notice of such default by the Lessor,

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

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

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, enjoy, sell, lease or otherwise dispose of the same in such manner as the Lessor may determine free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee in respect thereof, but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the Rental for any number of days less than a full Period by multiplying the Rental for such full Period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full Period) and also to recover forthwith from the Lessee (i) as liquidated damages for loss of the bargain and not as a penalty, a sum, with respect to all Units, which equals the Stipulated Loss Value of all the Units as of the rental payment date next preceding the date of termination of this Lease, and (ii) any other damages and expenses, including, without limitation, reasonable solicitors' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease. 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 subclauses (i) and (ii) of this clause (b) Lessor shall refund to Lessee the net amount received by Lessor, such refunded amount not to exceed the amount paid by Lessee to Lessor under subclause (i) of this clause, on any sale, lease or disposition of the Units after deducting all costs and expenses including any legal fees and income and/or other taxes incurred in connection therewith.

15.2 The remedies in this Lease provided in favour of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favour existing at law or in equity. The Lessee hereby waives, to

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the fullest extent permitted by applicable law, all rights (other than those expressly provided for herein) now or hereafter conferred upon it by statute or otherwise to terminate or surrender this Lease or the Units or to any abatement, suspension, deferment, diminution or reduction of the Rental payments.

15.3 The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies and a waiver on one occasion shall not constitute a waiver of any such right as to any other occasion.

## ARTICLE XVI

## ASSIGNMENT; POSSESSION AND USE

16.1 Subject to compliance with the provisions of Section 8.2, the Lessor shall have the absolute right to sell, transfer or assign to any person, firm, corporation or other entity resident in Canada any or all of its rights, obligations, benefits and interests under, in and to this Lease or any Unit. However, the Lessee shall be under no obligation to any assignee of this Lease except upon written notice of such assignment. All the rights of the Lessor hereunder shall enure to the benefit of the Lessor's assigns. Whenever the Lessor is referred to in this Lease, it shall apply and refer to each assignee of the Lessor.

16.2 So long as an Event of Default shall not have occurred and then be continuing under this Lease, the Lessee shall be entitled to the quiet enjoyment, possession and use of the Units in accordance with the terms of this Lease, but, except as otherwise expressly provided herein, the Lessee shall not without the prior written consent of the Lessor assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any property of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any property of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time

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be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions hereof.

16.3 Nothing in this Article XVI shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any company incorporated under the laws of Canada (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become amalgamated, merged or consolidated and which shall have acquired the property of the Lessee as an entirety or substantially as an entirety; or (ii) without the prior written consent of the Lessor to sublease any Unit to any party for a period (including renewals) not exceeding one year; or (iii) to sublease any Unit to any party for a period (including renewals) of more than one year with the prior written consent of the Lessor, such consent not to be unreasonably withheld, and such consent is hereby given with respect to any sublease by the Lessee to an affiliated or subsidiary corporation incorporated in the United States or Canada. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.

## ARTICLE XVII

## PURCHASE OPTIONS

17.1 The Lessee shall be entitled to exercise the purchase options, if any, described in Schedule F hereto, subject to the terms and conditions thereof.

## ARTICLE XVIII

## RETURN OF UNITS

18.1 As soon as is reasonable on or after the expiration of the Term, the Lessee shall (unless the Units are sold to the Lessee or shall have suffered a Casualty Occurrence), at its own cost and expense, at the request of the Lessor, assemble and deliver possession of any Units to the Lessor at such location on property of the Lessee in Canada as the Lessor may reasonably designate and permit the Lessor to store

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the Units for a period not exceeding 90 days. During any such storage period the Lessee shall permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any Unit, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of gross 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, lessee or user, the rights of inspection granted under this Section 18.1. The assembling, delivery, storage and transportation of the Units as hereinabove provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises, the Lessor shall be entitled to a judgment, order or decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this Section 18.1 shall be in the return condition specified in Schedule E hereto.

18.2 If this Lease shall terminate pursuant to Section 15.1, the Lessee shall forthwith deliver possession of the Units to the Lessor, and the provisions of Section 18.1 shall apply in all respects, except that the period of storage to be provided by the Lessee at the Lessee's sole cost, expense and risk shall extend until the date all such Units have been sold, leased or otherwise disposed of by the Lessor. Without in any way limiting the obligation of the Lessee under the foregoing provisions hereof, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

## ARTICLE XIX

## INCOME TAX REPRESENTATIONS AND INDEMNITY

19.1 The Lessee hereby makes the income tax representations and warranties set forth in Schedule G hereto and agrees to indemnify the Lessor as provided therein.

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## ARTICLE XX

## MILEAGE ALLOWANCE; SUBROGATION

20.1 Provided that no Event of Default has occurred hereunder and is continuing, the Lessee shall be entitled to (i) all mileage allowances and other similar moneys payable by reason of the use of the Units, and any such mileage allowances or other similar moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

## ARTICLE XXI

## FURTHER ASSURANCES

21.1 The Lessee covenants and agrees from time to time at its expense to do all acts and execute all such instruments of further assurance as it shall be reasonably requested by the Lessor to do or execute for the purpose of fully carrying out and effectuating this Lease and the intent hereof.

## ARTICLE XXII

## INTEREST ON ARREARS

22.1 Anything to the contrary herein contained notwithstanding, any Arrears shall bear interest at a rate per annum equal to the rate set out in Schedule B hereto for the period of time during which they are overdue and shall be payable on demand.

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## ARTICLE XXIII

## NOTICES

23.1 Any notice or other communication to a party under the provisions of this Lease shall be in writing and may be delivered personally or sent by prepaid mail, telex or telecopier to the following mailing, telex or telecopier address, as applicable:

(1) to the Lessor,

SLX Canada Inc.
1500 Bow Valley Square IV
250 6th Avenue S.W.
Calgary, Alberta
T2P 3H7
Attention: President
Telex: 03-825570 (WCBC CGY)
Telecopier: (403) 264-1262

and to:

Bennett Jones
3200 Shell Centre
400 4th Avenue S.W.
Calgary, Alberta
T2P 0X9
Attention: Mr. Peter A. Williams
Telex: 03824524
Telecopier: (403) 265-7219

(2) to the Lessee,

Canadian National Railway Company
935 de La Gauchetiere West
Montreal, Quebec
H3B 2M9
Attention: Treasurer
Telex: 055-61899 (CN FINANCE MTL)
Telecopier: (514) 399-8038,

Any such notice or other communication if personally delivered or mailed or telecopied, shall be deemed to have been given when received and, if telexed and the appropriate answerback received, shall be deemed received at the time that the answerback is received. Any party may from time to time

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notify the other in writing of a change of mailing, telex or telecopier address in the manner set forth herein which thereafter, until changed by like notice, shall be the address of that party for all purposes of this Lease.

## ARTICLE XXIV

## SEVERABILITY; EFFECT AND MODIFICATION OF LEASE

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

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

## ARTICLE XXV

## EXECUTION AND COUNTERPARTS

25.1 This Lease 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.

## ARTICLE XXVI

## GOVERNING LAW AND JURISDICTION

26.1 This Lease shall be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any suit, action or proceedings relating to this Lease, each of the parties hereby irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario.

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## ARTICLE XXVII

## EFFECTIVE DATE

27.1 This Lease and the obligations of the parties hereto shall be effective as and from the date first above written.

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

**SLX CANADA INC.**

By _____ c/s
Name: Bruce C. Barker
Title: Director

and by _____
Name: Paul J.D. Miller
Title: Director

**CANADIAN NATIONAL RAILWAY COMPANY**

Approved as to form only
Attorney

By _____ c/s
Name: P.J. FOLIOT
Title: VICE-PRÉSIDENT

and by _____
Name: MARIE-ANDRÉE PRÉNOVEAU
Title: ASSISTANT SECRETARY

## LIST OF SCHEDULES

A. Description of Units
B. Lease Particulars
C. Certificate of Acceptance
D. Stipulated Loss Values
E. Maintenance and Repair Standards; Return Condition
F. Purchase Options
G. Tax Representations, Warranties and Indemnity
H. Bill of Sale



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## SCHEDULE A

## DESCRIPTION OF UNITS

| TYPE | SPECIFICATION | BUILDER | IDENTIFICATION NUMBER | QUAN-TITY | UNIT PRICE |
|---|---|---|---|---|---|
| SD60F 3800 HP, Diesel Electric Locomotives | SD60F, 3800HP, Diesel Electric Locomotives in accordance with the Builder's Proposal DDL 1309 dated January 19, 1988, CN's letter dated December 7, 1987, the Builder's Proposal letter dated January 19, 1988, CN's letter of March 10, 1988 revised March 16, 1988 and the Builder's letter dated March 25, 1988. | Diesel Division, General Motors of Canada Limited, London, Ontario | CN 5509-5513 | 5 | as per invoices for Units delivered and accepted under this lease and hereafter attached to this Schedule A with the Unit Price designated by the Lessor and the Lessee |

DSM*LES8SCHA:VWBANK

## SCHEDULE B

## LEASE PARTICULARS

| | |
|---|---|
| LEASE RATE: | 11.25% |
| RENTAL COMMENCEMENT DATE: | April 1, 1989 |
| INTEREST RATE ON ARREARS: | 12.25% |
| LEASE TERMINATION DATE: | April 1, 2004 or such earlier date as this Lease is terminated pursuant to the provisions hereof. |
| INTERIM RENTAL | If the date on which the Builder is paid the Unit Price for each Unit (the "Drawdown Date") is prior to the Rental Commencement Date, the Lessee shall pay to the Lessor on the Rental Commencement Date an interim rental payment for each Unit in an amount equal to 0.030822% of the Unit Price for each day that the Drawdown Date is prior to the Rental Commencement Date.<br><br>If the Drawdown Date is after the Rental Commencement Date, the Lessor shall pay to the Lessee on the Drawdown Date an interim rental adjustment for each Unit in an amount equal to 0.030822% of the Unit Price for each day that the Drawdown Date is after the Rental Commencement Date.<br><br>All interim rental payments or adjustments as aforesaid are exclusive of Rental. |
| CASUALTY NOTICE DATE: | January 30 in each year during the term of this Lease. |

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| | |
|---|---|
| CASUALTY PAYMENT DATE: | April 1 in each year during the term of this Lease. |
| REGISTRATIONS: | subject to the Lessor providing the Lessee with the appropriate information, the Lessee shall cause each Unit 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. The Lessee shall maintain such records as shall be required from time to time by any applicable regulatory agency or any AAR railroad interchange agreement or rule. The Lessee shall, at its own expense, cause this Lease 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 (with notice of such deposit to be given forthwith in the Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. |

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SCHEDULE B TO LEASE #8
(continued)

RENTAL:

| Payment Number | Rental Payment Date | Percentage of Unit Price of each Unit | Rental Payment based on aggregate Unit Price as per Schedule A |
|---|---|---|---|
| 0 | 01-Apr-89 | 0.000000% | 0.00 |
| 1 | 01-Oct-89 | 0.175645% | |
| 2 | 01-Apr-90 | 5.108134% | |
| 3 | 01-Oct-90 | 5.175645% | |
| 4 | 01-Apr-91 | 4.679020% | |
| 5 | 01-Oct-91 | 4.679020% | |
| 6 | 01-Apr-92 | 4.228682% | |
| 7 | 01-Oct-92 | 4.228682% | |
| 8 | 01-Apr-93 | 3.823379% | |
| 9 | 01-Oct-93 | 3.823379% | |
| 10 | 01-Apr-94 | 3.458606% | |
| 11 | 01-Oct-94 | 3.458606% | |
| 12 | 01-Apr-95 | 3.130310% | |
| 13 | 01-Oct-95 | 3.130310% | |
| 14 | 01-Apr-96 | 2.834843% | |
| 15 | 01-Oct-96 | 2.834843% | |
| 16 | 01-Apr-97 | 2.568924% | |
| 17 | 01-Oct-97 | 2.568924% | |
| 18 | 01-Apr-98 | 7.143331% | |
| 19 | 01-Oct-98 | 15.000000% | |
| 20 | 01-Apr-99 | 15.000000% | |
| 21 | 01-Oct-99 | 15.000000% | |
| 22 | 01-Apr-2000 | 15.000000% | |
| 23 | 01-Oct-2000 | 15.000000% | |
| 24 | 01-Apr-2001 | 15.000000% | |
| 25 | 01-Oct-2001 | 15.000000% | |
| 26 | 01-Apr-2002 | 15.000000% | |
| 27 | 01-Oct-2002 | 15.000000% | |
| 28 | 01-Apr-2003 | 15.000000% | |
| 29 | 01-Oct-2003 | 15.000000% | |
| 30 | 01-Apr-2004 | 15.000000% | |

Method of Payment: Lessee shall pay the above amounts to the Lessor on the corresponding Rental Payment Date in same day funds.

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SCHEDULE C

CERTIFICATE OF ACCEPTANCE

TO: SLX Canada Inc.
1500 Bow Valley Square
250 6th Avenue S.W.
Calgary, Alberta
T2P 3H7

AND General Motors of Canada Limited
2021 Oxford St. East
London, Ontario
N6A 4N5

I, the duly authorized representative of SLX Canada Inc. (the "Lessor") and the Canadian National Railway Company (the "Lessee"), for the purposes of the manufacturing agreement dated February 3, 1989 (the "Purchase Order") between General Motors of Canada Limited (the "Builder") and the Lessee, the assignment of the Purchase Order dated as of February 3, 1989 (the "Purchase Order Assignment") between the Lessee, the Lessor and the Builder and the Lease of Railroad Equipment made as of February 16, 1989 (the "Lease") between the Lessee and the Lessor, DO HEREBY CERTIFY that there has been inspected on behalf of the Lessee and the Lessor and found to be completed and marked in accordance with the Purchase Order, the Purchase Order Assignment and the Lease and the applicable specifications, requirements and standards referred to in the Purchase Order the following units of railroad equipment constructed by General Motors of Canada Limited pursuant to the Purchase Order.

I further certify that there has been delivered to the Lessor at London, Ontario and fully and finally accepted by me on behalf of the Lessee and the Lessor (both under the Purchase Order, the Purchase Order Assignment and the Lease) the following units of railroad equipment constructed by General Motors of Canada Limited pursuant to the Purchase Order:

| DESCRIPTION | QUANTITY | ROAD NO. |
|---|---|---|
| SD60F 3800 HP Diesel Electric Locomotive | | |

Dated: _____

By: _____
Inspector and Authorized Representative of the Lessor and Lessee

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## SCHEDULE D

## STIPULATED LOSS VALUE

| Date | % |
|---|---|
| April 1, 1990 | 119.28% |
| April 1, 1991 | 123.40% |
| April 1, 1992 | 128.30% |
| April 1, 1993 | 133.95% |
| April 1, 1994 | 140.40% |
| April 1, 1995 | 147.70% |
| April 1, 1996 | 155.80% |
| April 1, 1997 | 164.80% |
| April 1, 1998 | 170.00% |
| April 1, 1999 | 154.50% |
| April 1, 2000 | 137.50% |
| April 1, 2001 | 119.25% |
| April 1, 2002 | 99.25% |
| April 1, 2003 | 77.50% |
| April 1, 2004 | 54.23% |

The Stipulated Loss Value shall be calculated as the applicable percentage of the "Unit Price" referred to in Schedule "A".

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## SCHEDULE E

## MAINTENANCE AND REPAIR STANDARDS; RETURN CONDITION

Maintenance and Repair Standards

(i) Locomotives

Each locomotive Unit shall be maintained and repaired to a standard at least equal to that of the remainder of the fleet of locomotives of similar age and type maintained by the Lessee, and, at a minimum, in accordance with the manufacturer's specifications and the minimum standards for operation as dictated by the National Transportion Agency and other Canadian governmental authorities having jurisdiction with respect thereto and/or Federal Railroad Administration rules.

Return Condition

(i) Locomotives

Each locomotive Unit returned to the Lessor shall be in a condition at least equal to that of the remainder of the fleet of locomotives of similar age and type maintained by the Lessee, and in at least as good operating order, repair and condition as when originally delivered to the Lessee, ordinary wear and tear excepted, and, at a minimum, in accordance with the manufacturer's specifications and the minimum standards for operation as dictated by the National Transportion Agency and other Canadian governmental authorities having jurisdiction with respect thereto and/or Federal Railroad Administration rules. Further, the average time from the last major rebuild for the Units to be returned shall not be more than the average time since the last major rebuild for the remainder of the fleet of locomotives of similar age and type maintained by the Lessee.

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## SCHEDULE F

## PURCHASE OPTIONS

### Purchase Options

B.1 Provided that this Lease has not been earlier terminated and no Event of Default has occurred and is then continuing, the Lessee may, by not less than 180 days prior written notice, irrevocably elect to purchase all but not less than all of the Units then covered by this Lease on April 1, 2004 for the applicable Option Price.

B.2 In the event the Lessee elects to purchase all of the Units, upon payment of the applicable Option Price, the Lessor shall upon request of the Lessee deliver to or upon the order of the Lessee a bill of sale (without recourse, representations or warranties) substantially in the form of Schedule H hereto for such Units executed by the Lessor and such other documents as may reasonably be required in order to transfer to the Lessee title to such Units free and clear of all liens, security interests and other encumbrances created by or arising through the Lessor.

B.3 For the purpose of this Schedule F the following terms have the following meanings:

"Fair Market Value" means with respect to any Unit an amount determined on the basis of, and equal in amount to, the value which would have been obtained in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and in such determination, cost of removal from the location of current use shall not be deducted from such value; provided, however, there shall be excluded any value attributable to Temporary Alterations made by the Lessee pursuant to the provisions hereof.

"Option Price" means with respect to April 1, 2004, an amount equal to 54.23% of the Unit Price for each Unit set forth in Schedule A hereto which is then subject to this Lease, which amount has been determined by the parties at the inception of this Lease to be the expected Fair Market Value of each Unit on such date.

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## SCHEDULE G

## TAX REPRESENTATIONS, WARRANTIES AND INDEMNITY

1. The Lessee hereby represents and warrants to the Lessor:

(a) that the Units are depreciable property and that:

(i) a corporation described in subsection (16)(a) of Regulation 1100 under the Income Tax Act (Canada) that owns the Units shall be entitled to deduct from its income for the purposes of the Income Tax Act (Canada) and the regulations thereunder (the "Act" and the "Regulations" respectively) capital cost allowance in each year during the Term on the basis that the Units qualify as Class 6 assets (or any analogous subsequent designation) pursuant to the Act;

(ii) a corporation that carries on business and that owns the Units but is not of the type described in paragraph (16)(a) of Regulation 1100 under the Act shall be entitled to a capital cost allowance with respect to the Units computed at the rate applicable for Class 6 assets (or any analogous subsequent designation) against its net income from renting "leasing properties" as provided in subsection 1100(15) of the Regulations computed before deducting capital cost allowances; and

(b) that the Lessee will not, by an act of commission or omission, effect any change in the nature or use and purpose of the Units which would or could directly or indirectly cause the deductions referred to in (a) above to decrease or be eliminated;

(c) that the Unit Price (as set out in Schedule A) paid by the Lessor for the Units represents the fair market value of the Units as of the date hereof; and

(d) that 54.23% of the Unit Price being the price at which the Lessee is entitled to purchase a Unit on April 1, 2004 pursuant to the Purchase Option contained in Schedule "F", represents a reasonable

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estimate as of the date hereof of the fair market value of a Unit at such Purchase Option date.

2. If, due to the inaccuracy of any representation herein made by the Lessee to the Lessor, the Lessor shall lose or shall not have the right to claim or shall suffer a disallowance of all or any portion of capital cost allowance, investment tax credit, or refundable investment tax credit with respect to any Unit (collectively referred to as "Tax Benefits"), to the extent claimed by the Lessor in its federal and provincial income tax returns for the relevant year, the following provisions shall be applicable:

(A) upon the Lessor being notified of any such denial (including by way of assessment or reassessment, or proposed assessment or reassessment) the Lessor shall notify the Lessee and if so requested by the Lessee in a timely manner, shall contest any such action (such contestation to be at the sole expense of the Lessee), as long as the rights and interests of the Lessor shall not be adversely affected thereby; and

(B) the Rental shall be adjusted as follows:

(I) the Lessor shall determine and give notice to the Lessee of the amount of each instalment of Rental which the Lessor would have required in order to obtain the after-tax net yield of funds employed to acquire the Units, as if the denial specified above had not occurred, and the Lessee shall pay to the Lessor by way of additional Rental on the tenth day following such notice, in respect of the elapsed Term of the Lease up to and including such tenth day, a sum equal to the amount by which the total Rental instalment determined under this paragraph exceeds the total Rental instalment otherwise payable hereunder, plus any provincial sales tax applicable to such additional rent payment; and

(II) the Lessor shall determine (and specify in the notice referred to in paragraph (I) above the amount of each instalment of Rental payable hereunder for the remainder of the Term after such tenth day which the Lessor will require to obtain the after-tax net yield of funds employed by the Lessor to acquire the Units as

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if the denial specified above had not occurred and the Rental shall be increased accordingly and this Lease shall be deemed to be so amended.

Provided always that the payment contemplated by Section 2 (B)(I) and the adjustment in Rental contemplated by Section 2 (B)(II) will not be required to be made until the relevant taxing authority or a court of competent jurisdiction has made a determination with respect to such denial in respect of which the Lessee does not exercise its rights under Section 2(A) or from which there is no further right to object or appeal.

Provided further, however, that the payment contemplated by Section 2 (B)(I) and the adjustment in Rental contemplated by Section 2 (B)(II) will not be required to be made if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor, all or any portion of such Tax Benefits with respect to such Unit as a direct result of the occurrence of any of the following events:

(i) any act or omission on the part of the Lessor;

(ii) any change in income tax legislation after the coming into force of this Lease; or

(iii) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Article VI hereof.

3. In addition but without duplication, the Lessee shall on demand indemnify and save harmless the Lessor from and in respect of all costs, expenses, increased payments of tax, interest, penalties, and costs of contestation of any assessment or reassessment made against the Lessor with respect to this Lease (including reasonable legal fees and disbursements) which the Lessor may suffer or incur as a result of or arising out of a denial specified above so that the net after-tax yield to the Lessor of funds employed to acquire the Units shall exist throughout the Term and any extension or renewal thereof as if the denial specified above had not occurred; provided always that the obligations of the Lessee hereunder shall only exist if the Lessor has fulfilled its obligations under Section 2(A) hereof.

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4. Each determination of increased Rental or other payment due to the Lessor under this Schedule shall be submitted to the Lessee by way of a certificate of an officer of the Lessor setting forth the amount of the increased Rental required (and the method of its calculation) and the basis for it, which certificate shall be conclusive evidence, in the absence of manifest error, of the amount of the increased Rental so required; provided, however, that the Lessee shall be entitled to receive confirmation of the amounts set forth in the certificate from the auditors of the Lessor as such confirmation may be available following the next annual audit of the Lessor's financial statements.

5. In the event that, as a result of events (other than the receipt by the Lessor of any increased Rental), it develops that the Lessor was not entitled to require such recalculation or payment of such increased Rental or was entitled to a lesser recalculation or to receive a lesser amount of increased Rental, the Lessor shall promptly refund to the Lessee on demand any excess amount received by the Lessor plus interest thereon calculated at the Prime Rate from the date such excess amount was received to the date of repayment.

6. For purposes of interpretation hereof "Lessor" shall include Lessor's successors and assigns.

7. The provisions of this Schedule shall survive the termination of the Lease and are included for the benefit of and shall be enforceable by the Lessor.

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## SCHEDULE H

## BILL OF SALE

SLX CANADA INC. (hereinafter called the "SELLER"), in consideration of the sum of ☒ dollars ($ ) paid by ☒, a ☒ 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 right, 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 EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND EXPRESSLY DISCLAIMS LIABILITY FOR LOST PROFIT OR 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:

_____

_____

MOT

PROVINCE OF QUEBEC )
) In the matter of a lease of
) Equipment #8 between SLX
DISTRICT ) Canada Inc. and Canadian
~~CITY~~ OF MONTREAL ) National Railway Company dated
) as of Feb 16, 1989

On this Feb. 21, 1989, before me personally appeared Paul J. Poirot, 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

L. BURTON
Commissioner for Oaths
Commissaire à l'Assermentation
District-Montreal
Expires July 10, 1989

PROVINCE OF ONTARIO ) In the matter of a lease of
) equipment #8 between SLX
CITY OF TORONTO ) Canada Inc. and Canadian
) National Railway Company dated
) as of ; 1989

On this , before me personally appeared Bruce C. Barker to me personally known, who, being by me duly sworn, says that he is the Chairman and Secretary of SLX Canada Inc., that one of the seals affixed to the foregoing instrument is the 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.

Notary Public in and for the
Province of Ontario

(Notarial Seal)

SCHEDULE 2

**ACKNOWLEDGEMENT OF CANADIAN NATIONAL RAILWAY COMPANY** to the Lease Assignment Agreement made as of March 29, 1989 between SLX Canada Inc. and Sun Life Assurance Company of Canada.

**TO: SUN LIFE ASSURANCE COMPANY OF CANADA**

**AND TO: SLX CANADA INC.**

Canadian National Railway Company ("CN") hereby acknowledges the terms of the foregoing Lease Assignment Agreement, and that the Equipment is in existence and has been maintained by CN in accordance with its obligations under the Lease, and that no Casualty Occurrence (as defined in the Lease) has occurred with respect to any of the Equipment. CN confirms that to the best of its knowledge the statements set out in sections 2(c), (d) and (e) of the Lease Assignment Agreement are correct as of the date hereof. Until otherwise directed in writing by Sun Life Assurance Company of Canada or its assignee, CN shall make all payments under or in respect of the Lease to the Assignee at:

Sun Life Assurance Company of Canada
P.O. Box 375
Station A
Toronto, Ontario
M5W 1C2

Attention: Director, Private Placement

on or before the due date thereof.

Dated March 29, 1989

Approved as to form only
Attorney

**CANADIAN NATIONAL RAILWAY COMPANY**

By: _____
Name
Position G.C. Church Treasurer

By: _____
Name
Position

RJP^LEASEAGR:VW

| | | |
|---|---|---|
| PROVINCE OF ONTARIO | ) | LEASE ASSIGNMENT AGREEMENT |
| | ) | dated March 29, 1989 between |
| CITY OF TORONTO | ) | SLX Canada Inc. and Sun Life |
| | ) | Assurance Company of Canada |

On this 29th day of March, 1989, before me personally appeared Bruce C. Barker to me personally known, who, being by me duly sworn, says that he is the Chairman and Secretary of SLX Canada Inc., that one of the seals affixed to the foregoing instrument is the 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.

D.S. McLean

Notary Public in and for the
Province of Ontario

(Notarial Seal)

| | | |
|---|---|---|
| PROVINCE OF ONTARIO | ) | LEASE ASSIGNMENT AGREEMENT dated |
| | ) | March 29, 1989 between SLX |
| CITY OF TORONTO | ) | Canada Inc. and Sun Life |
| | ) | Assurance Company of Canada |

On this 29th day of March, 1989, before me personally appeared James M.A. Anderson to me personally known, who, being by me duly sworn, says that he is an officer of Sun Life Assurance Company of Canada, 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.

D.S. McLean

Notary Public in and for the
Province of Ontario

(Notarial Seal)

DSM^SLX2:VW