RECORDATION NO. 18813 FILED 1425
MAY 19 1994 -2 50 PM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT NO. 3

Dated as of March 30, 1994

Between

ASSET FINANCE (BERMUDA) LIMITED

Vendor

and

TORONTO AREA TRANSIT OPERATING AUTHORITY

Purchaser

16 1988 Locomotives

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CONDITIONAL SALE AGREEMENT NO. 3

This Conditional Sale Agreement No. 3 dated as of March 30, 1994, between Asset Finance (Bermuda) Limited, a Bermuda company with its registered office at 31 Church Street, Hamilton, Bermuda ("Vendor"), and Toronto Area Transit Operating Authority, a corporation without share capital continued under the Toronto Area Transit Operating Authority Act (Ontario) with its chief executive office and principal place of business at 1120 Finch Avenue West, Toronto (Downsview), Ontario, Canada ("Purchaser").

W I T N E S S E T H:

WHEREAS, subject to the terms and conditions set forth herein, Vendor is willing to sell the Equipment to Purchaser and Purchaser is willing to purchase the Equipment from Vendor.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Vendor and Purchaser hereby agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, all capitalized terms used herein and not otherwise defined have the meanings set forth in Annex 1.

1.2 Rules of Interpretation

The following rules apply to this Agreement:

(a) the singular includes the plural and the plural includes the singular;

(b) "or" is not exclusive and "include" and "including" are not limiting;

(c) "hereby", "herein", "hereof", "hereunder", "this CSA", "this Agreement", "this Conditional Sale Agreement", or other like words refer to this Conditional Sale Agreement, as it may be amended,

modified or supplemented from time to time in accordance with its terms;

(d) a reference herein to an Article, Section, subsection, clause, Annex, Exhibit or Schedule is to the relevant Article, Section, subsection, clause, Annex, Exhibit or Schedule of this CSA;

(e) a reference herein to S & P or Moody's and a credit rating therefrom, in the event that either S & P or Moody's no longer issues ratings with respect to commercial paper or senior long term debt, as the case may be, shall mean a reference to any internationally recognized rating organization acceptable to Vendor and Purchaser and the comparable credit rating therefrom; and

(f) the headings of the Articles, Sections, subsections, clauses, Annexes, Exhibits and Schedules are for convenience of reference only and shall not affect the meaning of this Agreement.

ARTICLE 2

SALE OF EQUIPMENT

2.1 Sale of Equipment

(a) Following completion of the sale of the Equipment by Purchaser to Vendor pursuant to the Sale Agreement, and subject to the fulfillment of the conditions precedent set forth in Section 2.2 and Section 2.3 prior to or on the Closing Date, Vendor shall sell all of its right, title and interest in the Equipment to Purchaser and Purchaser shall purchase all of such right, title and interest in the Equipment from Vendor in consideration for the Purchase Price therefor and Vendor shall tender, and Purchaser shall accept delivery of, the Equipment hereunder, "as-is, where-is" and without representation and warranty except for the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof). Simultaneously with such delivery and acceptance, CSA Supplement No. 1 shall be delivered. Such CSA Supplement No. 1 shall be conclusive evidence that the sale contemplated hereby and the delivery and acceptance of the Equipment pursuant to this Section 2.1(a) have taken place.

(b) Title to each Unit of Equipment shall be retained by Vendor until such time as the Purchase Price with respect to such Unit shall be paid in full and Purchaser shall have fulfilled its other obligations under this Agreement.

2.2 **Conditions Precedent to Vendor's Obligations**

The obligation of Vendor to sell the Equipment to the Purchaser pursuant to Section 2.1(a) is subject to the fulfillment or the waiver by Vendor, prior to or on the Closing Date, as the case may be, of the following conditions precedent:

(i) Vendor shall have received due notice of the Closing Date pursuant to Section 2.4;

(ii) the following documents shall have been duly authorized, executed and delivered by Purchaser, shall each be satisfactory in form and substance to Vendor and shall be in full force and effect (unless the failure to be so in full force and effect results from a failure by Vendor to execute and deliver such document) and copies thereof shall have been delivered to Vendor:

(a) the Sale Documents;

(b) this CSA; and

(c) CSA Supplement No. 1 dated the Closing Date;

(iii) a financing statement with respect to this CSA and the Equipment shall have been filed in such public offices as are deemed necessary or appropriate by Vendor;

(iv) Vendor shall have received the following, in each case in form and substance satisfactory to Vendor: (a) a copy of the resolutions of the members of Purchaser certified by a duly authorized officer of Purchaser, duly authorizing the execution, delivery and performance by Purchaser of each of the CSA Documents, and (b) an incumbency certificate of Purchaser as to the Person or Persons authorized to execute and deliver the CSA Documents and the signatures of such Person or Persons;

(v) on the Closing Date, the following statements shall be true and correct and Vendor shall have received evidence satisfactory to it to the

following effect: (A) the representations and warranties of Purchaser contained herein or in any other CSA Document shall be true and correct as though made on and as of such date, or if such representations and warranties relate solely to an earlier date, as of such earlier date, (B) no event has occurred and is continuing which constitutes an Event of Default or an Event of Loss (or an event which with the passing of time or the giving of notice or both would constitute an Event of Default or an Event of Loss) and (C) Vendor has good title to the Equipment on the Closing Date, free and clear of all Liens other than Permitted Liens, and Purchaser shall have delivered a certificate signed by the Chairman or Vice Chairman and a Managing Director or Treasurer of Purchaser, dated the Closing Date, as to (A), (B) and (C);

(vi) no change shall have occurred in any Applicable Law that would make it illegal for Vendor to enter into any of the transactions contemplated by the CSA Documents or the Specified Documents;

(vii) no amendment or proposed amendment to the Tax Act, the Corporations Tax Act (Ontario), the Internal Revenue Code of 1986 of the United States, as amended, any relevant Bermuda tax statute, or to any regulation under any such tax statute and no published interpretation bulletins or guidelines, or judicial decision or administrative ruling or other pronouncement shall have been issued or changed, in each case, after February 4, 1994 and prior to the Closing Date which, in Vendor's reasonable judgment, would adversely affect Vendor's participation in the transactions contemplated by the CSA Documents or the Specified Documents;

(viii) no action or proceeding shall have been instituted nor shall any foreign or domestic governmental action or court order or decree be threatened or have occurred to set aside, restrain, enjoin or prevent the consummation of the transactions contemplated by the CSA Documents or the Specified Documents;

(ix) Vendor shall have received opinions addressed to it from McCarthy Tetrault, special counsel to Purchaser, substantially in the form set forth in Exhibit B, and from Appleby, Spurling & Kempe, special Bermuda counsel to Purchaser, substantially in the form set forth in Exhibit C;

(x) Vendor shall have received an opinion addressed to it from Blake, Cassels & Graydon, substantially in the form set forth in Exhibit D;

(xi) Vendor shall have received an opinion addressed to it from Mello, Hollis, Jones & Martin, substantially in the form set forth in Exhibit E; and

(xii) Vendor shall have received evidence that all governmental and other orders, permits, waivers, authorizations, exemptions, licenses, approvals, consents, registrations and filings necessary for the transactions contemplated by the CSA Documents to which Purchaser is or will be a party and for the legality, validity, enforceability and effectiveness thereof have been issued, obtained or effected on an unconditional basis and remain in full force and effect.

2.3 **Conditions Precedent to Purchaser's Obligations**

The obligation of Purchaser to purchase the Equipment pursuant to Section 2.1(a) is subject to the fulfillment or the waiver by Purchaser, prior to or on the Closing Date, as the case may be, of the following conditions precedent:

(i) the documents referred to in Section 2.2(ii) and a certified copy of an assurance issued to Vendor under The Exempted Undertakings Tax Protection Act, 1966 (Bermuda) in form satisfactory to Purchaser shall have been delivered to Purchaser;

(ii) Purchaser shall have received (a) a copy of the resolutions of the board of directors of Vendor, certified by the Secretary or an Assistant Secretary of Vendor, duly authorizing the execution, delivery and performance by Vendor of each of the CSA Documents, and (b) an incumbency certificate of Vendor as to the Person or Persons authorized to execute and deliver the CSA Documents and the signatures of such Person or Persons;

(iii) Purchaser shall have received certified copies of the bye-laws and memorandum of association of Vendor in effect on the Closing Date in form and substance satisfactory to Purchaser and certified copies of the share register of Vendor as at the Closing Date showing that the only issued and outstanding shares in the capital of Vendor consist of 11,280 Class A shares registered in the name of Newcourt Capital USA Inc. and 720 Class B shares registered in the name of Bermuda Trust Company Limited as trustee for the AFBL Trust, the enforcer of which shall be State House Trust Company Limited;

(iv) on the Closing Date, the representations and warranties of Vendor contained in Section 21.1 shall be true and correct as though made on and as of such date, or if such representations and warranties relate solely to an earlier date, as of such earlier date;

(v) no change shall have occurred in any Applicable Law that would make it illegal for Purchaser to enter into any of the transactions contemplated by the CSA Documents;

(vi) no amendment or proposed amendment to the Tax Act, the Corporations Tax Act (Ontario), the Internal Revenue Code of 1986 of the United States, as amended, any relevant Bermuda tax statute, or to any regulation under any such tax statute and no published interpretation bulletins or guidelines, or judicial decision or administrative ruling or other pronouncement shall have been issued or changed, in each case, after February 4, 1994 and prior to the Closing Date which, in Purchaser's reasonable judgment, would adversely affect Purchaser's participation in the transactions contemplated by the CSA Documents;

(vii) no action or proceeding shall have been instituted nor shall any foreign or domestic, governmental action or court order or decree be threatened or have occurred to set aside, restrain, enjoin or prevent the consummation of the transactions contemplated by the CSA Documents;

(viii) [INTENTIONALLY DELETED];

(ix) Purchaser shall have received an opinion addressed to it from Mello, Hollis, Jones & Martin, special Bermuda counsel to Vendor, substantially in the form set forth in Exhibit E;

(x) Purchaser shall have received a favourable opinion addressed to it from McCarthy Tétrault, special counsel to Purchaser, in form and substance satisfactory to Purchaser, and an opinion from Appleby, Spurling & Kempe, special Bermuda counsel to Purchaser, substantially in the form set forth in Exhibit C;

(xi) Purchaser shall have received evidence of any approvals or consents of any Government Entity required for the authorization, execution and delivery and for the consummation of the transactions contemplated by the CSA Documents and the Specified Documents by Vendor, if any; and

(xii) no event shall have occurred that would give rise to an obligation on the part of the Purchaser to make an indemnity payment pursuant to Section 21.3 or Section 21.4 or would constitute an event giving rise to a Burdensome Payout Right.

2.4 **Place and Time of Closing**

Consummation of the transaction contemplated by the CSA Documents (the "Closing") shall occur at 10:00 a.m., Bermuda time, on the Closing Date at the offices of Appleby, Spurling & Kempe, 41 Cedar Avenue, Hamilton, Bermuda or at such other time and at such other place in Bermuda as may be agreed by the parties hereto. The consummation of the transactions to be effected by the CSA Documents shall take place prior to the consummation of the transactions to be effected by the Specified Documents. Purchaser agrees to give Vendor at least three Business Days' telex, telecopied or telegraphic notice of the Closing Date. For purposes of determining whether Vendor has received at least three Business Days' notice of the Closing Date, the day on which such notice is received shall, unless such notice is received by Vendor by no later than 9:30 a.m., Bermuda time, on the Business Day of actual receipt thereof, be deemed to be the Business Day next succeeding such Business Day of actual receipt.

ARTICLE 3

PAYMENTS

3.1 **Payments**

(a) Subject to the terms of this CSA, Purchaser hereby agrees to pay Vendor the Purchase Price for each Unit of Equipment together with interest thereon at the Interest Rate in arrears calculated as provided in Section 3.2 (x) by paying the Periodic Payment for such Unit of Equipment due on each Periodic Payment Date commencing on the first Periodic Payment Date in the amount set forth opposite such Periodic Payment Date in Column 1 of Schedule A which relates to such Unit of Equipment, which Periodic Payment consists of (1) the principal portion of the Outstanding Balance, if any, specified in Column 2 of such Schedule A opposite such Periodic Payment Date, and (ii) the interest specified in Column 3 of such Schedule A opposite such Periodic Payment Date, and (y) by paying the Final Payment for such Unit of Equipment in accordance with Section 3.1(b).

(b) On the Specified Date, Purchaser shall pay the Final Payment for all, but not less than all, the Units of Equipment then subject to this CSA, plus all Periodic Payments and other amounts then due under this CSA with respect to such Units of Equipment, unless in lieu thereof Purchaser exercises its rights contemplated by

Section 20.1(a) or 20.1(b) hereof. Upon payment of the Final Payment with respect to such Units of Equipment, together with (i) all unpaid Periodic Payments with respect to such Units of Equipment, and (ii) all Supplemental Payments due and owing on the Specified Date, title to such Units of Equipment shall pass without further act from Vendor to Purchaser "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) or Liens of any Specified Party or any Person claiming by, through or under Vendor or any such Specified Party.

(c) Purchaser also agrees to pay to Vendor, or in the case of payments made pursuant to Section 21.3 or 21.4, to whomsoever shall be entitled thereto, any and all Supplemental Payments promptly as the same shall become due and owing (or on demand if no due date is specified), and in the event of any failure on the part of Purchaser to pay any Supplemental Payment, Vendor shall have all rights, powers and remedies provided for in Article 15. Purchaser will also pay on an After-Tax Basis, on demand, as a Supplemental Payment, to the extent permitted by Applicable Law, an additional amount that is the equivalent of interest at the Overdue Rate (i) on any part of any installment of a Periodic Payment not paid when due (without regard to any applicable grace period) for any period for which the same shall be overdue, (ii) on any payment of a Supplemental Payment not paid when due (without regard to any applicable grace period) or demanded for the period from such due date or demand until the same shall be paid, and (iii) subject to the exercise of the Purchaser's rights under Section 20.1, on the Final Payment from the Specified Date until the same shall be paid.

3.2 **Calculation of Interest**

(a) Interest shall accrue and shall be calculated on the basis of a 360-day year of 12 30-day months, but shall be payable on each Periodic Payment Date. The principle of deemed reinvestment of interest shall not apply.

(b) Whenever interest calculated on the Outstanding Balance for any Unit of Equipment at the Interest Rate exceeds the amount of interest included in the Periodic Payment for such Unit of Equipment to be made on a Periodic Payment Date, such excess (specified as a negative amount in Column 2 of the applicable Schedule A) shall be capitalized and added to the Outstanding Balance for such Unit of Equipment as reflected in Column 4 of the applicable Schedule A opposite such Periodic Payment Date and thereafter such increased Outstanding Balance shall bear interest at the Interest Rate calculated as herein provided.

3.3 **Manner of Payments**

All Periodic Payments shall be paid by Purchaser to Vendor at its account at First Fidelity Bank, N.A., London Office, account no. 01022524 in immediately available funds in Dollars, not later than 12:00 noon, London, England time, on the date due; *provided, however*, that Vendor and Vendor's Assignee may direct, and Purchaser agrees if so directed, that the Final Payment shall be paid by wire transfer, in immediately available funds in Dollars, directly to any Person entitled thereto as Vendor and Vendor's Assignee may direct pursuant to payment instructions delivered to Purchaser on the Closing Date or at any time thereafter as directed by Vendor and Vendor's Assignee not less than five (5) Business Days prior to the Specified Date; *provided, further, however*, that in the case of inconsistent directions, the direction of Vendor's Assignee shall prevail. Any such payment made after 12:00 noon, London, England time, shall be deemed received on the next following Business Day. All Supplemental Payments shall be paid by Purchaser, in the case of Vendor, to the account of Vendor specified above, in immediately available funds in Dollars, prior to 12:00 noon, London, England time, on the date due; *provided, however* that Vendor and Vendor's Assignee may direct, and Purchaser agrees if so directed, that the payment, if any, with respect to the Burdensome Payout Amount, the Specified Payment, the Event of Loss Amount (in the case of an Event of Loss affecting all or substantially all of the Equipment) or the Specified Lease Deficiency Amount shall be paid by wire transfer, in immediately available funds in Dollars, directly to the Person entitled thereto as directed from time to time by Vendor and Vendor's Assignee at a bank in a jurisdiction outside of the United States upon not less than five (5) Business Days' prior written notice to Purchaser; *provided, further, however,* that in the case of inconsistent directions, the direction of Vendor's Assignee shall prevail. Any such payment made after 12:00 noon, London, England time, shall be deemed received on the next following Business Day. The aforesaid account may be relocated to any bank in a jurisdiction outside the United States upon twenty (20) days' prior written notice to Purchaser (and if the Periodic Payment Date or the Specified Date, as the case may be, is more than ten (10) days and less than twenty (20) days prior thereto, upon ten (10) days' prior written notice to Purchaser). Due consideration shall be given by Vendor and Vendor's Assignee in order to minimize or avoid the obligation of Purchaser to make an indemnity payment hereunder and Purchaser shall be consulted in connection therewith.

3.4 **Unconditional Payments**

Purchaser's obligation to pay all Payments required to be paid hereunder shall be absolute and unconditional and shall not be affected by any circumstances, including, without limitation, (i) any setoff, counterclaim, recoupment, deduction, withholding, defense or other right which Purchaser may have against Vendor, any Permitted Lessee or any other Person for any reason whatsoever, (ii) any defect in compliance with specifications, title,

condition, merchantability, quality, design, operation or fitness for use of, or any purpose of, the Equipment, any Unit of Equipment or any portion thereof or the existence of any Liens or rights of others whatsoever with respect to the Equipment, any Unit or any portion thereof, or any damage to or loss or theft or destruction of, the Equipment, any Unit or any portion thereof from whatever cause, or any interruption, loss or cessation in or prohibition, limitation or restriction of the use or possession thereof by Purchaser, any Permitted Lessee or any other Person for any reason whatsoever, (iii) any insolvency, bankruptcy, reorganization or similar proceedings by or against Purchaser, Vendor, any Permitted Lessee or any other Person, (iv) any act or failure to act by any Permitted Lessee or the inability or impossibility of causing any Permitted Lessee to take any action under any Permitted Lease, (v) any breach, default or misrepresentation by Vendor under this CSA, including, without limitation, Section 21.1 or 22.2 hereof, or any other CSA Document or any of the documents referred to herein, or (vi) any other circumstance, happening or event whatsoever, whether or not unforeseen or similar to any of the foregoing. Purchaser covenants that it will remain obligated to pay all Payments under this CSA in accordance with its terms and will take no voluntary action to terminate, rescind or avoid this CSA except in accordance with the express terms hereof, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of Vendor or any other Person or other proceeding affecting Vendor or such other Person or any other action with respect to this CSA which may be taken in any such proceeding by any trustee or receiver of Vendor or any other Person or by any court or any of the foregoing actions which may be taken by or against any of Vendor's predecessors in interest in the Equipment, any Unit or any portion thereof. Purchaser hereby waives, to the extent permitted by Applicable Law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate this CSA or the Equipment or any Unit of Equipment or any portion thereof or to any abatement, suspension, deferment, return or reduction of any and all Payments. Each Payment made by Purchaser shall be final as to Vendor and Purchaser, and Purchaser will not seek to recover all or any part of any such Payment from Vendor for any reason whatsoever except manifest error. Nothing in this Section 3.4 shall prohibit Purchaser from pursuing any right it may have under this CSA or otherwise by a separate proceeding against Vendor or any other Person.

ARTICLE 4

VENDOR'S DISCLAIMER: MANUFACTURERS' WARRANTIES

4.1 Vendor's Disclaimer

PURCHASER ACKNOWLEDGES AND AGREES THAT (1) EACH UNIT OF EQUIPMENT IS OF THE SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO PURCHASER AND SUITABLE FOR ITS

PURPOSES, (2) VENDOR IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (3) VENDOR HAS NO FAMILIARITY WITH THE EQUIPMENT AND ASSUMES NO RESPONSIBILITY FOR THE INSTALLATION OR SERVICING THEREOF, (4) AS BETWEEN VENDOR AND PURCHASER, VENDOR SELLS THE EQUIPMENT "AS-IS, WHERE-IS" AND (5) VENDOR DOES NOT MAKE, HAS NOT MADE OR SHALL NOT BE DEEMED TO HAVE MADE AND IS DEEMED TO HAVE EXPRESSLY DISCLAIMED ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, CONDITION, WORKMANSHIP, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OR SUITABILITY FOR USE OR FOR A PARTICULAR PURPOSE OF THE EQUIPMENT OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ANY UNIT OF EQUIPMENT OR ANY PORTION THEREOF, the risks with respect to such matters being assumed by Purchaser, except that Vendor represents and warrants that, on the Closing Date, Vendor shall have received such title to each Unit of Equipment as shall have been conveyed to it on such date and each Unit of Equipment shall be free and clear of all Vendor's Liens.

4.2 **Manufacturers' Warranties**

(a) If and so long as a remedy pursuant to Section 15.1 has not been exercised by Vendor with respect to the Equipment resulting in the loss of possession by Purchaser of the Equipment, (1) Purchaser and any Permitted Lessee so authorized by Purchaser, to the exclusion of Vendor and Vendor's Assignee, may exercise in Purchaser's or such Permitted Lessee's own name all rights with respect to such Unit of Equipment under any warranty, covenant, representation, performance guarantee or indemnity of any manufacturer, contractor, supplier, subcontractor or vendor with respect thereto (a "Manufacturer") and, subject to subparagraphs (b) and (c) of this Section 4.2, may retain any warranty, covenant, representation, performance guarantee or indemnity (including any amounts received in respect thereof) of each Manufacturer and (2) Vendor shall, at Purchaser's (or any Permitted Lessee's) expense, cooperate with Purchaser (or any Permitted Lessee) and take such actions as Purchaser (or any Permitted Lessee) reasonably deems necessary to enable Purchaser (or any Permitted Lessee) to enforce such rights and claims.

(b) Notwithstanding anything herein to the contrary, Purchaser shall cause all amounts that each Manufacturer is obligated to pay to Purchaser under any agreement between such Manufacturer and Purchaser pertaining to the Equipment (a "Purchase Agreement"), including, without limitation, resulting from the enforcement of any warranty, covenant, representation, performance guarantee or indemnity thereunder, to be paid to

Purchaser unless a remedy pursuant to Section 15.1 has been exercised by Vendor with respect to any Unit of Equipment or a remedy pursuant to Section 15.2 for the non-payment of a Payment in an amount in excess of $5,000,000 has been exercised by Vendor with respect to the non-payment of such Payment, in which case each Manufacturer shall be instructed by Purchaser to make any and all such payments directly to Vendor or Vendor's Assignee.

(c) Vendor agrees that, as and when any right of action shall arise against any Manufacturer under a Purchase Agreement in relation to the terms of purchase, value, durability, merchantability, fitness for use, suitability, capacity, age, quality, description, state, condition, design, construction, use, operation or performance of, or any patent infringement or alleged patent infringement in relation to, a Unit of Equipment or any portion thereof, Purchaser shall be entitled, unless and so long as a remedy pursuant to Section 15.1 has been exercised by Vendor with respect to the Equipment resulting in the loss of possession by Purchaser of the Equipment, at its own expense, to exercise all rights of Vendor and Purchaser against such Manufacturer.

ARTICLE 5

QUIET ENJOYMENT

Vendor covenants that, unless an Event of Default shall have occurred and be continuing and this CSA shall have been duly declared, or deemed to have been declared, in default in accordance with the terms hereof, Vendor shall not take or cause to be taken any action contrary to Purchaser's (or any Permitted Lessee's) rights under this CSA, including, without limitation, the right to quiet enjoyment of the Equipment and the right to acquire title to the Equipment pursuant to the terms hereof.

ARTICLE 6

LIENS

Without the prior written consent of Vendor, Purchaser will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to the Equipment or any Unit of Equipment, title thereto or any interest therein (and Purchaser will promptly, at its own cost and expense, take such action as may be necessary duly to discharge any such Lien) during the term of this Agreement except (i) the respective rights of Vendor and Purchaser as herein provided, (ii) rights of others under agreements or arrangements to the extent expressly permitted by the terms of Section 7.2, (iii) Liens for Taxes payable by Purchaser either not yet due or being contested in good faith by appropriate

proceedings so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Equipment or any Unit of Equipment or interest therein, (iv) materialmen's, mechanics', worker's, repairer's, storer's, employees', or other like Liens arising in the ordinary course of Purchaser's (or any Permitted Lessee's) business securing amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such delinquency or proceedings do not involve any material danger of the sale, forfeiture or loss of the Equipment or any Unit of Equipment or interest therein, (v) Liens arising out of judgments or awards against Purchaser with respect to which an appeal or proceeding for review is being prosecuted in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review so long as such proceedings do not involve any material danger of the sale, forfeiture or loss of the Equipment or any Unit of Equipment or interest therein, (vi) customary salvage or similar rights of insurers under any insurance policies maintained by Purchaser, (vii) Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof), (viii) any Lien created under, arising out of or permitted by any CSA Document or any Specified Document, and (ix) any other Lien with respect to which a bond or other security in an amount and under terms satisfactory to Vendor shall have been provided.

ARTICLE 7

MAINTENANCE; POSSESSION; OPERATION

7.1 Maintenance

Purchaser, at its own cost and expense, will maintain, repair, overhaul, test and service, or cause to be maintained, repaired, overhauled, tested and serviced, each Unit of Equipment in accordance with Purchaser's (or such Permitted Lessee's) maintenance and repair program for similar units of equipment owned or operated by it at such time so that such Unit of Equipment will remain (x) in as good operating condition as when delivered under Section 2.1(a) hereof (ordinary wear and tear excepted) and (y) in compliance with any Applicable Law of (i) Canada or the Province of Ontario or (ii) any other jurisdiction in which such Unit of Equipment is located from time to time. Purchaser shall maintain or cause to be maintained in English all records, logs and other materials required by any applicable Government Entity to be maintained in respect of each Unit of Equipment. Purchaser further agrees (i) in respect of each Unit of Equipment, to perform preventive maintenance on an ongoing basis in accordance with Purchaser's standard maintenance manuals from time to time and (ii) to comply with the major maintenance changeout schedule as developed by Purchaser from time to time and not to defer any major component changeout beyond the scheduled major component changeout date. Purchaser agrees that it will not discriminate, and any Permitted Lessee will not discriminate against any Unit of

Equipment (as compared to other similar equipment owned or operated by Purchaser or such Permitted Lessee) with respect to use, operation or maintenance during the term of this CSA.

7.2 **Possession**

Purchaser will not, without the prior written consent of Vendor, lease or otherwise in any manner sell, deliver, transfer or relinquish possession of any Unit of Equipment during the term of this CSA (it being acknowledged and agreed that use upon railway lines owned or operated by Purchaser or any Permitted Lessee or owned or operated by other railroads, upon railway lines over which Purchaser or such Permitted Lessee has trackage rights or rights for operation of its trains, or upon railroad lines of connecting and other carriers in the usual interchange of traffic or in through or run-through service, shall not constitute delivery, transfer or relinquishment of possession) except that:

(i) so long as no Event of Default of the type described in Section 14(a)(i) or 14(a)(ii) in an amount in excess of $5,000,000, or 14(b) shall have occurred and be continuing, Purchaser may deliver any Unit of Equipment or any portion thereof to any manufacturer or supplier of such Unit of Equipment or to any other organization for testing, service, repair, maintenance, overhaul work or other similar purposes or for alterations or modifications or additions required or permitted by the terms of this CSA;

(ii) Purchaser may at any time permit the possession, use and operational control of any Unit of Equipment by any Permitted Operator pursuant to an Operating Agreement; and

(iii) so long as no Event of Default shall have occurred and be continuing, Purchaser may, without the prior consent of Vendor, lease any Unit of Equipment to any Permitted User or any Permitted Short Term User; *provided*, *however*, that (A) Purchaser shall remain primarily liable hereunder for the performance of all the terms of this CSA as if such lease had not occurred and all the terms and conditions of this CSA shall remain in full force and effect, (B) such Permitted User or Permitted Short Term User shall not be subject to bankruptcy proceedings on the commencement date of the lease, (C) such lease shall be expressly subject and subordinate to all the terms and conditions of this CSA and shall have a term which shall not extend beyond the Specified Date, and (D) in the case of a lease with a Permitted User who is not also a Permitted Short Term User, such lease shall contain provisions on modifications, maintenance and use

that are no less restrictive than the corresponding provisions in this CSA.

Any arrangement under which Purchaser maintains operational control of the Equipment shall not be subject to Section 7.2 except for the provisions of Section 7.2(i). No Permitted Lease permitted pursuant to this Section 7.2 shall permit any subleasing of the Equipment by the Permitted Lessee thereunder. Purchaser shall deliver a true and complete copy of any Permitted Lease with a term of more than 366 days to Vendor within 30 Business Days of execution thereof. In the event that Purchaser requires any Permitted Lessee (other than a Permitted Short Term User) to carry any insurance with respect to any Unit of Equipment covered by a Permitted Lease, Purchaser will provide to Vendor certificates of insurance with respect to such insurance.

7.3 Operation

Purchaser shall have the unlimited right to use the Equipment in any lawful manner whatsoever. Purchaser will not use or operate (and will not permit any Permitted Lessee to use or operate) any Unit of Equipment in violation of any Applicable Law of (i) Canada or the Province of Ontario or (ii) any other jurisdiction in which such Unit of Equipment is located from time to time.

ARTICLE 8

MODIFICATIONS

8.1 Required and Optional Improvements

Purchaser, at its own cost and expense, will from time to time make such modifications and improvements to each Unit of Equipment as are required by any Applicable Law of (i) Canada or the Province of Ontario or (ii) any other jurisdiction in which such Unit of Equipment is located from time to time or to comply with the terms of this CSA ("Required Improvements") and Purchaser (or any Permitted Lessee) may from time to time make such other modifications and improvements to any Unit of Equipment (including, without limitation, the removal of any part) as Purchaser (or such Permitted Lessee) considers desirable in the proper conduct of its business ("Optional Improvements"); *provided* that no such Optional Improvement shall impair the operation of such Unit of Equipment or decrease the current value or current utility of such Unit of Equipment as measured immediately prior to such alteration, modification or addition, assuming the Unit of Equipment was then in the condition required to be maintained by the terms of this CSA or cause such Unit of Equipment to have its commercial utility limited or substantially limited to use solely by Purchaser (or such Permitted Lessee); and *provided further* that no such

Optional Improvement shall impair the reasonably anticipated value of such Unit of Equipment as at the Specified Date.

8.2 **Nonseverable Improvements and Severable Improvements**

Title to all parts and improvements to any Unit of Equipment that are Required Improvements or that may not be removed without material damage to such Unit of Equipment ("Nonseverable Improvements") shall vest in Vendor free and clear of all Liens except Permitted Liens (as to which Permitted Liens Purchaser shall be responsible to remove immediately upon such Liens no longer being Permitted Liens) and become subject to this CSA; provided that title to all Nonseverable Improvements to Units of Equipment in respect of which Purchaser has paid the Final Payment, together with all other amounts due from Purchaser pursuant to Section 3.1(b) hereof, shall pass from Vendor to Purchaser "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any Person claiming by, through or under Vendor or any such Specified Party. Title to any Optional Improvements which are not Nonseverable Improvements ("Severable Improvements") shall remain in Purchaser and any such Severable Improvement shall not be deemed part of the Unit of Equipment. Upon any reconveyance of the Units of Equipment to Vendor on the Specified Date, Vendor shall have the right to purchase any Severable Improvement which Purchaser notifies Vendor will be removed prior to redelivery for its Fair Market Value on the Specified Date. In making any such alteration, modification, addition or improvement, Purchaser shall not discriminate between such Units of Equipment and other equipment of the same type in a manner adverse to such Units of Equipment.

ARTICLE 9

INSIGNIA

Any Unit of Equipment may be lettered with the names or initials or other insignia customarily used by Purchaser or any Permitted Lessee.

ARTICLE 10

LOSS, DESTRUCTION, REQUISITION, ETC.

10.1 Event of Loss

Upon the occurrence of an Event of Loss with respect to any Unit of Equipment, Purchaser shall give Vendor prompt written notice of such occurrence of an Event of Loss and written notice of its election to perform one of the following options (it being agreed that, if Purchaser shall not have given notice of such election within 75 days after notice of such occurrence, Purchaser shall be deemed to have elected to perform the option set forth in the following clause (ii)), and, if such Event of Loss shall occur on a date less than 90 days prior to the next Periodic Payment Date, on the Periodic Payment Date next following the Periodic Payment Date following the occurrence of such Event of Loss (and, if such Event of Loss shall occur on a date 90 days or more prior to the next Periodic Payment Date, on the Periodic Payment Date next following the occurrence of such Event of Loss), Purchaser shall perform one of the following options:

(i) in replacement for such Unit of Equipment, sell or cause to be sold to Vendor (subject to Permitted Liens) a Replacement Unit to be purchased by Purchaser from Vendor hereunder "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof), such Replacement Unit to be of the same or improved model and manufactured by the same Manufacturer or its successor or assigns or any other manufacturer reasonably satisfactory to the Vendor and to have a current value and current utility that is at least equal to that of the Unit of Equipment being replaced (assuming that such Event of Loss had not occurred) on the date of such Event of Loss, assuming at the time such Unit of Equipment is being replaced such Unit of Equipment had been maintained in the condition required by the terms of this CSA, and such Replacement Unit to have a reasonably anticipated value as at the Specified Date equal to the reasonably anticipated value of such Unit of Equipment as at the Specified Date (assuming such Event of Loss shall not have occurred); or

(ii) pay to Vendor (A) the Outstanding Balance for such Unit of Equipment and the Schedule B Amount for such Unit of Equipment set forth opposite such Periodic Payment Date (*plus*, if the Event of Loss arises under clause (iii) of the definition of Event of Loss and the Government Entity referred to therein is the Province of Ontario or any agency or

subdivision thereof, the excess (if any) of (y) the Fair Market Value of such Unit of Equipment immediately before such Event of Loss occurred over (z) the sum of (i) the Outstanding Balance for such Unit of Equipment and (ii) the Schedule B Amount for such Unit of Equipment as set forth opposite such Periodic Payment Date), *plus* (B) Breakage Costs, *plus* (C) all Supplemental Payments due and owing on such Periodic Payment Date, *plus* (D) all unpaid Periodic Payments due or owing on or prior to such Periodic Payment Date (collectively the "Event of Loss Amount"). Vendor shall pay to Purchaser all Swap Gain, if any, received by Vendor in connection with such payment, promptly upon receipt thereof.

If Purchaser shall fail to give timely notice of its election as provided for above, Purchaser shall be deemed to have elected to make, and shall make, the payment described above in clause (ii). If Purchaser shall have given timely notice of its election to replace a Unit of Equipment pursuant to clause (i) above, but shall have omitted by the Periodic Payment Date required above to have satisfied the conditions to such replacement described above and to have replaced such Unit of Equipment, Purchaser shall, on the Periodic Payment Date next following such Periodic Payment Date, make a payment to Vendor in an amount computed in accordance with clause (ii).

Upon payment in full of the Event of Loss Amount for such Unit of Equipment, (1) Periodic Payments, the Outstanding Balance (and the Final Payment accordingly) and the Schedule B Amount for such Unit of Equipment will cease to be payable, (2) Purchaser's maintenance obligations with respect to such Unit of Equipment will terminate, (3) title to such Unit of Equipment shall pass without further act from Vendor to Purchaser "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any other Person claiming by, through or under Vendor or any such Specified Party, and (4) Purchaser shall be subrogated to all claims of Vendor, if any, relating to such Unit of Equipment. Upon such transfer, Vendor shall execute and deliver or otherwise provide to Purchaser all appropriate instruments (prepared by Purchaser) to effect the foregoing, all at the cost and expense of Purchaser.

At the time of or prior to any replacement of such Unit of Equipment, Purchaser, at its own cost and expense, will (A) furnish Vendor with a full warranty (as to title only) bill of sale with respect to the Replacement Unit in form and substance reasonably satisfactory to Vendor, evidencing such transfer of title, (B) cause a CSA Supplement, providing for the sale of the Replacement Unit pursuant to this CSA and duly executed by Purchaser, to be delivered to Vendor for execution, (C) furnish Vendor with opinions of counsel qualified to practice in Ontario and Bermuda reasonably acceptable to Vendor, to the

effect that the bill of sale referred to in clause (A) above constitutes an effective instrument for the conveyance of title to the Replacement Unit to Vendor, and that upon such conveyance the Replacement Unit will be sold to the same extent as the Unit of Equipment replaced thereby, (D) furnish Vendor with such evidence of Purchaser's title to such Replacement Unit as Vendor may reasonably request, (E) assign to Vendor the benefit of all manufacturer's warranties, if any, with respect to the Replacement Unit, which warranties shall be reassigned to Purchaser pursuant to Section 4.2 hereof, and (F) furnish a certificate of a Responsible Officer of Purchaser certifying that such Replacement Unit is free and clear of all Liens (except for Permitted Liens), is of the same or improved model and is manufactured by the same Manufacturer or its successor or assigns or any other manufacturer reasonably satisfactory to Vendor and has a current value and current utility that is at least equal to that of the Unit of Equipment being replaced (assuming that such Event of Loss had not occurred) on the date of such Event of Loss, assuming at the time such Unit of Equipment is being replaced such Unit of Equipment had been maintained in the condition required by the terms of the CSA, and such Replacement Unit has a reasonably anticipated value as at the Specified Date equal to the reasonably anticipated value of such Unit of Equipment as at the Specified Date (assuming such Event of Loss had not occurred).

For all purposes hereof, upon passage of title thereto to Vendor, the Replacement Unit shall be deemed part of the Equipment purchased hereunder and the Replacement Unit shall be deemed a "Unit".

Upon Vendor's request, Purchaser agrees to provide a report similar to the one specified in Section 22.1(h).

10.2 **Application of Certain Payments**

(a) Any payments received at any time by Vendor or by Purchaser (or any Permitted Lessee) from any Government Entity or other Person with respect to an Event of Loss shall be paid over to, or retained by, Purchaser, *provided* that each such Person shall be entitled to receive and retain any proceeds of any policy of insurance obtained by such Person. Any payments received at any time by Vendor or by Purchaser (or any Permitted Lessee) from any Government Entity or other Person with respect to damages to or interference with the use or operation of any Unit of Equipment not constituting an Event of Loss shall be paid over to, or retained by, Purchaser.

(b) Any amount referred to in subsection (a) of this Section 10.2 which is payable to Purchaser shall not be paid to Purchaser, or if paid directly to Purchaser, shall not be retained by Purchaser, if at the time when such amount is paid an Event of Default shall have occurred and be continuing, but shall be paid to and held by Vendor as security for the obligations of Purchaser under this CSA. At such time as there shall not be continuing any such Event of Default, such amount shall be paid to Purchaser.

ARTICLE 11

INSURANCE

Purchaser shall be entitled at its option to self-insure, or to obtain (or cause any Permitted Lessee to obtain) insurance, with respect to loss of or damage to any Unit of Equipment, property damage and public liability, and all other perils relating to any Unit of Equipment.

ARTICLE 12

INSPECTION RIGHTS

Upon reasonable prior written notice to Purchaser:

(i) Vendor or its authorized representatives (A) at intervals not more frequent than twice in each calendar year during the term of this CSA with respect to the Equipment as a whole, or (B) at any time during such time as an Event of Default shall have occurred and be continuing; and

(ii) bona fide prospective purchasers of the Equipment and Specified Lessees following the giving of the Specified Notice;

may, at their own expense (unless an Event of Default shall have occurred and be continuing, in which case at Purchaser's expense) and risk, inspect any Unit of Equipment during regular business hours of Purchaser and the existing records of Purchaser (or if the Equipment is subject to a Permitted Lease, Permitted Lessee) relating thereto, which inspections shall be conducted on Purchaser's (or if the Equipment is subject to a Permitted Lease, Permitted Lessee's) track or premises where such Units of Equipment or such records are then located. Any such inspection shall be a visual, walk around inspection; *provided, further,* that no inspection pursuant to this Article 12 shall interfere with the use, commercial operation or maintenance of any Unit of Equipment or the normal conduct of Purchaser's (or if the Equipment is subject to a Permitted Lease, Permitted Lessee's) business. Upon the written request of Vendor, Purchaser shall notify Vendor of the next scheduled major overhaul of any Unit of Equipment and Vendor or its authorized representatives may observe such overhaul and the activities conducted in connection therewith. Vendor shall not have any duty to make any such inspection nor shall it incur any liability or obligation by reason of not making any such inspection.

ARTICLE 13

ASSIGNMENT

(a) Except as expressly permitted by this CSA, Purchaser shall not, without the prior written consent of Vendor, assign, convey or otherwise transfer any of its rights under any of the CSA Documents or its right, title or interest in any Unit of Equipment.

(b) Except as expressly permitted by this CSA or the Specified Documents, Vendor shall not, without the prior written consent of Purchaser, directly or indirectly assign, convey or otherwise transfer any of its rights under any of the CSA Documents or under any of the Specified Documents.

ARTICLE 14

EVENTS OF DEFAULT

The following events shall constitute events of default (each, an "Event of Default") (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any rule or regulation of any administrative or governmental body) and each Event of Default shall be deemed to exist and continue so long as, but only as long as, it shall not have been remedied:

(a) Purchaser shall fail to make (i) any Periodic Payments within seven (7) days after the same shall have become due or (ii) any Supplemental Payments due by it within fifteen (15) days after receipt by Purchaser of written notice of such failure by Vendor;

(b) Purchaser shall fail to pay the Final Payment for the Units of Equipment and to exercise either of its rights as set out in Section 20.1(a) or Section 20.1(b);

(c) Purchaser shall breach its covenant contained in Section 22.1(e) hereof;

(d) Purchaser shall fail to perform or observe any other covenant, obligation or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of 45 days after receipt of written notice from Vendor of such failure;

(e) any representation or warranty made by Purchaser in this CSA (other than the representation and warranty made by Purchaser pursuant to Section 21.2(h) and Section 21.2(i)) shall prove to have been incorrect in any material respect at the time made; *provided, however*, that such incorrectness, if capable of being cured, shall constitute an Event of Default hereunder only if such incorrectness shall continue uncured for a period of 45 days after the receipt by Purchaser of a written notice from Vendor advising Purchaser of the existence of such incorrectness;

(f) an Event of Default, as that term is defined in any Other CSA, has occurred and is continuing under such Other CSA (other than an Event of Default described in clause (g) of Article 14 of such Other CSA); or

(g) (i) a Vendor Default (or a Vendor Default under any Other CSA) described in clause (a)(i) of Section 14 of the Specified Agreement shall have occurred and be continuing for 3 Business Days after receipt of notice thereof by Purchaser and the Equity Trustee or (ii) a Vendor Default (other than a Vendor Default or a Vendor Default under any Other CSA described in clause (a)(ii), (b), (c), (d), (e) or (f) of Section 14 of the Specified Agreement or the Other Lease (as that term is defined in the Specified Agreement)) shall have occurred and be continuing for 60 days after receipt of notice thereof by Purchaser and the Equity Trustee;

provided that, notwithstanding anything to the contrary contained in this CSA, any failure of Purchaser to perform or observe any covenant, obligation or agreement herein shall not constitute an Event of Default if such failure is caused solely by reason of an event that constitutes an Event of Loss so long as Purchaser is continuing to comply, and does comply, with the applicable terms of Article 10; and *provided further* that, notwithstanding anything contained herein to the contrary, from and after the date (if any) of the payment in full by Purchaser of the Cure Amount, the language following the words "Units of Equipment" shall be deemed deleted from clause (b) above.

ARTICLE 15

REMEDIES

15.1 Certain Remedies

Upon the occurrence of any Event of Default and at any time thereafter, so long as the same shall be continuing, Vendor may, at its option, declare this CSA to be in default by a written notice to Purchaser and at any time thereafter, unless Purchaser shall have remedied all outstanding Events of Default and so long as such declaration shall not have been rescinded, Vendor may elect, in its sole discretion by written notice to the Purchaser (the "Remedy Election Notice"), one of the Sale Remedy, the Foreclosure Remedy or the Acceleration Remedy which, except as provided in Section 15.2, shall be its sole remedy hereunder (*provided* that, if Vendor is stayed or prevented by operation of law or otherwise from exercising such remedy after election thereof, Vendor shall be entitled to elect one of the remedies available hereunder not previously elected as its sole remedy hereunder) to the exclusion of any other contractual or non-contractual remedies, all of which other remedies are hereby expressly waived, and:

(a) in the event the Sale Remedy is elected, Purchaser will have the right to cure such Event of Default, including, without limitation, the right to exercise the Special Cure Right (if applicable), or to exercise a right of redemption in the manner specified below in this clause (a) with respect to the Equipment, in each case within 30 Business Days (the "Cure Period") following receipt by Purchaser of the Remedy Election Notice electing the Sale Remedy. If Purchaser cures such Event of Default within the Cure Period, then this CSA will continue. If Purchaser exercises such right of redemption, upon payment of the Deficiency Amount, title to the Equipment shall pass without further act from Vendor to Purchaser "as-is, where-is" and without representation or warranty except as to the absence of any Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* in the definition thereof) and Liens of any Specified Party or any Person claiming by, through or under Vendor or such Specified Party. If Purchaser does not exercise its right of redemption, Purchaser shall, upon written demand of Vendor and at Purchaser's expense, forthwith reconvey all of its right, title and interest in and to all, but not less than all, of the Units of Equipment to Vendor or Vendor's Designee in the manner and condition required by, and otherwise in accordance with, all of the provisions of Section 20.5 and Vendor will sell the Equipment to a third party for an amount payable in cash at the time

of completion of such sale. In either event, Purchaser shall pay to Vendor on the date of such redemption or sale, as the case may be, an amount (as adjusted in the case described in the *proviso* at the end of this clause (a), the "Deficiency Amount") equal to the Outstanding Balance for the Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus* any unpaid Periodic Payments due on or before such date, *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Outstanding Balance for the Units of Equipment from such immediately preceding Periodic Payment Date to such date, *less* net sales proceeds of any such third party sale, *plus* the Schedule B Amount for such Units of Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Schedule B Amount from such Periodic Payment Date to such date, *plus* an amount equal to Breakage Costs, if any, *plus* any Supplemental Payments then due and payable by Purchaser under this CSA; *provided*, *however*, that Purchaser shall not be liable for the Schedule B Amount for such Units of Equipment if the sole Event of Default with respect to which such Remedy Election Notice shall have been given shall be a Vendor Default. In the event of a sale to a third party, Vendor will be obligated to account to Purchaser for any net proceeds in excess of the Deficiency Amount;

(b) in the event the Foreclosure Remedy is elected, Purchaser will have the right to cure such Event of Default, including, without limitation, the right to exercise the Special Cure Right (if applicable), within the Cure Period following receipt by Purchaser of the Remedy Election Notice electing the Foreclosure Remedy. If Purchaser cures such Event of Default within the Cure Period, then this CSA will continue. If Purchaser does not cure such Event of Default within the Cure Period, then this CSA will terminate and Vendor will own the Equipment free of any right, title and interest therein of Purchaser under this CSA. In such event, Purchaser shall, upon written demand of Vendor and at Purchaser's expense, forthwith reconvey all of its right, title and interest in and to all, but not less than all, of the Units of Equipment to Vendor or Vendor's Designee in the manner and condition required by, and otherwise in

accordance with, all of the provisions of Section 20.5 and Vendor will be deemed to have accepted the Equipment in full satisfaction of Purchaser's obligations under this CSA (except that Purchaser shall be liable to pay, (w) any unpaid Periodic Payments due on or before such date, (x) an amount equal to Breakage Costs, if any, (y) any amount the nonpayment by Purchaser to Vendor of which resulted in such Event of Default and (z) any other Supplemental Payments then due and payable) and Vendor will be entitled to retain, use, keep idle, sell, lease or otherwise dispose of or deal with the Equipment. In such event, Purchaser will not be required to pay the Deficiency Amount, if any, Vendor will not be required to account to Purchaser for any net sales proceeds or other amounts in excess of the Deficiency Amount, and Purchaser will have no equity of redemption nor any preemptive right to purchase the Equipment from Vendor; *provided*, *however*, that, if the sole Event of Default with respect to which such Remedy Election Notice has been given is a Vendor Default, on any day prior to the date of the sale pursuant to such foreclosure, Purchaser may prepay the Outstanding Balance for the Units of Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus* any unpaid Periodic Payments due on or before such date, *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Outstanding Balance from such immediately preceding Periodic Payment Date to such date, in which event title to the Equipment shall pass without further act from Vendor to Purchaser (except that Purchaser shall be liable to pay an amount equal to any Breakage Costs plus any other Supplemental Payments then due and payable) "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or other Person claiming by, through or under Vendor or such Specified Party;

(c) in the event the Acceleration Remedy is elected, then Purchaser shall pay to Vendor the Outstanding Balance of the Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus* any unpaid Periodic Payments due on or before such date, *plus*, if such date shall not be a Periodic

Payment Date, accrued interest at the Interest Rate on such Outstanding Balance from such immediately preceding Periodic Payment Date to such date, *plus* the Schedule B Amount for such Units of Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Schedule B Amount from such Periodic Payment Date to such date, *plus* an amount equal to Breakage Costs, if any, *plus* any Supplemental Payments then due and payable by Purchaser under this CSA (*provided*, *however*, that Purchaser will not be liable for the Schedule B Amount if the sole Event of Default with respect to which such Election Remedy Notice shall have been given shall be a Vendor Default), and Vendor shall have the right to demand payment thereof and to sue for any non-payment thereof and upon such payment, title to the Equipment shall pass without further act from Vendor to Purchaser, "as-is, where-is" and without representation or warranty except as to the absence of any Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* in the definition thereof) and Liens of any Specified Party or any Person claiming by, through or under Vendor or such Specified Party.

15.2 **Procedures, Etc.**

(a) In addition to the remedies set out in Section 15.1, Purchaser shall be liable, except as otherwise provided herein, without duplication of any amounts payable hereunder, for all reasonable legal fees and other reasonable costs and expenses incurred by reason of the occurrence of any Event of Default (other than a Vendor Default) or the exercise of Vendor's remedies with respect thereto, including all reasonable costs and expenses incurred in connection with the reconveyance of any Unit of Equipment in accordance with the terms of Section 20.5, including, without limitation, any reasonable costs and expenses incurred in connection with any repossessing of such Unit of Equipment or in placing such Unit of Equipment in the condition required by Section 20.5 or maintaining or storing such Unit of Equipment. No express or implied waiver by Vendor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

(b) So long as an Event of Default has not occurred and is not continuing, Vendor shall have the right to demand payment of any unpaid Payments then due and payable and to commence an action to recover the same or to commence an

action for specific performance to enforce its rights hereunder in connection with any breach or violation by Purchaser of its obligations hereunder.

(c) Notwithstanding anything contained in this CSA to the contrary, from and after the date (if any) of the payment by Purchaser in full of the Cure Amount, the foregoing remedies (and the limitation on Purchaser's rights with respect to Vendor's exercise of such remedies) shall no longer be applicable and from and after such date, upon the occurrence of any Event of Default and at any time thereafter, so long as the same shall be continuing, Vendor (or Vendor's Assignee) may, at its option, declare this CSA to be in default by a written notice to Purchaser and at any time thereafter, unless Purchaser shall have remedied all outstanding Events of Default and so long as such declaration shall not have been rescinded, Vendor (or Vendor's Assignee) may elect, by written notice to Purchaser, to the extent permitted by, and subject to compliance with, any Applicable Law, any right or remedy which may be available to it under Applicable Law and no such remedy exercised hereunder thereafter shall be to the exclusion of any other contractual or non-contractual remedies otherwise available to Vendor (or Vendor's Assignee) at law or in equity, and Purchaser shall have full rights available to it in law and in equity and, regardless of which remedy is elected, Vendor (or Vendor's Assignee) shall not be entitled to (and shall be obligated to account to Purchaser for) net proceeds in excess of the Outstanding Balance for the Units of Equipment and unpaid Periodic Payments due and payable plus Breakage Costs plus Supplemental Payments due and payable by Purchaser in the event of an Event of Default.

ARTICLE 16

FINANCIAL INFORMATION

Purchaser shall furnish Vendor with the audited financial statements of Purchaser, prepared in accordance with Canadian generally accepted accounting principles, consisting of the balance sheet, statement of equity, statement of operations, statement of changes in financial position and accompanying notes, together with the auditor's report thereon, for each fiscal year of Purchaser (commencing with the fiscal year ended March 31, 1994), within 30 days after the same shall have been tabled in the Legislature of the Province of Ontario in accordance with the laws of the Province of Ontario. In addition, Purchaser shall furnish (or cause to be furnished) to Vendor the financial statements of the Province of Ontario promptly after such financial statements become available to the public.

ARTICLE 17

NOTICES

Every notice, request, demand or other communication under this CSA shall:

(a) be in writing delivered personally or by prepaid registered mail or by facsimile (confirmed in the case of a facsimile, by prepaid airmail letter sent within 24 hours of dispatch);

(b) be deemed to have been received, subject as otherwise provided in this CSA, in the case of a facsimile, at the time of dispatch with transmission confirmation of the addressee's facsimile number appearing at the end of the communication and, in the case of a personal delivery or prepaid registered mail, when actually received (*provided*, *however*, that, in the case of a facsimile, if the date of dispatch, and in the case of personal delivery or prepaid registered mail, if the date of receipt, is not a Business Day in the location of the addressee, it shall be deemed to have been received at the opening of business on the next such Business Day); *provided*, *however*, that, if personal delivery or delivery by prepaid registered mail of a notice is tendered but refused, such notice shall be effective upon such tender;

(c) be sent if:

(1) to Vendor to:

Asset Finance (Bermuda) Limited
31 Church Street
Hamilton
Bermuda

Attention: Thomas E. Schrickel
Facsimile: (809) 292-2277

(2) to Purchaser to:

Toronto Area Transit Operating
Authority
1120 Finch Avenue West
Toronto (Downsview), Ontario
M3J 3J8

Attention: Director of Finance
Facsimile: (416) 665-1875

or to such other address or facsimile number as is from time to time notified by one party to the other under this CSA.

ARTICLE 18

FURTHER ASSURANCES

Purchaser will, at its own cost and expense, cause the CSA to be deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act (Canada) and with the Interstate Commerce Commission of the United States pursuant to 49 U.S.C. Section 11303, including, if requested by Vendor, the deposit of any supplements or amendments to the CSA. Purchaser shall, at its own cost and expense, on or before the Closing Date, register a financing statement in accordance with the PPSA giving notice of the Vendor's interest in the CSA and in the Equipment and from time to time thereafter, if requested by Vendor, make such further registrations under the laws of the Province of Ontario, including the PPSA, as may be necessary to protect and perfect Vendor's interest in the CSA and in the Equipment.

ARTICLE 19

BURDENSOME PAYOUT RIGHT

19.1 Burdensome Payout Right

If one or more events occur which would give rise to an obligation by Purchaser to make indemnity payments under Section 21.3, 21.4, 21.6 or 22.1(d) and the aggregate of such indemnity payments *plus* the present value of any indemnity payments reasonably expected to be made in the future, discounted at a rate of 7.70% per annum, exceeds 2% of the Purchase Price of the Equipment, and such indemnity obligation (and

the underlying cost or tax) would be avoided if Purchaser had title to the Equipment, Purchaser or its designee shall have the right (unless Vendor waives in full its right to receive such indemnity payment) to acquire title to all, but not less than all, of the Units of Equipment (the "Burdensome Payout Right") as specified below; *provided* that Purchaser shall not have such Burdensome Payout Right if such indemnity arises by reason of a breach by Purchaser of a representation or covenant contained in this CSA or by reason of any statutory or regulatory action by the Province of Ontario or any agency or any political subdivision thereof or any act or failure to act which is in the control of Purchaser or the Province of Ontario or any agency or any political subdivision thereof. The Burdensome Payout Right shall be exercisable on any Business Day (the "Burdensome Payout Date") following the delivery of written notice by Purchaser to Vendor of Purchaser's intent to exercise the Burdensome Payout Right, which notice shall be delivered at least 10 Business Days prior to the Burdensome Payout Date. In the event Purchaser exercises the Burdensome Payout Right, Purchaser shall pay to Vendor in accordance with Section 3.3 on the Burdensome Payout Date the Outstanding Balance for the Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), together with (x) the Schedule B Amount for such Units of Equipment as at such date (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date (if such date shall not be a Periodic Payment Date), *plus*, if such date shall not be a Periodic Payment Date, any accrued interest at the Interest Rate on such Schedule B Amount from such Periodic Payment Date to such date, (y) any unpaid Periodic Payments due on or before such date, *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Outstanding Balance from such immediately preceding Periodic Payment Date to such date, (z) an amount equal to Breakage Costs, if any, *plus* all Supplemental Payments due and owing on such date (such Outstanding Balance together with the amounts set out in (x), (y) and (z) above are herein collectively referred to as the "Burdensome Payout Amount"), *provided* that, if such indemnity is solely the result of a Vendor Default other than a Vendor Default resulting from or resulting in the imposition of a Canadian withholding tax, the amount in (x) above will not be payable. Upon Purchaser's payment of such amounts, title to the Equipment shall pass without further act from Vendor to Purchaser "as-is, where-is" and without representation or warranty except as to the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any other Person claiming by, through or under Vendor or any such Specified Party.

Vendor shall pay to Purchaser promptly upon receipt thereof all Swap Gain, if any, received by Vendor resulting from the exercise of a Burdensome Payout Right in connection with an indemnity obligation of Purchaser arising from the imposition of a Canadian withholding tax.

19.2 **No Further Payment Obligations**

Upon payment of the Burdensome Payout Amount in compliance with the provisions of this Article 19, Purchaser shall have no further obligations under this Agreement to pay Periodic Payments for the Units of Equipment under Section 3.1 on any Periodic Payment Date occurring subsequent to the Burdensome Payout Date and the Final Payment for the Equipment on the Specified Date.

ARTICLE 20

PURCHASER'S RIGHTS IN LIEU OF FINAL PAYMENT

20.1 **Purchaser's Rights**

In lieu of making the Final Payment with respect to the Equipment as contemplated by Section 3.1(b) hereof, Purchaser will have the right on the Specified Date either (a) to reconvey to Vendor all of Purchaser's right, title and interest in and to all, but not less than all, of the Units of Equipment (including Manufacturers' warranties, if any, with respect to such Equipment) and to pay the Specified Payment in accordance with Section 20.4 hereof, or (b) to reconvey to Vendor all of Purchaser's right, title and interest in and to all, but not less than all, of the Units of Equipment (including Manufacturer's warranties, if any, with respect to such Equipment) subject to a Specified Lease with a Specified Lessee and to pay the Specified Lease Deficiency Amount, if any, in accordance with Section 20.3 hereof. Any such reconveyance, together with payment by Purchaser of the Specified Payment or the Specified Lease Deficiency Amount (if any), as the case may be, and other amounts due under the CSA shall satisfy Purchaser's obligations under the CSA, Vendor shall be entitled to retain the Periodic Payments and other Payments previously made to it under this CSA, Vendor shall retain title to the Equipment, and Purchaser shall not have any further right, title or interest in or to the Equipment reconveyed by Purchaser to Vendor or any proceeds of disposition thereof. In the event that (i) the reset of the interest rate under the Specified Documents shall not occur, (ii) the prospective Specified Lessee shall fail to consummate the transactions contemplated by the proposed Specified Lease or (iii) the specified lender shall not provide the funding necessary for the proposed Specified Lease, upon notice of such event by Vendor to Purchaser, Purchaser shall make the Final Payment on the Specified Date unless, in lieu thereof, Purchaser exercises its right pursuant to Section 20.1(a) upon giving a written notice thereof prior to the Specified Date.

20.2 **Notices**

Purchaser shall, not less than 190 but not more than 360 days prior to the Specified Date, deliver to Vendor an irrevocable (except as specified in this Article 20) written notice ("Specified Notice" and the date of such Specified Notice is herein called the "Specified Notice Date") of its intention to exercise its rights under clause (a) or (b) of Section 20.1 hereof. Failure to give the notice described in the preceding sentence shall constitute irrevocable notice to Vendor that Purchaser will not exercise its rights contemplated by Section 20.1 and will make the Final Payment in respect of the Equipment pursuant to Section 3.1(b) hereof.

20.3 **Specified Lease Right**

(a) Procedures; Terms. In the event Purchaser shall have given Specified Notice of its intention to exercise the right described in Section 20.1(b) on the Specified Date, Purchaser shall (i) reconvey the Equipment to Vendor or Vendor's Designee in the condition required by Section 20.5, "as-is, where-is", and without representation or warranty except as to the absence of any Liens other than Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any other Person claiming by, through or under Vendor or any such Specified Party, and (ii) pay the Specified Lease Deficiency Amount, if any. The Specified Notice shall identify the prospective Specified Lessee and be accompanied by detailed supporting information establishing that such Person meets all the criteria set forth in the definition of "Specified Lessee". Vendor agrees to cooperate in all respects with Purchaser and the Specified Lessee to provide for a Specified Lease during the period succeeding the Specified Notice Date. Purchaser shall promptly provide Vendor with any financial or other information regarding the proposed Specified Lessee that Vendor may reasonably request.

Any Specified Lease shall satisfy all of the following terms and conditions:

(i) the Specified Lessee must meet all the criteria set forth in the definition of "Specified Lessee";

(ii) the term of the Specified Lease shall commence on the day next following the Specified Date and end on July 1, 2018 in the case of the Class A Equipment, or such earlier date as may be agreeable to Vendor;

(iii) terms and conditions of the Specified Lease shall be substantially similar in all material respects to those of this CSA (except that the Specified Lease will not permit the Specified Lessee to self-insure,

will provide for insurance coverage acceptable to Vendor, will not contain any provisions similar to Section 3.1(b), 14(g), 21.5, Article 19 or Article 20, will require that the Specified Lessee return the Equipment to Vendor's Designee at any interchange point on the tracks of Specified Lessee, f.o.b. such interchange point, as Vendor's Designee may reasonably designate to Specified Lessee in writing, will contain general and tax indemnities customary in transactions similar to the Specified Lease and will provide such other terms and conditions as Vendor's Designee may reasonably designate consistent with the foregoing; and

(iv) for each Class of Equipment provide for basic rent ("Specified Lease Basic Rent") and stipulated loss values ("Specified Lease Stipulated Loss Values"):

A. with respect to Specified Lease Basic Rent for each Class of Equipment, in amounts at least equal to the corresponding amounts determined by Vendor or Vendor's Designee and set forth in the applicable Exhibit F; or

B. with respect to Specified Lease Basic Rent for each Class of Equipment, in amounts ("Adjusted Rents") that, when taken together with any Specified Lease Deficiency Amount paid by Purchaser to Vendor or Vendor's Designee on the Specified Date with respect to such Class of Equipment, preserve the same net economic return as that implicit in the amounts referred to in subclause (A) above, as such net economic return is described and that are computed in accordance with the procedures described in Section 20.3 of the Specified Agreement; or

C. with respect to Specified Lease Stipulated Loss Values for each Class of Equipment, in amounts that, taken together with any such Specified Lease Deficiency Amount and any Specified Lease Basic Rent with respect to such Class of Equipment payable on or before the respective payment dates applicable to such Specified Lease Stipulated Loss Values, preserve the same after-tax yield and periodic after-tax cash flow, or rate of return on assets, as applicable, as those implicit in the Specified Lease Basic Rent set forth in the applicable Exhibit F, as such after-tax yield is described in and that are computed in accordance with such procedures.

In no event may any Specified Lessee or any sublessee or other user or service recipient in respect of any Unit of Equipment subject to a Specified Lease be Vendor or any Affiliate of Vendor, or Purchaser or any Person related to Purchaser (including the Province of Ontario or any agency thereof). In the event Purchaser provides a Specified Lease, it will use its best efforts to provide a Specified Lessee that is a Person (a "Taxable Entity") other than a "tax-exempt entity" within the meaning of section 168(h) of the Internal Revenue Service Code of 1986 of the United States, as amended (a "Tax-Exempt Entity"), which Specified Lessee will operate the Equipment for its own account (and not as lessor to a Tax-Exempt Entity) or will sublease the Equipment to a Taxable Entity which will so operate the Equipment; *provided* that Purchaser shall not thereby be required to provide a Specified Lessee that is a Taxable Entity in favor of an otherwise available Specified Lessee that is a Tax-Exempt Entity if by doing so Purchaser would be obligated to pay a Specified Lease Deficiency Amount that would not otherwise be payable.

(b) Conditions Precedent. Vendor's obligation to enter into the Specified Lease shall be subject to the satisfaction of the following conditions at or prior to the commencement of the Specified Lease term: (i) the Specified Lease shall be duly executed by Vendor or Vendor's Designee (as lessor) and Specified Lessee (as lessee), and to the extent applicable, the Specified Lease shall be duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and such other filings, financing statements, continuation statements or other instruments and all other actions shall have been taken as are necessary to maintain Vendor's or Vendor's Designee's right, title and interest in the Equipment, (ii) Vendor or Vendor's Designee shall be furnished with such evidence of compliance with the insurance provisions of the Specified Lease as Vendor or Vendor's Designee may reasonably request and such other documents, certificates and opinions of counsel as Vendor or Vendor's Designee may reasonably request, and (iii) such other matters and proceedings as may be reasonably requested by Vendor or Vendor's Designee shall be taken in connection with such transaction.

In addition, prior to entering into any Specified Lease, Lessor shall have received an opinion of counsel for the Specified Lessee (such counsel and opinion to be reasonably acceptable to Vendor or Vendor's Designee) covering such matters incident to the Specified Lease transaction as Vendor or Vendor's Designee may reasonably request (and stating that Lessor under the Specified Lease is entitled to the benefits of 11 U.S.C. Section 1168 (or any successor statute) with respect to the Equipment).

(c) No Payments to Purchaser or Affiliates. In connection with any Specified Lease of the Equipment, neither Purchaser or any related Person shall accept any consideration, directly or indirectly, from the Specified Lessee or any other Person for locating or obtaining a Specified Lessee or for arranging a Specified Lease. In the event that any such consideration is received by Purchaser or any related Person,

Purchaser shall, or shall cause such Person to, immediately pay over such amounts to Vendor or Vendor's Designee.

(d) Expenses. Purchaser shall be responsible for all reasonable costs, fees and expenses incurred by Vendor (including, without limitation, reasonable legal fees and disbursements) in connection with the entering into of a Specified Lease.

20.4 **Specified Payment Right**

In the event Purchaser shall have given Specified Notice of its intention to exercise the right described in Section 20.1(a) on the Specified Date, Purchaser shall (i) reconvey the Equipment to Vendor or Vendor's Designee in the condition required by Section 20.5, "as-is, where-is", and without representation or warranty except as to the absence of Liens other than Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any other Person claiming by, through or under Vendor or any such Specified Party, and (ii) pay to Vendor in accordance with Section 3.3 (A) an amount equal to the excess (if any) of the Final Payment for the Units of Equipment over the appraised Fair Market Value of the Equipment as at the Specified Date (minus a reasonable allowance for hypothetical disposal costs) (the "Specified Payment"), *plus* (B) all unpaid Periodic Payments due and owing on the Specified Date, *plus* (C) all Supplemental Payments due and owing on the Specified Date; *provided* that in no event may the Specified Payment exceed the Final Payment for the Units of Equipment minus 20% of the Purchase Price with respect thereto; and *provided further* that Vendor may by written notice to Purchaser given within 60 days of receipt of the Specified Notice elect to have the Equipment sold, in which event net sale proceeds will be substituted for the appraised Fair Market Value less hypothetical disposal costs. If such election is made but the Equipment has not been sold by the Specified Date, the net sale proceeds shall be deemed to equal zero and Purchaser will pay on the Specified Date the maximum Specified Payment and will be promptly reimbursed therefor out of net sales proceeds actually received in excess of the sum of (a) 20% of the Purchase Price and (b) interest on 20% of the Purchase Price at the Interest Rate from the Specified Date to the date such proceeds are received and, if such sale has not been completed within 18 months after the Specified Date, the net sale proceeds shall be deemed to equal zero; and net sale proceeds, if any, after such reimbursement will be for the account of Vendor or its Designee. Any such reconveyance, together with payment by Purchaser of the Specified Payment and other amounts then due under this CSA, will satisfy Purchaser's obligations under this CSA with respect to the Equipment. Vendor will be entitled to retain Periodic Payments and any Supplemental Payments previously made and Purchaser will not have any further right, title or interest in or to the Equipment or any proceeds of disposition thereof.

20.5 **General Condition Upon Reconveyance**

(a) At the time of delivery of any Unit of Equipment to Vendor (or Vendor's Designee) (or if Purchaser exercises the right described in Section 20.1(b), to the Specified Lessee) pursuant to the terms of this CSA, such Unit of Equipment shall be:

(i) free and clear of all Liens except for the absence of Vendor's Liens (including for this purpose Liens that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) and Liens of any Specified Party or any Person claiming by, through or under the Vendor or any Specified Party;

(ii) in the condition required by Section 7.1; and

(iii) if a Class of Equipment constitutes bi-level II coaches, in the condition in which such Class of Equipment would have been if such Class of Equipment had received a major equipment maintenance and refurbishment on the same basis as would have been performed on Purchaser's bi-level I coaches prior to the date of reconveyance of such Class of Equipment.

(b) Purchaser shall deliver the Equipment (unless Purchaser shall have paid the Final Payment therefor) on the Specified Date or the date of earlier termination of this CSA; *provided, however*, that, if a Unit or Units of Equipment cannot be delivered on the Specified Date in accordance with this Section 20.5 as a result of Force Majeure or if a Unit or Units of Equipment shall not on the Specified Date comply with the conditions specified in Section 20.5(a) as a result of Force Majeure, an Event of Loss pursuant to clause (iii) of the definition of "Event of Loss" shall be deemed to have occurred with respect to such Unit or Units of Equipment. To the extent that any maintenance logs are kept with respect to any Unit of Equipment delivered pursuant to this Section 20.5, such maintenance logs shall be made available to Vendor or Vendor's Designee upon the delivery of such Unit of Equipment.

Delivery pursuant to this Section 20.5(b) shall be made at Purchaser's sole cost and expense to the Willowbrook Maintenance Facility or, if the Willowbrook Maintenance Facility is no longer Purchaser's primary maintenance facility, to Purchaser's primary maintenance facility from time to time.

Effective at the time of such delivery, maintenance obligations with respect to any such Unit of Equipment so delivered shall terminate, and Purchaser shall cease to have any liability with respect to any such Unit of Equipment so delivered.

20.6 **Storage**

Upon written request of Vendor or Vendor's Designee given to Purchaser not later than 30 days prior to the Specified Date, Purchaser, on the Specified Date, will provide storage facilities for up to 120 days at the Vendor's (or Vendor's Designee's) expense and risk (but without charge for storage) at a location in Ontario used by Purchaser for the storage of similar equipment. Such storage facility shall provide reasonable protection from damage as a result of vandalism or other external causes (but in no event any less protection than Purchaser provides in the storage of similar equipment).

20.7 **Cure Amount**

Notwithstanding anything contained herein to the contrary, from and after the date (if any) of the payment in full of the Cure Amount, the provisions of this Article 20 shall no longer be applicable.

ARTICLE 21

REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION

21.1 **Representations and Warranties of Vendor**

Vendor represents and warrants to Purchaser that as of the Closing Date:

(a) Vendor is a company duly organized, validly existing and in good standing under the laws of Bermuda and has the corporate power and authority to enter into and perform its obligations under the CSA Documents to which it is or will be a party and such CSA Documents have been duly authorized, executed and delivered by Vendor and constitute legal, valid and binding obligations of Vendor enforceable against it in accordance with their respective terms (except that the enforceability of any CSA Document may be subject to any applicable bankruptcy, insolvency, reorganization or other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court); and neither the execution, delivery and performance by Vendor of any CSA Document to which it is or will be a party nor compliance by it with any of the provisions thereof requires or will require any approval of its shareholders or approval or consent of any trustees or

holders of any indebtedness or obligations of it which have not already been obtained or contravenes or will contravene the provisions of, or constitute a default under, its Memorandum of Association or Bye-laws or any indenture, mortgage, contract or any agreement or instrument to which it is a party;

(b) no authorization or approval or other action by, and no notice to or filing with, any Government Entity or regulatory body of Bermuda is required for the due execution, delivery or performance by Vendor of any CSA Document to which it is or will be a party, except such as have been duly obtained or made, it being understood that no representation or warranty is being made herein with respect to any Applicable Laws specific to the Equipment;

(c) on the Closing Date, Vendor shall have such title to the Units of Equipment as was conveyed to it by Seller pursuant to the Bill of Sale and there are no Vendor's Liens on any Unit of Equipment;

(d) there are no pending or, to its knowledge, threatened actions or proceedings before any court or administrative agency, foreign or domestic, against Vendor (A) relating to the transactions contemplated hereby or (B) which, if adversely determined, would materially adversely affect its financial condition or its ability to perform its obligations under any of the CSA Documents or under any of the Specified Documents;

(e) no Vendor Default or event which with the passing of time or giving of notice or both would constitute a Vendor Default has occurred and is continuing; and

(f) the documents attached as Exhibit G are the Memorandum of Association and Bye-laws of the Vendor, are in full force and effect, unamended, as of the date of this CSA and no proceedings have been taken or are pending to alter or amend same.

21.2 **Representations and Warranties of Purchaser**

Purchaser represents and warrants to Vendor that:

(a) Purchaser is a corporation without share capital continued pursuant to the Toronto Area Transit Operating Authority Act (Ontario), is an agency of the Province of Ontario and has the statutory power and authority to conduct its business as presently conducted, and to enter into and perform its obligations under the CSA Documents and each such document has been or will be duly authorized, executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms (except that the enforceability of any CSA Document against Purchaser may be subject to any applicable bankruptcy, insolvency, reorganization or other laws of general application limiting the enforcement of creditors' rights generally and to the fact that specific performance is an equitable remedy available only in the discretion of the court) and neither the execution, delivery and performance of any CSA Document nor compliance by it with any of the provisions thereof contravenes the provisions of the Toronto Area Transit Operating Authority Act (Ontario), any applicable laws, ordinances, treaties, judgments, decrees, injunctions, writs and orders of any court, arbitrator or governmental agency or authority or any rules, regulations, orders, interpretations, directives, licenses and permits of any Government Entity, by which any of its property or assets may be bound or affected;

(b) as of the Closing Date, Purchaser's principal place of business and chief executive office, in each case for purposes of filings, registrations or recordings under the applicable laws of Ontario, is located at 1120 Finch Avenue West, Toronto (Downsview), Ontario M3J 3J8;

(c) as of the Closing Date, no authorization or approval or other action by, and no notice to or filing with, any Government Entity is required for the due execution, delivery or performance by Purchaser of any of the CSA Documents except such as have been duly obtained or made;

(d) there are no pending or, to its knowledge, threatened actions or proceedings before any court or administrative agency, foreign or domestic, against Purchaser that are reasonably likely to materially

adversely affect its financial condition or its ability to perform its obligations under any of the CSA Documents;

(e) as of the Closing Date, there has not occurred any event which constitutes (A) an Event of Default (other than an Event of Default described in clause (g) of Article 14) which is then continuing or (B) an Event of Loss; *provided, however*, in the event an Event of Loss has occurred without any actual knowledge thereof by any of the Director of Operations or the Executive Managing Director (or a Managing Director) of Purchaser, any breach of such representation shall be cured by the performance by Purchaser of its obligations with respect to such Event of Loss pursuant to Article 10;

(f) as of the Closing Date, no deposit, registration, recording, notice or filing (other than the deposit of the CSA with the Registrar General of Canada pursuant to Section 90 of the Railway Act (Canada) and with the Interstate Commerce Commission of the United States pursuant to 49 U.S.C. Section 11303 and the filing of a financing statement giving notice of Vendor's interest in the Equipment under the PPSA) is necessary under the applicable laws of Ontario to perfect or protect Vendor's interest in the Equipment pursuant to this CSA;

(g) on the Closing Date, Purchaser will have transferred to Vendor good title to the Equipment free and clear of all Liens other than Permitted Liens;

(h) as of the Closing Date, failure to make the Final Payment in respect of the Units of Equipment (x) will not have any adverse consequence of which Purchaser is aware after due diligence and (y) in any event, will not have any material adverse consequence, in each case to Purchaser or any related Person (including the Province of Ontario or any agency thereof) extrinsic to the terms of this Agreement so long as such Units of Equipment are reconveyed to Vendor or Vendor's Designee pursuant to Section 20.1(a) or Section 20.1(b) along with the Specified Payment or the Specified Lease Deficiency Amount, if any, as the case may be;

(i) as of the Closing Date, neither Purchaser nor any related person in a position to control or substantially control the operating or financial decisions of Purchaser has decided whether, on the Specified Date, Purchaser will make the Final Payment in respect of the Units of

Equipment, reconvey such Units of Equipment to Vendor or Vendor's Designee pursuant to Section 20.1(a), or reconvey such Units of Equipment to Vendor or Vendor's Designee pursuant to Section 20.1(b) and pay the Specified Payment or the Specified Lease Deficiency Amount, if any, as the case may be;

(j) the Vendor is not required to be licensed to carry on business in Ontario solely by reason of the execution and delivery in Bermuda of the CSA Documents and the registration of the CSA Documents in Ontario;

(k) the choice of the laws of Bermuda as the governing law of the CSA and the CSA Supplement is a valid choice of law and in any proceeding brought before a court of competent jurisdiction in the Province of Ontario in respect to this CSA and the CSA Supplement, the laws of Bermuda would, to the extent specifically pleaded and proved as a fact by expert evidence, be recognized and applied by such court to all issues which, under the conflict of law rules of the Province of Ontario, are to be determined in accordance with the proper or governing law of a contract, except that in such proceeding, any such court will (i) apply those laws of Ontario which it characterizes as procedural, (ii) not apply those laws of Ontario which it characterizes as being of a revenue, penal or public law nature and (iii) not apply those laws of Bermuda, the application of which would be inconsistent with "public policy", as such term is applied by the courts in Ontario and except further that under the laws of Ontario the validity, perfection and effect of perfection or non-perfection of a security interest in the Equipment is governed by the laws of Ontario; and

(l) the CSA Documents are obligations of, and are legal, valid, binding and enforceable against the Province of Ontario as principal of Purchaser, notwithstanding any bankruptcy, insolvency, reorganization or other proceeding under laws of general application limiting the enforcement of creditors' rights generally which might affect Purchaser, provided however, that:

(i) equitable remedies are available only in the discretion of the court; and

(ii) where in a proceeding against Purchaser or the Province of Ontario any relief is sought that might be granted by way of

injunction or specific performance, the court shall not, as against Purchaser or the Province of Ontario, grant an injunction or make an order for specific performance.

21.3 **General Indemnity**

(a) Claims Indemnified. Subject to the exclusions stated in paragraph 21.3(b) below, Purchaser agrees to indemnify, protect, defend and hold harmless, and does hereby indemnify, Vendor and the Newcourt Indemnitees (and their respective successors, heirs, executors, administrators and personal representatives) (each an "Indemnitee") against Claims imposed on, incurred by or asserted against any Indemnitee in any way relating to or resulting from or arising out of:

(i) the CSA Documents, the Specified Documents or any of the transactions contemplated thereby or the enforcement of the terms of any thereof or any amendment, modification or waiver in respect thereof;

(ii) the manufacture, design, purchase, acceptance, rejection, delivery, nondelivery or condition of any Unit of Equipment, including, without limitation, latent and other defects, whether or not discoverable, and patent, trademark or copyright infringement;

(iii) any Unit of Equipment or any portion thereof, including, without limitation, the ownership, fitness for use, operation, possession, use, nonuse, maintenance, overhaul, testing, storage, preparation, installation, modification, alteration, repair, conditional sale, lease, disposition or transportation of any Unit of Equipment or any portion thereof by Purchaser or any other Person, including, without limitation, Claims for death, personal injury or property damage or other loss or harm to any Person whatsoever or arising out of any Event of Default (other than a Vendor Default) or any action taken by any Indemnitee as a consequence of an Event of Default (other than a Vendor Default);

(iv) in the case of any Newcourt Indemnitee, any act done, concurred in or omitted in or about the execution of such Newcourt Indemnitee's office, capacity or trust; or omitted by such Newcourt Indemnitee; or

(v) non-performance or breach by Purchaser or Seller of any obligation, or the falsity of any representation or warranty by Purchaser or Seller, contained in any of the CSA Documents.

(b) Claims Excluded. The following are excluded from Purchaser's agreement to indemnify any Indemnitee under this Section 21.3(a) provided that the following exclusions (other than the exclusion set out in clause (iii)) do not apply to the Purchaser's agreement to indemnify the Newcourt Indemnitees under Section 21.3:

(i) with respect to any Unit of Equipment, any Claim attributable to acts, omissions or events occurring after the earlier of (x) the reconveyance of the Equipment under this CSA in accordance with the terms hereof and (y) the Specified Date or earlier termination of this CSA in accordance with the terms hereof under circumstances not requiring the reconveyance of the Equipment, unless and to the extent such Claim is attributable to actions, omissions or events occurring in connection with the exercise of remedies pursuant to Article 15 following the occurrence, and during the continuance, of an Event of Default (other than a Vendor Default) hereunder;

(ii) any Claim that is a Tax, or is a cost of contesting a Tax, or (subject to Section 21.3(e) below) otherwise arises from a Tax, whether or not Purchaser is required to indemnify therefor under Section 21.4;

(iii) as to any Indemnitee, any Claim attributable to the gross negligence, wilful negligence, wilful default, fraud or dishonesty or wilful misconduct of such Indemnitee and as to Vendor, any claim attributable to the gross negligence or wilful misconduct of Vendor or any Affiliate of Vendor or any of their respective directors, officers or employees (and their respective successors, heirs, executors, administrators and personal representatives);

(iv) any Claim attributable to the noncompliance by any Indemnitee or any Affiliate or shareholder thereof or any of their respective officers, directors or employees, with any of the terms of, or any misrepresentation or warranty by such Indemnitee or any of its Affiliates or any of their respective directors, officers or employees contained in any CSA Document or any Specified Document or any breach by such Indemnitee or any of its Affiliates or any of their respective directors, officers or employees of any covenant contained in any CSA Document or any Specified Document or any agreement relating thereto;

(v) any Claim attributable to the offer, sale, assignment, transfer or other disposition (voluntary or involuntary) by or on behalf of any Indemnitee of its interest (whether direct or beneficial) in any CSA Document or any Specified Document or in any Unit of Equipment, other than a transfer by such Indemnitee made pursuant to Article 3, 10, 15, 19 or 20;

(vi) any Claim constituting or arising from a Vendor's Lien (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) or from a Lien of any Specified Party or any Person claiming from or under Vendor or

any such Specified Party or attributable to the bonding or discharge thereof;

(vii) any Claim attributable to a Vendor Default or any act or event which is or which with the passing of time or the giving of notice or both would be a Vendor Default (whether any such act or event shall be voluntary or involuntary or comes about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, order, rule or regulation of any Government Entity) or arising from any action or omission on the part of Vendor or any of its Affiliates or any of their respective directors, officers or employees not required by any CSA Document or any Specified Document;

(viii) any Claim attributable to the authorization or giving, or withholding, by any Indemnitee of any amendment, supplement, waiver or consent with respect to any CSA Document or any Specified Document except as a result of any action or misrepresentation of Purchaser or as expressly requested by Purchaser or required by Applicable Laws;

(ix) any Claim which is duplicative of any amount payable by Purchaser under any provision of any CSA Document;

(x) any Claim which relates to a cost, fee or expense payable by any Person other than Purchaser pursuant to any provision of any CSA Document or any Specified Document, except as expressly reimbursable by Purchaser pursuant to such provisions;

(xi) any Claim which is an ordinary and usual operating or overhead expense of any Indemnitee;

(xii) any brokerage or placement fee, except with respect to a broker engaged by or under the authorization of Purchaser; and

(xiii) any Claim that is a Claim which Purchaser is required to indemnify for under Section 21.5 or 21.6, or is a cost of contesting such Claim or otherwise arises from such Claim, whether or not Purchaser is required to indemnify therefor thereunder.

(c) Insured Claims. In the case of any Claim indemnified by Purchaser hereunder which is covered by a policy of insurance maintained by Purchaser or any Permitted Lessee, Vendor agrees (and shall cause each Indemnitee) to cooperate, at the sole cost and expense of Purchaser or such Permitted Lessee, with insurers in exercise of their rights, to investigate, defend or compromise such Claim.

(d) After-Tax Basis. Purchaser agrees that any payment or indemnity pursuant to Section 21.3(a) or Section 21.6 in respect of any Claim shall be made to the Indemnitee of such payment or indemnity on an After-Tax Basis.

(e) Claims Procedure. Vendor shall (and shall cause each Indemnitee to) promptly after such Indemnitee shall have actual knowledge thereof notify Purchaser of any Claim as to which indemnification is sought (which notice shall be deemed to have been promptly made if made within 10 days of actual knowledge of the circumstances of such Claim); *provided*, that the failure so to notify Purchaser shall not relieve it from any liability which it may have to such Indemnitee pursuant to Section 21.3(a), except in respect of the increase, if any, in such amounts for which indemnification is sought, which increase would not have accrued if such notice had been promptly made as provided. Promptly after Purchaser receives notification of such Claim accompanied by a written statement describing in reasonable detail the Claims which are the subject of and basis for such indemnity and the computation of the amount so payable, Purchaser shall notify such Indemnitee whether it intends to pay, object to, compromise or defend any matter involving the asserted liability of such Indemnitee. Any amount payable to any Indemnitee pursuant to this Section 21.3 shall be paid within thirty (30) days after receipt of such written demand therefor from such Indemnitee. Purchaser shall have the right to investigate and so long as no Event of Default (other than a Vendor Default) shall have occurred and be continuing, Purchaser shall have the right, in its sole discretion, to defend or compromise any Claim for which indemnification is sought under Section 21.3(a). If Purchaser elects, subject to the foregoing, to compromise or defend any such asserted liability it may do so at its own expense and by counsel selected by it. Upon Purchaser's election to compromise or defend such asserted liability and prompt notification to such

Indemnitee of its intent to do so, such Indemnitee shall cooperate at Purchaser's expense with all reasonable requests of Purchaser in connection therewith. Purchaser will provide such Indemnitee with all information not within the control of such Indemnitee as is reasonably available to Purchaser which such Indemnitee may reasonably request and shall otherwise cooperate in all reasonable respects with such Indemnitee in the exercise of its rights and the performance of its obligations under Section 21.3(a). Where Purchaser, or the insurers under a policy of insurance maintained by Purchaser or any Permitted Lessee, undertake the defense of such Indemnitee with respect to a Claim, no additional legal fees or expenses of such Indemnitee in connection with the defense of such Claim shall be indemnified hereunder unless such fees or expenses were incurred at the request of Purchaser or such insurers. Notwithstanding the foregoing, subject to the requirements of any policy of insurance maintained by Purchaser or any Permitted Lessee, an Indemnitee may participate at its own expense in any judicial proceeding controlled by Purchaser pursuant to the preceding provisions; *provided*, that such party's participation does not in the reasonable opinion of independent counsel appointed by Purchaser or Permitted Lessee's insurers to conduct such proceedings, interfere with such control; *provided further* that if and to the extent that (i) such Indemnitee is advised by counsel that an actual or potential material conflict of interest exists where it is advisable for such Indemnitee to be represented by separate counsel or (ii) such Indemnitee has been indicted or otherwise charged in a criminal complaint in connection with a Claim not excluded by Section 21.3(b) and such Indemnitee informs Purchaser that such Indemnitee desires to be represented by separate counsel, such Indemnitee shall have the right to control its own defense of such Claim and the reasonable and documented fees and expenses of such separate counsel shall be borne by Purchaser. No Indemnitee shall enter into any settlement or other compromise with respect to any Claim without the prior written consent of Purchaser unless an Event of Default (other than a Vendor Default) has occurred and is continuing.

(f) Subrogation. To the extent that a Claim indemnified by Purchaser under Section 21.3(a) is in fact paid in full by Purchaser or an insurer under an insurance policy maintained by Purchaser or any Permitted Lessee, Purchaser or such insurer shall be subrogated to the rights and remedies of the Indemnitee on whose behalf such Claim was paid (other than rights of such Indemnitee under insurance policies maintained at its own expense) with respect to the transaction or event giving rise to such Claim. Should an Indemnitee receive any refund, in whole or in part, with respect to any Claim paid by Purchaser hereunder, it shall promptly pay the amount refunded (but not an amount in excess of the amount Purchaser or any of its (or any Permitted Lessee's) insurers has paid in respect of such Claim) over to Purchaser.

(g) Non-Parties. If an Indemnitee is not a party to this Agreement, Purchaser may require such Indemnitee to agree in writing, in a form reasonably

acceptable to Purchaser, to the terms of Section 21.3 prior to making any payment to such Indemnitee under Section 21.3.

(h) Survival. The provisions of this Section 21.3 and Purchaser's obligations hereunder shall survive the Specified Date or earlier termination of this CSA.

21.4 **Tax Indemnity**

(a) Indemnity. Purchaser agrees to indemnify, protect, save, defend and hold Vendor and its Affiliates and shareholders (including, if any shareholder is a trust which has an enforcer, such enforcer) and each of their respective directors, officers and employees (and any of their respective successors, heirs, executors, administrators or personal representatives) (each a "CSA Tax Indemnitee") harmless on an After-Tax Basis from and against any and all Taxes imposed on or incurred by or with respect to any CSA Tax Indemnitee, Purchaser, the Equipment, any Unit or Units of Equipment, or any interest in any thereof, by any government or taxing authority of or in Bermuda, by any Canadian federal, provincial or municipal government or taxing authority, by any United States federal, state or local government or taxing authority, or by any other government or taxing authority, upon or with respect to (i) the Equipment, any Unit or Units of Equipment, or any interest in any thereof, (ii) the manufacture, importation, exportation, location, sale, lease, sublease, hire, ownership, use, operation, purchase, delivery, nondelivery, possession, condition, maintenance, modification, repair, construction, acceptance, rejection, transport, registration, abandonment, redelivery or transfer of title to the Equipment, any Unit or Units of Equipment, or any interest in any thereof, (iii) the receipts or earnings arising from the Equipment, any Unit or Units of Equipment, or any interest in any thereof, (iv) any amount paid by Purchaser pursuant to this Agreement or any other CSA Document or Specified Document, (v) this Agreement or any other CSA Document or any Specified Document, or (vi) otherwise with respect to the transactions contemplated by this Agreement or any other CSA Document or any Specified Document.

(b) Exclusions. Section 21.4(a) shall not apply to and Purchaser shall have no liability to any CSA Tax Indemnitee (other than any Newcourt Indemnitee) pursuant to Section 21.4(a) with respect to:

(i) Taxes imposed by any government or taxing authority of or in Bermuda that (A) are not imposed as a result of a change in applicable law after the Closing Date, or (B) would not have been imposed if the transactions contemplated by the CSA Documents and the Specified Documents had been the only transactions entered into by Vendor or any Specified Party;

(ii) Taxes imposed by any Canadian federal, provincial or municipal government or taxing authority that (A) are Taxes other than sales, use, value added or withholding taxes or taxes in the nature thereof, (B) are taxes on net income and (C) would not have been imposed if the transactions contemplated by the CSA Documents or the Specified Documents had been the only transactions entered into by Vendor or any Specified Party;

(iii) Taxes imposed by any United States federal, state or local government or taxing authority that (A) are sales, use or value added taxes or taxes in the nature thereof which are imposed (I) by a taxing jurisdiction other than a jurisdiction in which the Equipment or any Unit or Units of Equipment is or was located, or (II) as a result of a change in applicable law after the Closing Date, or (B) are (I) taxes other than sales, use, value added or withholding taxes or taxes in the nature thereof and (II) are Taxes on, based on or measured by or with respect to net or gross income, net or gross receipts (including any minimum taxes or taxes on items of tax preference), capital or net worth, franchise, excess profits or conduct of business taxes;

(iv) Taxes imposed by any government or taxing authority other than any government or taxing authority of or in Bermuda, any Canadian federal, provincial or municipal government or taxing authority or any United States federal, state or local government or taxing authority, which are not imposed as a result of (A) the location, use, operation or registration of the Equipment or any Unit or Units of Equipment in the relevant jurisdiction, (B) the organization or presence of Purchaser, any Permitted Lessee, any other Person in possession of the Equipment or any Unit or Units of Equipment, or any Affiliate of any thereof, in the relevant jurisdiction, (C) the making or receipt of any payment by Purchaser, any Permitted Lessee, any other Person in possession of the Equipment or any Unit or Units of Equipment, or any Affiliate of any thereof, from or in the relevant jurisdiction, or (D) any other nexus between the relevant jurisdiction and the transactions contemplated by the CSA Documents or the Specified Documents;

(v) Taxes imposed in respect of any period after the earliest to occur of (x) the reconveyance of the Equipment in accordance with the terms of Article 20 hereof, and (y) the Specified Date or earlier termination of this Agreement in accordance with the terms hereof

under circumstances not contemplated by Article 20, in either case after satisfaction in full by Purchaser of all of its obligations under this Agreement; *provided, however*, that the exclusion set forth in this Section 21.4(b)(v) shall not apply to the extent such Taxes relate to events occurring or matters arising prior to or simultaneously with the events described in clauses (x) or (y) above;

(vi) Taxes imposed on any CSA Tax Indemnitee that would not have been imposed but for an amendment to any CSA Document or any Specified Document that was not consented to by Purchaser in writing;

(vii) Any interest, penalties or additions to any Tax imposed on or payable by any CSA Tax Indemnitee that would not have been imposed or payable but for the failure of any CSA Tax Indemnitee to file any return properly and timely unless such failure is caused by the failure of Purchaser to fulfill its obligations, if any, under Section 21.4(g) hereof;

(viii) any Tax that is a Tax which Purchaser is required to indemnify for under Section 21.4(h) or which is specifically excluded from indemnification pursuant to Section 21.4(h), or is a cost of contesting such Tax or otherwise arises from such Tax;

(ix) Taxes to the extent resulting from the failure of any CSA Tax Indemnitee to take timely action in contesting a claim if required to take such action pursuant to Section 21.4(f) hereof or any Specified Document if such failure shall preclude the contest of such claim as a matter of law; or

(x) Taxes expressly imposed by their terms in lieu of or in substitution for Taxes described in clauses (1) through (8) of this Section 21.4(b).

(c) Offsetting Benefits. If by reason of any Tax that is paid or indemnified against by Purchaser under Section 21.4(a), any CSA Tax Indemnitee either realizes an actual reduction (whether by means of credit, deduction, allocation or apportionment of income or otherwise) in Taxes not previously taken into account for which Purchaser is required to indemnify such CSA Tax Indemnitee pursuant to Section 21.4(a) or receives a refund of such Taxes paid or indemnified against by Purchaser, then such CSA Tax Indemnitee shall pay to Purchaser an amount equal to the sum of such Tax

reduction or refund, as the case may be, plus interest (if any) received on any such refund and any actual net reduction in Taxes attributable to any payments made by such CSA Tax Indemnitee pursuant to this Section 21.4(c), less any income, withholding or other Tax imposed on such CSA Tax Indemnitee, the Equipment, any Unit or Units of Equipment, or on or in respect of any payment pursuant to this Section 21.4(c). Any amount so due shall be paid to Purchaser promptly upon realization of the reduction in Taxes or refund, as the case may be, by the CSA Tax Indemnitee. Any amount the CSA Tax Indemnitee would otherwise be required by the terms of this Section 21.4(c) to pay to Purchaser shall not be paid to Purchaser if at the time of such payment an Event of Default shall have occurred and be continuing, but only so long as such Event of Default continues, or to the extent that the amount otherwise required to be paid would exceed the aggregate amount of all prior payments by Purchaser to such CSA Tax Indemnitee pursuant to Section 21.4(a) less the aggregate amount of all prior payments by such CSA Tax Indemnitee to Purchaser pursuant to this Section 21.4(c), but any such excess shall reduce *pro tanto* any amount that Purchaser is subsequently obligated to pay to such CSA Tax Indemnitee pursuant to Section 21.4(a). Any subsequent loss of any portion of any such reduction in Taxes or refund with respect to which such CSA Tax Indemnitee shall have made a payment to Purchaser pursuant to this Section 21.4(c) shall be treated as a Tax subject to indemnification pursuant to Section 21.4(a) without regard to Section 21.4(b).

(d) Payments. Any amount payable to any CSA Tax Indemnitee pursuant to Section 21.4(a) shall be paid within 30 days after receipt of a written demand therefor from such CSA Tax Indemnitee accompanied by a written statement describing in reasonable detail the Taxes which are the subject of such indemnity and the computation of the amount so payable, but not prior to the later of (i) 5 Business Days prior to the date payment of such Taxes is required, (ii) in the case of amounts which are being contested pursuant to Section 21.4(f), the time such contest (including all appeals, if any, permitted hereby and by law) is finally resolved, or (iii) 10 days following verification of such amounts, if verification shall be required pursuant to Section 21.4(e). If Purchaser actually pays any amount payable under Section 21.4(a) prior to the later of the dates described in this Section 21.4(d), then Purchaser shall not be required to pay such CSA Tax Indemnitee the amount of any interest, penalties, fines or additions to tax that shall accrue after such payment by Purchaser to the extent that prompt payment by such CSA Tax Indemnitee of the Taxes in question, to the extent of such payment by Purchaser to such CSA Tax Indemnitee, would cause such interest, penalties, fines or additions to tax to cease to accrue.

Any payments made pursuant to Section 21.4 to any CSA Tax Indemnitee or Purchaser shall be made in Dollars in immediately available funds at such bank or to such account as is specified by the payee in written directions to the payor or, if no such directions shall have been given, by cheque of the payor payable to the order of the payee and mailed to the payee by certified mail, return receipt requested, postage prepaid, to its

address as set forth in Article 17. To the extent permitted by applicable law, interest at the Overdue Rate shall be paid, on demand, on any amount or indemnity not paid when due pursuant to Section 21.4 until the same shall be paid. Any such interest shall be paid in the same manner as the unpaid amount in respect of which such interest is due.

If for any reason Purchaser makes any payment to any CSA Tax Indemnitee with respect to any Taxes which Taxes are not the responsibility of Purchaser under the CSA Documents, then such CSA Tax Indemnitee shall pay to Purchaser, promptly upon written demand therefor from Purchaser, an amount which equals the amount paid by Purchaser with respect to such Taxes together with interest on such amount at the Prime Rate.

(e) Verification. At the written request of Purchaser within 15 days after the notice from any CSA Tax Indemnitee as specified in the first sentence of Section 21.4(d), the amount of any indemnity payment by Purchaser pursuant to Section 21.4(a) shall be subject to verification by a firm of independent chartered accountants or an investment bank mutually acceptable to such CSA Tax Indemnitee and Purchaser. Any tax return of any Person other than Purchaser shall be strictly confidential and shall not be provided to Purchaser. The fee of such independent accounting firm shall be paid by Purchaser unless such verification results in a determination that the present value of the total payments to be made with respect to the Taxes calculated by such CSA Tax Indemnitee is more than the lesser of (i) 105% of the present value of the correct payment, in each case using the Interest Rate, or (ii) $50,000, in which case such fee shall be paid by such CSA Tax Indemnitee. The determination of the accountants or investment bank shall be final and conclusive and binding on such CSA Tax Indemnitee and Purchaser.

(f) Contest Rights. If written claim is made against any CSA Tax Indemnitee for any Taxes that Purchaser may be required to pay or indemnify against pursuant to Section 21.4(a), such CSA Tax Indemnitee shall promptly notify Purchaser thereof in writing, which notice shall be accompanied by a copy of such claim, *provided* that the failure to supply such notice shall not relieve Purchaser of any of its obligations hereunder unless such failure precludes as a matter of law the exercise of Purchaser's contest rights hereunder relating to such claim. At the written request of Purchaser within 30 days after such notice from CSA Tax Indemnitee, Purchaser shall be entitled at its sole cost and expense (i) in any proceeding that involves solely a claim for one or more Taxes (other than income Taxes) indemnified by Purchaser pursuant to Section 21.4(a), to assume responsibility and control thereof, or (ii) in any proceeding involving a claim for one or more Taxes (other than income Taxes) indemnified by the Purchaser pursuant to Section 21.4(a) as well as other claims related or unrelated thereto, to assume responsibility and control thereof insofar as it relates to a claim for Taxes (other than income Taxes) indemnified by Purchaser, but only to the extent the same may be and is

severed from such other claims (and such CSA Tax Indemnitee shall, upon the written request and at the sole cost and expense of Purchaser, use reasonable efforts to obtain such severance). With respect to any contest conducted by Purchaser, Purchaser shall retain control over such contest but shall consult in good faith with such CSA Tax Indemnitee, shall permit such CSA Tax Indemnitee to review and comment on the relevant portions of written submissions relating to such claim and, in the case of claims for Taxes imposed by any United States federal, state or local government or taxing authority, shall not take any legal position over the objection of such CSA Tax Indemnitee. With respect to any other Tax (including any income Tax), if Purchaser shall so request in writing, such CSA Tax Indemnitee shall contest the imposition, validity, applicability or amount of such Tax (including taking appeals of any adverse judicial decision) by, after consulting with Purchaser and its counsel concerning the forum in which the claim is most likely to be resolved favorably, in its sole discretion selecting the forum for such contest, and, at such CSA Tax Indemnitee's election, (i) resisting payment thereof, (ii) not paying the same except under protest, if protest is necessary and proper, or (iii) if payment shall be made, seeking a refund thereof in appropriate administrative or judicial proceedings, *provided* that no contest shall be required to be initiated or continued unless (i) prior to taking such action Purchaser shall have agreed to pay, and Purchaser shall pay upon demand by such CSA Tax Indemnitee, at no after-tax cost to such CSA Tax Indemnitee, all reasonable out-of-pocket costs and expenses that such CSA Tax Indemnitee may incur in connection with such contest, including, in the case of a contest conducted by such CSA Tax Indemnitee, any reasonable out-of-pocket, legal, accounting, appraisal and investigating fees and disbursements, (ii) if such CSA Tax Indemnitee pays and claims a refund for such Taxes, then Purchaser shall provide such CSA Tax Indemnitee with sufficient funds (on an interest-free basis) to make such payment and shall indemnify such CSA Tax Indemnitee in form and substance satisfactory to such CSA Tax Indemnitee against any income Taxes arising from such advance or from the interest-free nature thereof, and (iii) such proceedings do not involve any material risk of sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on, any Unit or Units of Equipment unless Purchaser shall have provided security reasonably acceptable to such CSA Tax Indemnitee. In addition, the CSA Tax Indemnitee shall not be required to contest any claim with respect to an income Tax unless (i) the aggregate amount of indemnity payments by Purchaser with respect to such income Tax pursuant to Section 21.4(a) together with all recurring or related actual or potential claims arising in the same or in a different taxable year with respect to such Tax is in excess of $25,000 and (ii) prior to the commencement of any judicial proceedings, Purchaser shall have provided such CSA Tax Indemnitee with an opinion of independent tax counsel selected by Purchaser and reasonably acceptable to such CSA Tax Indemnitee to the effect that there is a reasonable basis for such contest. With respect to any contest conducted by the CSA Tax Indemnitee, such CSA Tax Indemnitee shall retain control over such contest but shall consult in good faith with Purchaser and shall permit Purchaser to review and comment on the relevant portions of written submissions relating to such claim. The CSA

Tax Indemnitee or Purchaser, as the case may be, shall supply the other with such information reasonably requested by the other as is necessary or advisable for the other to control or participate in any proceedings to the extent permitted by this Section 21.4(f). The CSA Tax Indemnitee may elect not to contest a claim pursuant to this Section 21.4(f), or to settle any contest with respect thereto, but if such contest is otherwise required to be initiated or continued, such election shall constitute a waiver by such CSA Tax Indemnitee of any right to indemnification pursuant to Section 21.4(a) with respect to the claim which was the subject of such proposed contest or such contest and any other claim the contest of which is precluded as a matter of law by reason of such action by such CSA Tax Indemnitee unless Purchaser shall consent thereto (such consent not to be unreasonably withheld), and, if Purchaser has theretofore provided such CSA Tax Indemnitee with funds to pay such Tax, such CSA Tax Indemnitee shall promptly repay such funds to Purchaser together with interest at the Prime Rate on the amount of such funds. The amount of any out-of-pocket expenses incurred by such CSA Tax Indemnitee and paid by Purchaser pursuant to this Section 21.4(f) relating to a claim required to be but not contested, or settled without the consent of Purchaser, as aforesaid, by such CSA Tax Indemnitee shall be a credit against any such expenses incurred by such CSA Tax Indemnitee and reimbursable by Purchaser with respect to the contest of any subsequent claim that was the subject matter of such non-contested or settled claim. If such CSA Tax Indemnitee shall obtain a refund or credit of all or any part of any Taxes that Purchaser shall have paid to or for the account of such CSA Tax Indemnitee or for which Purchaser shall have reimbursed such CSA Tax Indemnitee, such CSA Tax Indemnitee shall pay to Purchaser the amount of such refund or credit plus any interest received or credited on such refund or credit attributable to such Taxes paid to or for such CSA Tax Indemnitee less any applicable income, withholding or other Taxes imposed on such CSA Tax Indemnitee, the Equipment, any Unit or Units of Equipment, or on or in respect of the payment contemplated hereby.

(g) Reports; Forms. Purchaser shall timely notify any CSA Tax Indemnitee in writing of any report, return or statement required to be filed with respect to any Tax that is subject to indemnification under this Section 21.4 and shall promptly furnish to the CSA Tax Indemnitee such information, not within the control of such CSA Tax Indemnitee, as is necessary for such CSA Tax Indemnitee to file such report, return or statement or for such CSA Tax Indemnitee to furnish such information to any Specified Party. Each CSA Tax Indemnitee shall furnish from time to time to Purchaser, or to such other Person as Purchaser may designate, such duly executed and properly completed forms as Purchaser may reasonably request in writing.

(h) Claims Against Vendor. Notwithstanding anything else contained in any CSA Document to the contrary, Purchaser agrees to indemnify, protect, defend and hold harmless, and does hereby indemnify, Vendor on an After-Tax Basis against any and all liability that Vendor may incur in respect of tax indemnities and matters relating

thereto under the terms of any Specified Document; *provided, however,* that Purchaser's agreement to indemnify Vendor against any and all liabilities that Vendor may incur in respect of tax indemnities and matters relating thereto under the terms of any of the Specified Documents shall exclude any such liabilities attributable to a Vendor Default other than Taxes imposed by withholding. Vendor shall promptly notify Purchaser in writing of any claim against Vendor for or relating to Taxes under any Specified Document. Failure of Vendor to contest, verify, give notices or take (or fail to take) any other action under any Specified Document shall not relieve Purchaser of any of its obligations hereunder. Purchaser to the exclusion of Vendor shall be permitted to exercise any and all contest and verification rights and any other right that Vendor may have in respect of any such claim under any Specified Document and all elections provided thereunder relating to any Taxes that may be subject to indemnification thereunder and Vendor shall not consent to any settlement or compromise without the prior written consent of Purchaser (not to be unreasonably withheld), *provided* that as a condition to Vendor allowing Purchaser to exercise such rights (including the requirement of consent to any settlement or compromise) Purchaser shall (i) satisfy the conditions to the exercise of such rights under any Specified Document, and (ii) agree to pay all reasonable expenses and costs incurred by Vendor as the result of such exercise and shall pay all such expenses and costs as they become due at no after-tax cost to Vendor.

Vendor shall promptly pay over to Purchaser, net of any applicable income, withholding or other Taxes imposed on Vendor, the Equipment, any Unit or Units of Equipment, or on or in respect of the payment contemplated hereby, any amounts received by Vendor relating to Taxes under any Specified Document.

(i) Non-Parties. If a CSA Tax Indemnitee is not a party to this Agreement, Purchaser may require such CSA Tax Indemnitee to agree in writing, in a form reasonably acceptable to Purchaser, to the terms of Section 21.4 prior to making any payment to such CSA Tax Indemnitee under Section 21.4.

(j) Forms, Etc. The CSA Tax Indemnitee agrees to furnish from time to time to Purchaser, or to such other Person as Purchaser may designate, such duly executed and properly completed non-United States forms as Purchaser may reasonably request.

(k) Survival. All the rights, privileges and obligations arising from this Section 21.4 shall survive the termination of this Agreement.

21.5 **Breakage Costs**

(a) Subject to clause (b) of this Section 21.5, Purchaser agrees to indemnify, protect, defend and hold harmless, and does hereby indemnify Vendor on an

After-Tax Basis, for any and all Breakage Costs. If a Vendor Default shall have occurred, Vendor shall pay to Purchaser all Swap Gain, if any, received by Vendor as a result of the occurrence of such Event of Default.

(b) If (x) a Vendor Default shall have occurred, (y) such Vendor Default shall not otherwise have been cured pursuant to the cure provisions specified in the Specified Documents and (z) Breakage Costs would otherwise be incurred, then, Purchaser shall have a further cure right (the "Special Cure Right") whereby Purchaser shall pay to Vendor on the date of the exercise thereof an amount equal to that portion of the Outstanding Balance for the Units of Equipment then subject to this Agreement set forth under Column 4B of the applicable Schedule A hereto (if such date shall be a Periodic Payment Date) or as at the immediately preceding Periodic Payment Date, *plus*, if such date shall not be a Periodic Payment Date, accrued interest at the Interest Rate on such Outstanding Balance from such Periodic Payment Date to such date (the "Cure Amount"). So long as the conditions to the Special Cure Right (as defined in the Specified Documents) shall have been satisfied in full and Vendor's Assignee shall have succeeded to the rights of Vendor hereunder as a result of such Special Cure Right and such Special Cure Right cures the Specified Default giving rise to the Special Cure Right, if Purchaser pays the Cure Amount (i) such Vendor Default shall be deemed to be cured, and (ii) Article 14 shall be deemed to have been amended by deleting clause (g) thereof and clause (g) thereof shall have no further force or effect. Notwithstanding anything contained herein to the contrary, from and after the date of payment of the Cure Amount, (i) each Periodic Payment for such Units of Equipment to be made on each Periodic Payment Date that occurs after such date shall be an amount equal to the sum of (x) the amount set forth in Column 2A of the applicable Schedule A opposite the date of such Periodic Payment Date and (y) the amount set forth in Column 3A of the applicable Schedule A opposite the date of such Periodic Payment Date, (ii) the Outstanding Balance for such Units of Equipment on each Periodic Payment Date that occurs after such date shall be the amount set forth in Column 4A of the applicable Schedule A opposite the date of such Periodic Payment Date, (iii) the Final Payment for such Equipment that occurs after such date shall be the amount set forth in Column 4A of applicable Schedule A opposite the Periodic Payment Date corresponding to the Specified Date and (iv) the Schedule B Amount on each Periodic Payment Date that occurs after such date shall be deemed to equal zero.

(c) If Purchaser is stayed or otherwise prevented by operation of law from exercising the Special Cure Right, Vendor shall at Purchaser's request cooperate in good faith with Purchaser in order to restructure the transaction so as to produce an equivalent economic result to that contemplated by the immediately preceding paragraph and, in conjunction therewith, Purchaser shall pay the Cure Amount; *provided*, *however*, that neither party shall as a result of such undertaking be required to take any action that

in its good faith opinion would have any adverse consequence or cost or risk thereof to it or any Affiliate unless indemnified to its reasonable satisfaction.

21.6 **Other Claims Indemnified**

Notwithstanding anything in any CSA Document to the contrary, Purchaser agrees to indemnify, protect, defend and hold harmless, and does hereby indemnify, Vendor against any and all Claims for which Vendor is responsible under the Specified Documents (other than any Claims described in Section 21.3(b)(ii)); *provided, however,* that Purchaser's agreement to indemnify Vendor against any and all Claims for which Vendor is responsible under the Specified Documents shall exclude (i) any Claim constituting or arising from a Vendor's Lien (including for this purpose any Lien that would have constituted a Vendor's Lien but for the *proviso* to the definition thereof) or from a Lien of any Specified Party or any Person claiming from or under Vendor or any such Specified Party or attributable to the bonding or discharge thereof or (ii) any Claim (other than a Claim under Section 21.3(i) of the Specified Agreement or a Claim against Vendor for reasonable fees and other costs and expenses incurred by reason of the exercise of remedies with respect to the occurrence of a Vendor Default by the Indenture Trustee or the holder of any Notes (as such term is defined in the Specified Documents)) attributable to a Vendor Default or any act or event which is or which with the passing of time or the giving of notice or both would be a Vendor Default (whether any such act or event shall be voluntary or involuntary or comes about or be effected by operation of law or pursuant to or in compliance with any judgment, decree, order, rule or regulation of any Government Entity) or arising from any action or omission on the part of Vendor or any of its Affiliates or any of their respective directors, officers or employees not related to or in violation of any CSA Document or any Specified Document. Vendor shall promptly notify Purchaser in writing of any Claim against Vendor under any Specified Document; *provided, however*, that the failure to do so will not in any way reduce or affect Purchaser's liability with respect to any Claims described in this Section 21.6. Purchaser to the exclusion of Vendor shall be permitted to exercise any and all contest and verification rights and any other right that Vendor may have in respect of any such Claim under any Specified Document and all elections provided thereunder relating to any Claims that may be subject to indemnification thereunder and Vendor shall not consent to any settlement or compromise without the prior written consent of Purchaser, *provided* that as a condition to Vendor allowing Purchaser to exercise such rights (including the requirement of consent to any settlement or compromise) Purchaser shall (i) satisfy the conditions to the exercise of such rights under any Specified Document, and (ii) agree to pay all reasonable expenses and costs incurred by Vendor as the result of such exercise.

21.7 **Survival**

All the rights, privileges and obligations arising from this Article 21 and Purchaser's obligations thereunder shall survive the Specified Date or other termination of this CSA.

21.8 **Non-Party Indemnitee**

Where pursuant to Section 21.3, Section 21.4, Section 21.5 or Section 22.1(d) Purchaser agrees to indemnify any Person not party to this Agreement including, without limitation, the Newcourt Indemnitees (a "Non-Party Indemnitee"), Purchaser hereby appoints Vendor as trustee to hold such agreement to indemnify such Non-Party Indemnitees in trust and agent for each such Non-Party Indemnitee for the benefit of each such Non-Party Indemnitee as beneficiary and to receive and hold for and disburse to the relevant Non-Party Indemnitee as its interest may appear, all payments made by or on behalf of Purchaser (such amounts being herein referred to as "Trust Funds") for the benefit of such Non-Party Indemnitee. Vendor accepts its appointment as trustee and it is hereby acknowledged and agreed that neither Purchaser's agreement to indemnify any Non-Party Indemnitee nor Trust Funds shall form the property of or assets of Vendor, shall not be available to any creditor of Vendor (except the relevant Non-Party Indemnitee) and shall be held by Vendor solely in its capacity as trustee for the benefit of each Non-Party Indemnitee. All Supplemental Payments shall be paid by the Purchaser in the case of a Non-Party Indemnitee, in accordance with instructions furnished to Purchaser by such Non-Party Indemnitee, in immediately available funds in Dollars, prior to 12:00 noon London, England time, on the date due hereunder. Any such payment made after 12:00 noon London, England time shall be deemed received on the next following Business Day.

ARTICLE 22

COVENANTS OF PURCHASER AND VENDOR

22.1 **Covenants of Purchaser**

(a) Purchaser covenants to notify Vendor prior to any change in the location of the chief executive office of Purchaser to a location outside Ontario.

(b) Upon a Responsible Officer of Purchaser obtaining actual knowledge of the occurrence of an Event of Default (or an event with notice or the passage of time or both would constitute an Event of Default), Purchaser covenants to notify Vendor

promptly of such Event of Default (or an event with notice or the passage of time or both would constitute an Event of Default) and specify the nature and, with respect to an Event of Default, period of existence thereof and the action Purchaser has taken or proposes to take with respect thereto.

(c) Purchaser covenants to defend the title to the Equipment conveyed to Vendor pursuant to the Bill of Sale against all claims and demands whatsoever.

(d) Purchaser covenants to notify Vendor promptly upon the movement of any Unit of Equipment into the United States; *provided*, that failure to give such notice shall not constitute an Event of Default notwithstanding anything contained in Article 14 to the contrary. In the event that Vendor or any Specified Party shall notify Purchaser that Vendor or such Specified Party has reasonably determined that (x) Vendor or Newcourt Capital U.S.A. Inc. is insolvent or is at significant risk of becoming insolvent in the two years following the giving of such notice and (y) Vendor would be entitled as a "debtor" (as defined in Section 109 of the Federal Bankruptcy Code of 1978 of the United States, as amended from time to time (the "Bankruptcy Code")) to file with a bankruptcy court of the United States a petition for voluntary bankruptcy under Section 301 of the Bankruptcy Code, or a petition for involuntary bankruptcy under Section 303 of the Bankruptcy Code may be filed with a bankruptcy court of the United States against Vendor, by reason of such Unit of Equipment being located within the United States, and in such event Purchaser will indemnify and hold harmless Vendor and each Specified Party from and against all Claims resulting from or arising out of the filing by Vendor with a bankruptcy court of the United States of a petition for voluntary bankruptcy under Section 301 of the Bankruptcy Code or the filing of a petition for involuntary bankruptcy under Section 303 of the Bankruptcy Code with a bankruptcy court of the United States against Vendor if a basis for the such bankruptcy court's having jurisdiction in a case initiated under Section 301 or 303 of the Bankruptcy Code over Vendor is the location of any Unit of Equipment in the United States; *provided* that, in any case in which, at the time when Purchaser shall have been so notified, any Units of Equipment shall be located in the United States, Purchaser shall not be so liable if Purchaser shall have removed such Units of Equipment within 30 days after such notice.

(e) Purchaser covenants, at any time the Province of Ontario ceases to be liable for the obligations of Purchaser, to provide to Vendor immediately prior to such cessation, an unconditional guarantee by the Province of Ontario of all of the obligations of Purchaser under this CSA.

(f) Purchaser hereby agrees to enter into the Consent.

(g) Purchaser agrees that it will not, prior to the 181st day following the termination of this Agreement, file a petition, or join in the filing of a petition, seeking

reorganization, arrangement, adjustment or composition of, or in respect of, Vendor under Applicable Law.

(h) Purchaser covenants upon the request of Vendor, following an Event of Loss, to provide Vendor a report identifying (by serial number) those Units of Equipment subject to this CSA and those Units of Equipment, if any, which have suffered an Event of Loss and briefly describing the nature of such Event of Loss.

22.2 **Covenants of Vendor**

(a) Vendor covenants not to enter into, consent to or approve any amendment, supplement or modification to any Specified Document or waive any provision thereof or take any discretionary action permitted thereunder without the prior written consent of Purchaser; *provided* that consent of the Purchaser shall not be required, so long as an Event of Default shall have occurred and be continuing, but in the event that Vendor enters into any such waiver, amendment, supplement or modification without the prior written consent of Purchaser, such waiver, amendment, supplement or modification shall not be effective to the extent that such waiver, amendment, supplement or modification increases any of Purchaser's obligations hereunder or has a material adverse effect on Purchaser, including on its rights hereunder; *provided, however,* Vendor may amend the Specified Documents to relocate its account at a bank in a jurisdiction outside the United States and such an amendment will not be deemed to have a material adverse effect on Purchaser. Promptly upon the execution and delivery of the Specified Documents and any amendment, supplement or modification thereto, Vendor shall deliver true and accurate copies thereof to Purchaser.

(b) With respect to any right under this CSA that requires as a condition thereto any action by or consent of any other party that such party is required to take or provide pursuant to any of the Specified Documents, Vendor covenants to request that such party take such action or provide such consent. With respect to any action by Purchaser hereunder which, in order to be effected, would require Vendor to make a corresponding action under the Specified Documents, Vendor covenants to use its best efforts to cause such party to take such action or provide such consent. Vendor covenants to provide Purchaser all material written information and all notices and documents received by it with respect to the Specified Documents, including requests for consents or waivers thereunder.

(c) Vendor covenants, if requested by, and at the expense of Purchaser, to take all reasonable efforts to enforce any obligation of any Specified Party under any Specified Document and to recover any Swap Gain in the case of a Vendor Default, an Event of Loss or the exercise of a Burdensome Payout Right in connection with an

indemnity obligation of Purchaser arising from the imposition of a Canadian withholding tax.

(d) Except as otherwise expressly provided herein or except as Purchaser shall otherwise consent in writing, Vendor shall:

(i) preserve and maintain its existence and rights as a company under the laws of Bermuda except where any action to the contrary is done in compliance with the provisions of the Bye-laws of the Vendor relating thereto;

(ii) preserve and maintain the assurance described in Section 2.3(i);

(iii) comply with all applicable laws and observe all valid requirements of any relevant Government Entity;

(iv) pay and discharge before the same shall become delinquent, all Taxes imposed on it or upon its property (except any Tax the payment of which is being contested in good faith and by appropriate proceedings and for which adequate provision for payment has been made) other than those Taxes indemnified by Purchaser hereunder;

(v) forthwith upon the occurrence of the same, give written notice to the Purchaser of the occurrence of a Vendor Default or an event which with the giving of notice, lapse of time or both would become a Vendor Default;

(vi) perform its obligations under the Specified Documents;

(vii) discharge promptly any Vendor's Lien other than Permitted Liens; and

(viii) to defend such title to the Equipment as shall have been conveyed to it.

(e) Except as otherwise expressly provided herein or except as the Purchaser shall otherwise consent in writing, Vendor shall not:

(i) make any change in the Memorandum of Association or Bye-laws of Vendor except in accordance with the provisions relating thereto in the Bye-laws;

(ii) take any action which would conflict with or be in contravention of, or result in a conflict or a contravention of, its Memorandum of Association or Bye-laws; or

(iii) create or incur any Lien on any of its business, property or assets except for Permitted Liens.

22.3 **Cooperation**

Purchaser and Vendor covenant to cooperate with each other in order to eliminate or minimize any detriment to Purchaser or Vendor under the laws of any applicable jurisdiction, including by means of restructuring the transaction; *provided, however*, that neither party shall as a result of such undertaking be required to take any action that in its good faith opinion would have any adverse consequence or cost or risk thereof to it or any of its Affiliates unless indemnified to its reasonable satisfaction.

ARTICLE 23

VENDOR'S RIGHT TO PERFORM FOR PURCHASER

If Purchaser fails to make any Periodic Payment, or Supplemental Payment required to be made by it hereunder or fails to perform or comply with any of its agreements contained herein (other than in respect of the Final Payment for the Equipment) and such failure can be cured with the payment of money, Vendor may with the prior written consent of the Specified Parties, on behalf of Purchaser and upon reasonable prior notice to Purchaser, itself make such payment. In addition, Vendor may with the prior written consent of the Specified Parties, following an Event of Default (other than a Vendor Default), perform or comply with any agreement of Purchaser in a commercially reasonable manner. No such advance, performance or other act shall be deemed to waive any such Event of Default or relieve Purchaser of its obligations hereunder. The amount of any such payment and the amount of the reasonable expenses of Vendor incurred in connection with such payment shall be deemed a Supplemental Payment, payable by Purchaser upon demand, with interest, to the extent permitted by any Applicable Law, then in effect, at the Overdue Rate.

ARTICLE 24

INVESTMENT OF SECURITY FUNDS

Any moneys required to be paid to or retained by Vendor which would otherwise be required to be paid to Purchaser pursuant to Article 10 but which are not so required to be paid solely because an Event of Default (other than a Vendor Default) shall have occurred and be continuing shall, until paid to Purchaser as provided in Article 10, be invested in Permitted Investments by Vendor from time to time, as directed in writing by Purchaser. Any gain (including interest received) realized as the result of any such investment (net of any reasonable fees, commissions and other expenses, if any, incurred in connection with such investment) shall promptly be remitted to Purchaser, unless an Event of Default (other than a Vendor Default) shall have occurred and be continuing. Any loss suffered as a result of any such investment shall be for the account of Purchaser.

ARTICLE 25

MISCELLANEOUS

25.1 Severability

Any provision of this CSA which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be 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.

25.2 Counterparts

To the extent, if any, that this Agreement constitutes chattel paper (as such term is defined in the PPSA), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the "Original" counterpart on the signature page thereof. Subject to the preceding sentence, this Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

25.3 **Business Days**

If any date on which a Payment is due hereunder would otherwise fall on a day which is not a Business Day, such due date shall instead fall on the next succeeding Business Day unless such day would fall in the next calendar month, in which case such due date shall be the immediately preceding Business Day.

25.4 **Waiver; Amendment**

No delay or omission to exercise any right, power or remedy accruing to Vendor upon any breach or default by Purchaser under this CSA shall impair such right, power or remedy of Vendor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default. No term or provision herein may be changed, waived, discharged or terminated orally, but only by written instrument signed by the party (including where appropriate any Newcourt Indemnitee) against which the enforcement of the change, waiver, discharge or termination is sought.

25.5 **Governing Law**

This CSA shall be governed by and construed in accordance with the laws of Bermuda, without regard to the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

25.6 **Limitation of Purchaser's Remedies**

Purchaser's remedies for any breach of any representation, warranty or covenant in this CSA shall include the right to recover money damages and to sue for specific performance, to the extent provided by Applicable Law; *provided, however,* that Purchaser waives irrevocably any right or remedy against any property of Vendor that shall be from time to time encumbered by any security interest or other encumbrance to which Purchaser shall have consented in writing.

25.7 **Service of Process and Jurisdiction**

Each of the parties hereto (i) hereby irrevocably submits to the exclusive jurisdiction of the Ontario Court, General Division, for the purposes of any suit, action or other proceeding arising out of any CSA Document, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto, (ii) hereby irrevocably agrees that all claims in respect of such action or

proceeding shall be heard and determined solely in such Ontario court, and (iii) hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named court, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that any CSA Document, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby may not be enforced in or by such court. A final judgment obtained in respect of any action, suit or proceeding referred to in this Section 25.7 shall be conclusive. Vendor hereby irrevocably appoints Blake, Cassels & Graydon at Commerce Court West, 28th Floor, Toronto, Ontario M5L 1A9 as its agent for service of process in connection with any suit, action or other proceeding arising out of any CSA Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby and agrees that it will at all times until the Specified Date maintain a duly authorized agent to receive service of process. Each of the parties hereto hereby consents to service of process by registered mail, or responsible international courier (i) in case of service of process upon Purchaser, at the address to which notices to it are to be given and (ii) in case of service of process upon Vendor, to its process agent appointed pursuant to this Section 25.7, to receive service of process in any action, suit or proceeding with respect to any matter as to which it submits to jurisdiction as set forth above, it being agreed that service in such manner shall constitute valid service upon such party in connection with any such action or proceeding only; *provided, however*, that nothing in this Section 25.7 shall affect the right of any of such parties or their respective successors or assigns to serve legal process in any other manner permitted by law.

25.8 **Currency**

If for the purposes of obtaining judgment in, or enforcing judgment of, any court in Canada, it becomes necessary to convert into Canadian dollars (the "Judgment Currency") an amount due under the CSA from US Dollars then the conversion shall be made at the rate of exchange prevailing on the Business Day before the day on which the judgment is given or the order of enforcement is made, as the case may be (unless a court shall otherwise determine). If there is a change in the rate of exchange prevailing between the Business Day before the day on which the judgment is given or an order of enforcement is made, as the case may be (or such other date as a court shall determine), and the date of payment of the amount due, Purchaser will pay such additional (or, as the case may be, such lesser) amount, if any, as may be necessary so that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment will produce the amount due under this CSA in Dollars. In the event that any payment mentioned above, upon conversion, produces an amount greater than the amount due under this CSA in Dollars, Purchaser shall be entitled to immediate payment of any such surplus. The term "rate of exchange" shall, on any day, mean the noon rate of exchange reported by the Bank of Canada on that day.

25.9 **Interest Act (Canada)**

For the purpose of disclosure pursuant to Section 4 of the Interest Act (Canada) only, if necessary, the yearly rate of interest to which interest calculated on a basis of a 360-day year of 12 30-day months is equivalent is (i) for any period of less than a calendar month, the rate of interest multiplied by the actual number of days in the year in question and divided by 360 and (ii) for any period of one or more, but less than 12, full calendar months the rate of interest determined under (i) above multiplied by the product of 30 and the number of full calendar months in the period, and divided by the actual number of days in the period.

IN WITNESS WHEREOF, Vendor and Purchaser have each caused this CSA to be duly executed and delivered at Bermuda as of the day and year first above written.

ASSET FINANCE (BERMUDA) LIMITED

By:_____
Name: Thomas E. Schrickel
Title: President

TORONTO AREA TRANSIT OPERATING AUTHORITY

By:_____
Name: David G. Hobbs
Title: Chairman

By:_____
Name: Richard C. Ducharme
Title: Managing Director

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 31st day of March, 1994, in Hamilton, Bermuda, before me personally appeared Thomas E. Schrickel, to me personally known, who being by me duly sworn, did depose and say that he is the President of Asset Finance (Bermuda) Limited, a Bermuda company, and that the foregoing instrument was signed 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.

Notary Public

Commission Expires September 2, 19[illegible]

[Notarial Seal]

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 31st day of March, 1994, in Hamilton, Bermuda, before me personally appeared David G. Hobbs, to me personally known, who being by me duly sworn, did depose and say that he is the Chairman of Toronto Area Transit Operating Authority, a corporation without share capital continued under the Toronto Area Transit Operating Authority Act (Ontario), and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

Certificate filed in New York County
Commission Expires September 8, 1994

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On the 31st day of March, 1994, in Hamilton, Bermuda, before me personally appeared Richard C. Ducharme, to me personally known, who being by me duly sworn, did depose and say that he is the Managing Director of Toronto Area Transit Operating Authority, a corporation without share capital continued under the Toronto Area Transit Operating Authority Act (Ontario), and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

Commission Expires September 8, 1994

ANNEX 1 TO CONDITIONAL SALE AGREEMENT NO. 3

DEFINITIONS

"**Acceleration Remedy**" shall mean the remedy specified in clause (c) of Article 15.1.

"**Acceptable Bank**" shall mean a bank incorporated in the United States or a state hereof (or a branch in the United States of a bank incorporated outside the United States) if such bank's unsecured senior obligations maturing in not less than one year and in an amount not less than the Specified Lease Stipulated Loss Value from time to time shall be rated AA- or better by S&P or Aa2 by Moody's.

"**Acceptable Letter of Credit**" shall mean a letter of credit issued by an Acceptable Bank in an amount not less than the Specified Lease Stipulated Loss Value.

"**Affiliate**" of a particular Person shall mean any Person (i) directly or indirectly controlling, controlled by or under common control with the particular Person, (ii) that beneficially owns or holds (directly or through a subsidiary) more than 50% of the voting power of any class of voting securities of the particular Person or (iii) more than 50% of the voting securities (or, in the case of a Person which is not a corporation, more than 50% of the equity interest) of which is beneficially owned or held by the particular Person or a subsidiary thereof. For purposes of this definition, "control" when used with respect to any particular Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; *provided, however*, that, in the case of Purchaser, the term "Affiliate" shall not include the Province of Ontario when it is performing a governmental function or duty which neither (i) is related to the transactions contemplated by the CSA Documents or, if so related, does not discriminate against the transaction contemplated by the CSA Documents or otherwise distinguish such transactions from other matters which are affected by such performance, (ii) specifically refers to all or any part of the specific transactions contemplated by the CSA Documents (rather than general references to transactions involving the financing of commuter transportation equipment used in Ontario) nor (iii) is performed as part of its legislative, statutory or constitutional mandate to oversee and/or control the policies, operations or other activities of Purchaser; *provided further* that the act of merely approving either the annual budget of Purchaser or the appropriation of monies required for the operation of Purchaser shall not in and of itself constitute the exercising such control or power to direct unless such control or power to direct is so exercised. Notwithstanding the foregoing, the term "Affiliate" shall include the Province of Ontario to the extent that (i) it acquires any debt related to the transactions contemplated by the Specified Documents or (ii)

it enters into any agreement or understanding with any third party for the sale of the Equipment.

"**After-Tax-Basis**", in the context of determining the amount of a payment to be made on such basis, shall mean the payment of an amount which, after reduction by the net increase in net income tax liability of the recipient of such payment for the jurisdiction wherein the recipient is organized or is subject to net income taxation on payments received which would not be imposed but for the location or use of any Unit of Equipment (which net increase shall be calculated by taking into account any reduction in such taxes resulting from any tax benefits realized or to be realized by the recipient as a result of such payment) shall be equal to the amount required to be paid. In calculating the amount payable by reason of this provision, all income taxes payable and tax benefits realized or to be realized shall be determined on the assumptions that (i) the recipient shall be (x) subject to the applicable income taxes at the highest marginal tax rates then applicable to corporate taxpayers taxed on the same basis as the recipient that are in effect in the applicable jurisdictions at the time such amount is received or properly accrued and (y) that all tax benefits are utilized at the highest marginal rates then applicable to corporate taxpayers taxed on the same basis as the recipient that are then in effect in the applicable jurisdictions, and (ii) tax benefits to be realized in any taxable year other than the year of payment are determined on a present value basis using a discount rate of 7.70% per annum.

"**Applicable Laws**" shall mean, without limitation, all applicable laws and treaties, judgments, decrees, injunctions, writs and orders of any court, arbitration or governmental agency or authority and rules, regulations, orders, licenses and permits of any Government Entity.

"**Assignment of Warranties**" shall mean the Assignment of Warranties No. 3 dated as of the Closing Date between Vendor and Purchaser in the form of Exhibit A to the Sale Agreement, as the same may be amended, modified or supplemented from time to time after the Closing Date in accordance with the terms thereof.

"**Bill of Sale**" shall mean that certain full warranty (as to title) bill of sale for the Equipment, dated the Closing Date, executed by Seller and Her Majesty the Queen in Right of the Province of Ontario in favour of Vendor and specifically referring to each Unit of Equipment.

"**Breakage Costs**" shall mean (i) any Swap Breakage Costs or (ii) any Yield Maintenance Amounts (as those terms are defined in the Specified Documents) for which Vendor is responsible under any Specified Document.

"**Burdensome Payout Amount**" shall have the meaning set forth in Section 19.1 of the CSA.

"**Burdensome Payout Date**" shall have the meaning set forth in Section 19.1 of the CSA.

"**Burdensome Payout Right**" shall have the meaning set forth in Section 19.1 of the CSA.

"**Business Day**" shall mean any day other than a Saturday, Sunday or other day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in (i) with respect to payment obligations, London, England; New York, New York; Toronto, Canada or (ii) with respect to any other obligation Bermuda; Toronto, Ontario, Canada; the city and state in which the principal corporate trust office of each of the Indenture Trustee and the Equity Trustee is located and such other jurisdiction in which the bank account is located to which any Payment is directed to be made pursuant to Section 3.3 of the CSA.

"**Claim**" shall mean any liability, obligation, loss, damage, penalty, claim, action, suit, proceeding, cost, expense or disbursement, including reasonable legal fees, expenses and reasonable related charges, of whatsoever kind and nature, including those arising by reason of negligence, strict or absolute liability and liability in tort.

"**Class A Equipment**" shall mean the Units of Equipment listed under Class A Equipment in the CSA Supplement No. 1.

"**Class of Equipment**" shall mean each class of equipment set forth in CSA Supplement No. 1.

"**Closing**" shall have the meaning set forth in Section 2.4 of the CSA.

"**Closing Date**" shall mean March 31, 1994.

"**Consent**" shall mean the Consent to the Assignment No. 3 dated as of March 30, 1994 by Vendor to the Equity Trustee.

"**CSA**" shall mean Conditional Sale Agreement No. 3, dated as of March 30, 1994, between Vendor and Purchaser, together with Annex 1 and any and all Schedules thereto, as the same may be amended, modified or supplemented from time to time in accordance with its terms.

"**CSA Documents**" shall mean the CSA, the CSA Supplements and the Sale Documents.

"**CSA Supplement**" shall mean CSA Supplement No. 1 to the CSA and any other CSA supplement entered into subsequent to the Closing Date for the purpose of memorializing any amendment, modification or supplement to the CSA or for the purpose of subjecting any Replacement Unit to the CSA, as the same may be amended, modified or supplemented in accordance with the terms of the CSA.

"**CSA Supplement No. 1**" shall mean CSA Supplement No. 1 to the CSA, substantially in the form of Exhibit A to the CSA, to be entered into between Vendor and Purchaser on the Closing Date for the purpose of subjecting the Equipment to the terms of the CSA, as the same may be amended, modified or supplemented in accordance with the terms of the CSA.

"**CSA Tax Indemnitee**" shall have the meaning set forth in Section 21.4(a) of the CSA.

"**Cure Amount**" shall have the meaning set forth in Section 21.5 of the CSA.

"**Cure Period**" shall have the meaning set forth in Section 15.1 of the CSA.

"**Deficiency Amount**" shall have the meaning set forth in Section 15.1 of the CSA.

"**Dollars**", "**US Dollars**" and "**US$**" shall mean the lawful currency from time to time of the United States.

"**Equipment**" shall mean the units of equipment described in each CSA Supplement entered into from time to time and not replaced pursuant to Article 10 of the CSA.

"**Equity Participant**" shall mean CCD Rail Four, Inc.

"**Equity Trustee**" shall mean First Security Bank of Utah, N.A., a national banking association, not in its individual capacity but solely as trustee, and each other Person which may from time to time be acting as Equity Trustee in accordance with the provisions of the Trust Agreement, as defined in the Specified Agreement.

"**Event of Default**" shall have the meaning set forth in Article 14 of the CSA.

"**Event of Loss**", with respect to any Unit of Equipment, shall mean, and shall be deemed to have occurred upon the occurrence of, any of the following events with respect to such Equipment:

(i) loss of any Unit of Equipment or use thereof due to destruction or damage to such Unit of Equipment that renders repair uneconomic or that renders such Unit of Equipment permanently unfit for normal use;

(ii) any damage to any Unit of Equipment that results in an insurance settlement with respect to such damage on the basis of a total loss or a constructive or compromised total loss;

(iii) the confiscation, condemnation, seizure of, expropriation or requisition of use, title, ownership or possession to any Unit of Equipment by any Government Entity having jurisdiction over such Unit of Equipment or any political subdivision thereof which shall have resulted in loss of title or ownership or the loss of use or possession to any Unit of Equipment for a period of the lesser of 180 days and the number of days from the occurrence of such event to the Specified Date;

(iv) theft or disappearance of any Unit of Equipment resulting in the loss of possession of such Unit of Equipment by Purchaser (or a Permitted Lessee) for a period in excess of the lesser of 90 days and the consecutive number of days from the occurrence of such event to the Specified Date unless the location of such Unit of Equipment is known and Purchaser (or Permitted Lessee) is diligently pursuing recovery of such Unit of Equipment but in no event for a period in excess of 180 days or the number of days from the occurrence of such event to the Specified Date, whichever is shorter.

"**Event of Loss Amount**" shall have the meaning set forth in Section 10.1 of the CSA.

"**Fair Market Value**" shall mean the value in Dollars that would be obtained in an arm's length transaction between an informed and willing purchaser who is under no compulsion to buy, and an informed and willing seller under no compulsion to sell.

"**Final Payment**" shall, with respect to any Unit of Equipment, mean the Outstanding Balance of the Purchase Price therefor as at the Specified Date.

"**Force Majeure**" shall mean acts of God, strikes or concerted acts of workmen, fires, floods, explosions, wars, riots, storms, earthquakes, accidents, acts of public quarantine restrictions, shortages of labour, materials or supplies (unless the same are otherwise available at commercially reasonable wages or prices), failures by contractors or subcontractors, transportation embargoes, failures or delays in transportation, rules, regulations, orders, or directives of any supranational authority, national government or any political subdivision, agency or instrumentality thereof or the order of any court of competent

jurisdiction, in each case other than such as may constitute, in respect of any Unit of Equipment, an Event of Loss.

"**Foreclosure Remedy**" shall mean the remedy specified in clause (b) of Section 15.1 of the CSA.

"**Government Entity**" shall mean and include any (i) national government, any political subdivision of a national government or of any country or local jurisdiction therein or (ii) board, commission, department, division, organ, instrumentality, court or agency of any thereof.

"**Indemnitee**" shall have the meaning set forth in Section 21.3 of the CSA.

"**Indenture Trustee**" shall mean First Fidelity Bank, National Association, a national banking association, and each other Person which may from time to time be acting as indenture trustee in accordance with the terms of the Specified Documents.

"**Interest Rate**" shall mean the rate of 7.396% per annum until such date (if any) as Purchaser pays the Cure Amount and thereafter shall mean the Debt Rate as defined in the Specified Documents.

"**Invoice**" shall mean an invoice from Seller specifying the Sale Price payable for the Equipment under the Sale Agreement.

"**Lessor**" shall mean the Equity Trustee, acting as lessor under the Specified Agreement.

"**Lien**" shall mean any mortgage, pledge, lien, charge, encumbrance, lease, exercise of rights, security interest, title retention, preferential arrangement or claim.

"**Loan Participants**" shall mean each of ABN Amro Bank, N.V., New York Branch; Connecticut General Life Insurance Company; Dai-Ichi Kangyo Bank; Deutsche Bank AG; INA Life Insurance Company of New York; Life Insurance Company of North America; The Long Term Credit Bank of Japan, New York Branch; Massachusetts Mutual Life Insurance Company; National Westminster Bank, plc; The Sumitomo Bank Ltd.; and Toronto Dominion (Texas), Inc.

"**Manufacturer**" shall have the meaning set forth in Section 4.2 of the CSA.

"**Moody's**" shall mean Moody's Investors Service, Inc.

"**Newcourt Indemnitee**" shall mean each of the directors, officers and employees of Vendor, the shareholders of Vendor, including, if a shareholder is a trust which has an enforcer, such enforcer, each Affiliate of Vendor (including Newcourt Capital USA Inc., Newcourt Financial USA, Inc., Newcourt Credit Group USA Inc., Newcourt Credit Group Inc. and each of their respective Affiliates), Bermuda Trust Company Limited, State House Trust Company Limited and each of their respective directors, officers and employees (and each of their respective successors, heirs, executors, administrators or personal representatives).

"**Operating Agreements**" shall mean the operating agreement dated October 1, 1981 between Purchaser and Canadian Pacific Limited and the operating agreement dated June 1, 1987 between Purchaser and Canadian National Railway Company, as each of the same have been or may be amended, modified or supplemented from time to time, and any successor agreement thereto.

"**Other CSA**" shall mean each of Conditional Sale Agreement No. 1, Conditional Sale Agreement No. 2, Conditional Sale Agreement No. 4, Conditional Sale Agreement No. 5 and Conditional Sale Agreement No. 6 entered into as of the date of the CSA between Vendor and Purchaser, as the same may be amended, modified or supplemented in accordance with the terms thereof, to the extent such agreement is in effect.

"**Outstanding Balance**", with respect to any Unit of Equipment, shall mean the unpaid balance of the Purchase Price for such Unit of Equipment outstanding therefor at any given time as set out in Column 4 of the applicable Schedule A to the CSA.

"**Overdue Rate**" shall mean the rate per annum (i) of 8.70% for the first ten days for which any Payment shall be overdue and (ii) thereafter the higher of (but in no event higher than the greatest interest rate permitted by Applicable Law) (x) the rate of 9.70% per annum or (y) the rate per annum of the Prime Rate plus 2%.

"**Payments**" shall mean Periodic Payments, the Final Payment, Supplemental Payments and any other amounts owing by Purchaser pursuant to the terms of the CSA.

"**Periodic Payment**", with respect to any Unit of Equipment, shall mean the payments of the Outstanding Balance for such Unit of Equipment and interest payable thereon pursuant to Section 3.1 of the CSA, as set out in Column 1 of the applicable Schedule A to the CSA.

"**Periodic Payment Date**" shall mean July 1, 1994, and each succeeding January 1 and July 1 thereafter to and including the Specified Date.

"**Permitted Investments**" shall mean each of (i) direct obligations of Canada or the United States, (ii) obligations fully guaranteed by Canada or the United States, (ii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of Canada or any province thereof or of the United States or one of the states thereof having the combined capital and surplus and retained earnings of at least $500,000,000, (iv) commercial paper of companies incorporated or doing business under the laws of Canada or any province thereof or the United States or any state thereof having a rating assigned to such commercial paper by S&P or Moody's equal to the highest rating assigned by such organization for such commercial paper, and (v) repurchase agreements with any financial institution having combined capital and surplus and retained earnings of at least $750,000,000 collateralized by obligations described in clause (i) where delivery must be taken having a final maturity of 90 days or less from the date of purchase; *provided* that no investment shall be eligible as and included within the definition of the term "Permitted Investment" unless the final maturity or date of return of such investment is equal to or less than 90 days from the date of purchase thereof, and *provided further* that any such investment shall be denominated in Dollars.

"**Permitted Lease**" shall mean any lease or other agreement relating to the use of any Unit of Equipment permitted by the first paragraph of Section 7.2 of the CSA.

"**Permitted Lessee**" shall mean any Permitted User, any Permitted Short Term User or any Permitted Operator, of one or more Units of Equipment.

"**Permitted Liens**" shall mean Liens referred to in clauses (i) through (ix) of Article 6 of the CSA.

"**Permitted Operator**" shall mean any Person which is party to an Operating Agreement other than Purchaser.

"**Permitted Short Term User**" shall mean a lessee or other user of one or more Units of Equipment under a lease or other agreement with a term of less than 367 days.

"**Permitted User**" shall mean (i) each Person listed from time to time on Schedule C to the CSA and (ii) any other Person agreed upon by Vendor and Purchaser.

"**Person**" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"**Prime Rate**" means the rate of interest publicly announced from time to time by National Westminster Bank, plc, New York Branch, at its principal office in New York City as its prime lending rate, such rate to change as and when such prime lending rate changes.

"**PPSA**" shall mean the Personal Property Security Act (Ontario), as the same may be in effect from time to time.

"**Province of Ontario**" shall mean Her Majesty the Queen in Right of the Province of Ontario.

"**Purchaser**" shall have the meaning set forth in the introductory paragraph of the CSA.

"**Purchase Price**", for any Unit of Equipment, shall mean the purchase price thereof specified in the applicable Schedule A to the CSA Supplement No. 1.

"**Remedy Election Notice**" shall mean the notice specified in Section 15.1 of the CSA.

"**Replacement Unit**" shall mean a unit of equipment being substituted for a Unit of Equipment pursuant to Section 10.1(i) of the CSA.

"**Responsible Officer**" shall mean, with respect to any Person, any officer who is knowledgeable about the transactions and agreements contemplated by the CSA.

"**Sale Agreement**" shall mean that certain Sale Agreement dated as of March 30, 1994, between Purchaser, as seller, and Vendor, as purchaser.

"**Sale Documents**" shall mean the Bill of Sale, the Invoice, the Sale Agreement and the Assignment of Warranties.

"**Sale Price**" shall mean the sale price for the Equipment set forth in Schedule A to the Bill of Sale.

"**Sale Remedy**" shall mean the remedy specified in clause (a) of Section 15.1 of the CSA.

"**Schedule B Amount**", as of any Periodic Payment Date through and including the Specified Date, shall mean the amount set forth on Schedule B to the CSA opposite such Periodic Payment Date.

"**Seller**" shall mean Purchaser as seller under the Sale Agreement and grantor of the Bill of Sale issued pursuant thereto in connection with the transactions contemplated by Section 2.4 of the Conditional Sale Agreement.

"**Special Cure Right**" shall have the meaning set forth in Section 21.5 of the CSA.

"**Specified Agreement**" shall mean that certain Lease Agreement No. 3 dated as of March 30, 1994, between Vendor, as lessee, and the Equity Trustee, as lessor, as it may be amended, modified or supplemented from time to time in accordance with the terms thereof.

"**Specified Date**" shall mean July 1, 2006.

"**Specified Default**" shall mean a Lease Event of Default as that term is defined in the Specified Agreement.

"**Specified Documents**" shall mean the Consent, the Assignment, the Charge, the Assignment of Charge, the Notes, the Lease, the Trust Agreement, the Indenture and the Tax Indemnity Agreement, as such agreements are defined in the Specified Documents (including any amendments, modifications or supplements) as the same may be amended, modified or supplemented from time to time after the Closing Date pursuant to the terms thereof.

"**Specified Lease**" shall mean a lease agreement between Vendor or Vendor's Designee and a Specified Lessee in respect of the Equipment which shall satisfy the terms and conditions of Section 20.3 of the CSA.

"**Specified Lease Basic Rent**", with respect to any Class of Equipment, shall have the meaning set forth in Section 20.3.

"**Specified Lease Deficiency Amount**" shall have the meaning set forth in Section 20.3(iv)(B).

"**Specified Lease Stipulated Loss Values**", with respect to any Class of Equipment, shall have the meaning set forth in Section 20.3.

"**Specified Lessee**", with respect to a Specified Lease, shall mean either (i) a Person listed on Exhibit H to the CSA, *provided* that each such Person's creditworthiness as of the date of the Specified Notice has not deteriorated as reasonably determined by Vendor or Vendor's Designee since the Closing Date, or (ii) a Person that has (or a Person whose obligations under the Specified Lease are guaranteed by a Person that has), as of the date of

the Specified Notice, a credit rating on its senior unsecured long-term debt at least equal to A3 as determined by Moody's and A- as determined by S&P and a net worth of at least US $500,000,000 unless such Specified Lessee has provided credit enhancement satisfactory to Vendor in its reasonable discretion, resulting in the Specified Lessee's obligations in such transaction having such rating; in addition, unless such Person or guarantor has a credit rating on its senior unsecured long term debt at least equal to A1 as determined by Moody's or A+ as determined by S&P on the Specified Notice Date, an Acceptable Letter of Credit would be provided to Vendor or Vendor's Designee or (iii) a Person that (x) has no such credit rating and will be majority owned by (or is any agency or political subdivision of) the governments of the United States, Canada, any country of the European Union, Switzerland or Japan and the long term senior U.S. dollar denominated unsecured debt obligations of such government (or such political subdivision thereof) are rated not less than A3 by Moody's and A- by S&P (provided that Purchaser, at its own expense, may obtain a private letter rating from Moody's or S&P with respect to the obligations of such Person) and (y) the obligations of which are guaranteed by such government (or such political subdivision thereof) pursuant to a guarantee in form and substance satisfactory to Vendor; *provided, however,* that the entering into of such Specified Lease will not violate credit restrictions applicable to Persons in connection with leasing transactions established by the Equity Participant and in effect at such time (and not established in connection with the selection of such Specified Lessee). The Specified Lessee or guarantor, unless such guarantor is a government, as applicable, must also have had operating cash flows (net income plus depreciation plus amortization plus deferred income taxes) during the most recently ended fiscal year of the Specified Lessee or guarantor, as applicable (for which financial statements have been issued), as of the date of the Specified Notice at least sufficient to cover the current portion of its long-term debt and the current portion of its capitalized leases.

"**Specified Notice**" shall have the meaning set forth in Section 20.2 of the CSA.

"**Specified Notice Date**" shall have the meaning set forth in Section 20.2 of the CSA.

"**Specified Payment**" shall have the meaning set forth in Section 20.4 of the CSA.

"**Specified Party**" shall mean each Loan Participant, Equity Participant, the Indenture Trustee and the Equity Trustee, as the case may be, and their permitted successors and assigns.

"**Supplemental Payment**" shall mean any and all amounts (other than Periodic Payments and the Final Payment) which Purchaser assumes or agrees to pay hereunder to Vendor or any other Person, including the Schedule B Amounts, the Specified Lease

Deficiency Amount, the Specified Payment, the Event of Loss Amount and indemnity payments.

"**Swap Gain**" shall mean any gain associated with breaking any swap or funding agreement pursuant to any Specified Document.

"**S&P**" shall mean Standard & Poor's Corporation.

"**Tax**" or "**Taxes**" shall mean any and all license, registration and documentation fees and any and all taxes, assessments, levies, imposts, duties, charges, fees or withholdings of any nature whatsoever, together with any penalties, fines or interest thereon, or other additions thereto, imposed by any government or taxing authority.

"**Tax Act**" shall mean the Income Tax Act (Canada), as amended, and any successor Canadian income tax statute (including regulations promulgated thereunder).

"**Unit**" or "**Unit of Equipment**" shall mean any unit of Equipment.

"**Unit Purchase Price**" shall mean the purchase price for each Unit of Equipment as set forth in Schedule A of the CSA Supplement covering such Unit of Equipment.

"**United States**" shall mean the United States of America.

"**Vendor**" shall have the meaning set forth in the introductory paragraph of the CSA.

"**Vendor Default**" shall mean a Lease Default which is not caused by any Event of Default described in clauses (a) to (f) of Article 14 of the CSA.

"**Vendor's Assignee**" shall mean the Equity Trustee as security assignee or its assigns permitted under the Assignment No. 3 (as defined in the Specified Documents) or its assigns permitted under the Consent.

"**Vendor's Designee**" shall mean any Person who shall from time to time be designated by notice from Vendor and Vendor's Assignee to Purchaser as a "Vendor's Designee"; *provided, however*, in the case of inconsistent notices, the notice of Vendor's Assignee shall prevail.

"**Vendor's Lien**" shall mean any Lien on or disposition of title affecting the Equipment or any Unit arising as a result of (i) claims against or affecting Vendor or any Affiliate thereof not related to, or in violation of, any CSA Document or any Specified

Document or the transactions contemplated thereby, (ii) any act or omission of Vendor or any Affiliate thereof that is not related to, or in violation of, any CSA Document or any Specified Document or the transactions contemplated thereby or that is in breach of any covenant or agreement of Vendor set forth therein, (iii) Taxes or claims against Vendor or any Affiliate thereof which are not indemnified against by Purchaser under the CSA or (iv) claims against or affecting Vendor or any Affiliate thereof arising out of the voluntary or involuntary transfer by Vendor of any portion of the interest of Vendor in the Equipment or the CSA (without the consent of Purchaser), other than a transfer of the Equipment or any interest therein pursuant to and contemplated by Articles 3, 8, 10, 15, 19 or 20 of the CSA, or pursuant to the Lease in order for Vendor to make such transfers to Purchaser; *provided, however*, that any Lien that would otherwise constitute a Vendor's Lien hereunder shall not constitute a Vendor's Lien hereunder so long as (1) the existence of such Lien does not create any material risk of the sale, forfeiture or loss of any Unit of Equipment or any interest therein, (2) the existence of such Lien does not interfere with the use or operation of the Equipment by Purchaser (or any Permitted Lessee), and (3) Vendor or such Affiliate, as the case may be, is diligently contesting in good faith such Lien by appropriate proceedings.

Schedule A
Conditional Sales Agreement No. 3
1988 Locomotives

US $ Unit Cost of: 1,460,067.16

D

Periodic Payment Date	Periodic Payment Amount Column 1	Outstanding Balance Portion of Periodic Payments: Total Outstanding Payments Column 2	Debt Outstanding Payments Column 2A	Equity Outstanding Payments Column 2B	Interest Portion of Periodic Payments: Total Interest Payments Column 3	Debt Interest Payments Column 3A	Equity Interest Payments Column 3B	CSA Balance Column 4	Outstanding Balance: Debt in CSA Balance Column 4A	Equity in CSA Balance Column 4B
3/31/94	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,460,067.16	1,270,258.43	189,808.73
7/1/94	24,888.03	-2,365.01	0.00	-2,365.01	27,253.03	24,724.17	2,528.87	1,462,432.17	1,270,258.43	192,173.73
1/1/95	49,068.81	-4,925.61	0.00	-4,925.61	53,994.42	48,904.95	5,089.47	1,467,357.78	1,270,258.43	197,099.34
7/1/95	49,068.81	-5,107.47	0.00	-5,107.47	54,176.28	48,904.95	5,271.33	1,472,465.24	1,270,258.43	202,206.81
1/1/96	49,068.81	-5,296.04	0.00	-5,296.04	54,364.85	48,904.95	5,459.90	1,477,761.28	1,270,258.43	207,502.85
7/1/96	50,221.04	-4,339.34	1,152.23	-5,491.58	54,560.39	48,904.95	5,655.44	1,482,100.63	1,269,106.20	212,994.43
1/1/97	49,723.44	-4,997.16	698.99	-5,696.15	54,720.60	48,860.59	5,860.01	1,487,097.79	1,268,407.21	218,690.58
7/1/97	61,352.38	6,447.29	12,354.85	-5,907.56	54,905.10	48,833.68	6,071.42	1,480,650.50	1,256,052.37	224,598.14
1/1/98	57,863.63	3,196.57	9,341.75	-6,145.18	54,667.06	48,358.02	6,309.04	1,477,453.93	1,246,710.61	230,743.32
7/1/98	59,918.97	5,369.93	11,756.75	-6,386.82	54,549.04	47,998.36	6,550.68	1,472,084.00	1,234,953.86	237,130.14
1/1/99	59,342.38	4,991.60	11,632.79	-6,641.19	54,350.77	47,545.72	6,805.05	1,467,092.40	1,223,321.07	243,771.33
7/1/99	59,514.61	5,348.13	12,252.88	-6,904.76	54,166.48	47,097.86	7,068.62	1,461,744.27	1,211,068.18	250,676.09
1/1/00	60,451.98	6,482.96	13,661.99	-7,179.04	53,969.02	46,626.13	7,342.90	1,455,261.31	1,197,406.19	257,855.12
7/1/00	60,531.05	6,801.38	14,337.28	-7,535.89	53,729.66	46,100.14	7,629.53	1,448,459.93	1,183,068.91	265,391.02
1/1/01	65,222.38	11,743.83	19,580.59	-7,836.76	53,478.55	45,548.15	7,930.40	1,436,716.10	1,163,488.32	273,227.78
7/1/01	54,460.51	1,415.55	9,572.57	-8,157.02	53,044.96	44,794.30	8,250.66	1,435,300.56	1,153,915.75	281,384.80
1/1/02	90,917.51	37,924.82	46,398.12	-8,473.30	52,992.69	44,425.76	8,566.94	1,397,375.74	1,107,517.63	289,858.11
7/1/02	42,733.06	-8,859.41	0.00	-8,859.41	51,592.47	42,639.43	8,953.04	1,406,235.15	1,107,517.63	298,717.52
1/1/03	94,818.25	42,898.67	52,085.18	-9,186.51	51,919.57	42,639.43	9,280.14	1,363,336.47	1,055,432.45	307,904.02
7/1/03	40,727.78	-9,607.93	0.00	-9,607.93	50,335.71	40,634.15	9,701.56	1,372,944.40	1,055,432.45	317,511.95
1/1/04	96,984.11	46,293.67	56,256.33	-9,962.66	50,690.44	40,634.15	10,056.29	1,326,650.73	999,176.12	327,474.61
7/1/04	38,561.91	-10,419.32	0.00	-10,419.32	48,981.24	38,468.28	10,512.96	1,337,070.05	999,176.12	337,893.93
1/1/05	99,323.43	49,957.50	60,761.52	-10,804.01	49,365.93	38,468.28	10,897.65	1,287,112.55	938,414.60	348,697.95
7/1/05	36,222.60	-11,298.85	0.00	-11,298.85	47,521.45	36,128.96	11,392.49	1,298,411.40	938,414.60	359,996.80
1/1/06	86,862.34	38,923.73	50,639.75	-11,716.02	47,938.61	36,128.96	11,809.65	1,259,487.67	887,774.85	371,712.82
7/1/06	41,976.90	-4,524.61	0.00	-4,524.61	46,501.51	34,179.33	12,322.18	1,264,012.28	887,774.85	376,237.42

Schedule B
Conditional Sales Agreement No. 3
1988 Locomotives

Schedule B Determination Date	Schedule B Amount
7/1/94	31,120.22
1/1/95	40,728.31
7/1/95	51,225.49
1/1/96	58,783.21
7/1/96	68,276.44
1/1/97	73,844.75
7/1/97	82,359.99
1/1/98	85,988.66
7/1/98	93,478.19
1/1/99	95,111.55
7/1/99	101,462.09
1/1/00	101,202.30
7/1/00	106,409.61
1/1/01	104,229.11
7/1/01	108,302.71
1/1/02	104,204.31
7/1/02	106,991.95
1/1/03	101,247.56
7/1/03	103,024.95
1/1/04	95,798.86
7/1/04	96,583.75
1/1/05	87,919.74
7/1/05	87,699.38
1/1/06	77,639.00
7/1/06	0.00

SCHEDULE C

PERMITTED USERS

At the time of commencement of a Permitted Lease, the Permitted User shall be one or more of the following:

(1) A Railway Company (as that term is defined in the Railway Act (Canada));

(2) U.S. Class I Railroad, as defined by the Interstate Commerce Commission including all subsidiary and associated railroads;

(3) U.S. Railroad operating a commuter service for or on behalf of any public agency or political subdivision of the United States; or

(4) A Commuter service operated by a public agency or a political subdivision of the United States or Canada.

EXHIBIT A TO CONDITIONAL SALE AGREEMENT NO. 3

FORM OF CSA SUPPLEMENT NO. 1

CSA Supplement No. 1 (the "CSA Supplement"), dated March 31, 1994, between Asset Finance (Bermuda) Limited, a Bermuda Company with its registered office at 31 Church Street, Hamilton, Bermuda ("Vendor"), and Toronto Area Transit Operating Authority, a corporation without share capital continued under the Toronto Area Transit Operating Authority Act (Ontario) with its chief executive office and principal place of business at 120 Finch Avenue West, Toronto (Downsview), Ontario, Canada ("Purchaser").

W I T N E S S E T H:

WHEREAS, Vendor and Purchaser have heretofore entered into Conditional Sale Agreement No. 3, dated as of March 30, 1994 (the "CSA"). All capitalized terms used herein without definition shall have the meanings specified in Annex 1 to the CSA. The CSA provides for the execution and delivery from time to time of CSA Supplements, each substantially in the form hereof for the purpose of memorializing any amendment, modification or supplement to the CSA or for the purpose of selling any Replacement Unit pursuant to the CSA, as the same may be amended, modified or supplemented in accordance with the terms of the CSA;

NOW THEREFORE, in consideration of the premises and other good and sufficient consideration, Purchaser and Vendor hereby agree as follows:

1. Vendor hereby sells all of its right, title and interest in the Equipment described in Schedule A hereto, and Purchaser hereby accepts and purchases all of such right, title and interest in the Equipment for the Purchase Price for each Unit of Equipment and Vendor hereby tenders and Purchaser hereby accepts delivery of the Equipment "as-is, where-is" and without representation and warranty except for the absence of Vendor's Liens (including for this purpose any Lien that would have constituted a Vendor's Lien but for the proviso to the definition thereof).

2. The Purchase Price for each Unit of Equipment is as set out on Schedule A hereto.

3. All of the terms and provisions of the CSA are hereby incorporated by reference in this CSA Supplement to the same extent as if fully set forth herein.

4. To the extent, if any, that this CSA Supplement constitutes chattel paper (as such term is defined in the PPSA), no security interest in this CSA Supplement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be idenified as the "Original" counterpart on the signature page hereof. Subject to the preceding sentence, this CSA Supplement may be executed by the parties hereto in separate counterparts, each of which when executed and delivered shall be an original, but all of such counterparts shall constitute but one and the same instrument.

5. This CSA Supplement has been delivered in Bermuda. It shall in all respects be governed by, and construed in accordance with, the laws of Bermuda, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Purchaser and Vendor have caused this CSA Supplement to be duly executed as of the day and year first above written.

ASSET FINANCE (BERMUDA) LIMITED

By:_____
Name:
Title:

TORONTO AREA TRANSIT OPERATING AUTHORITY

By:_____
Name:
Title:

By:_____
Name:
Title:

Receipt of this Original Counterpart of the foregoing CSA Supplement is hereby accepted on this _____ day of _____, 1994.

FIRST FIDELITY BANK, NATIONAL ASSOCIATION

By:_____
Name:
Title:

EXHIBIT B
TO
CONDITIONAL SALE AGREEMENT NO. 3
FORM OF OPINION OF McCARTHY TÉTRAULT
SPECIAL COUNSEL TO PURCHASER

March 31, 1994

Toronto Area Transit Operating
Authority
1120 Finch Avenue West
Toronto (Downsview), Ontario
M3J 3J8

-and-

Asset Finance (Bermuda) Limited
31 Church Street
Hamilton, Bermuda

Dear Sirs:

Re: Sale and Sale-Back of Locomotives and Commuter Rail Coaches

We have acted as counsel to the Toronto Area Transit Operating Authority (the "Purchaser") in connection with (i) the sale today by the Purchaser to Asset Finance (Bermuda) Limited (the "Vendor") of certain locomotives and bi-level commuter rail coaches pursuant to a sale agreement dated as of March 30, 1994 between the Purchaser as seller and the Vendor as purchaser (the "Sale Agreement") and (ii) the conditional sale back today to the Purchaser by the Vendor of certain of such locomotives and bi-level commuter rail coaches pursuant to a conditional sale agreement no. 3 dated as of March 30, 1994 between the Vendor as seller and the Purchaser as purchaser (the "CSA") as suppleneted by a conditional sale agreement supplement no.1 dated as of March 31, 1994 between the Vendor as seller and the Purchaser as purchaser (the "CSA Supplement").

In this connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of:

1. the Sale Agreement;

2. a bill of sale dated March 31, 1994 by the Purchaser and by the Province of Ontario as represented by the Minister of Finance in favour of the Vendor;

3. the CSA;

4. the CSA Supplement;

5. an assignment of warranties dated as of March 31, 1994 between the Purchaser and the Vendor (the "Assignment of Warranties");

6. the *Toronto Area Transit Operating Authority Act* (Ontario), (the "Act");

7. by-laws No. 1 and 2 of the Purchaser (collectively the "By-laws");

8. regulation 529/93 made under the Act;

9. Order in Council 3158/93 made December 15, 1993;

10. resolution of the members of the Purchaser passed at a meeting held on March 11, 1994 certified to be a true copy by certificate dated March 31, 1994 (the "Resolution");

11. letter dated March 31, 1994 from the Minister of Finance of Ontario to the Purchaser;

12. letter dated March 31, 1994 from the Minister of Finance of Ontario to the Purchaser contemplated by Order-in-Council 3158/93 and the Resolution;

13. certificate of David G. Hobbs and Richard C. Ducharme, respectively the Chairman and Managing Director of the Purchaser dated March 31, 1994;

14. certificate of the Deputy Clerk of the Executive Council of Ontario dated March 31, 1994;

15. letter dated December 22, 1993 from Mergers Branch, Bureau of Competition Policy, Ministry of Industry and Science (Canada) stating that the waiting period for completion of the transaction contemplated by the CSA Documents expired on December 22, 1993 for the purposes of *Competition Act* (Canada).

The Sale Agreement, the Bill of Sale, the CSA, the CSA Supplement and the Assignment of Warranties are collectively referred to herein as the "CSA Documents". Terms used and not otherwise defined herein are used with the meanings ascribed thereto in Annex 1 to the CSA.

For the purposes of our opinion we have assumed (i) the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies, whether certified or otherwise, (ii) that the CSA and the CSA Supplement constitute legal, valid and binding agreements, enforceable in accordance with their terms under the laws of Bermuda, by which laws the CSA and the CSA Supplement are expressed to be governed, (iii) that insofar as any obligation under the CSA and the CSA Supplement is to be performed in any jurisdiction outside of Ontario its performance will not be illegal or unenforceable by virtue of the laws of that jurisdiction and (iv) that the Vendor has duly authorized, executed and delivered the CSA Documents to which it is a party and that such CSA Documents constitute legal, valid and binding obligations of the Vendor enforceable against the Vendor in accordance with their terms. We have relied, as to factual matters, on the documents referred to above, without independent verification.

We have considered such questions of law as we have deemed relevant and necessary as a basis of the opinions hereinafter expressed. The opinions expressed herein are limited to the laws of Ontario and the federal laws of Canada applicable therein. This opinion is being delivered pursuant to Section 2.2 (ix) of the CSA.

Based and relying upon the foregoing and subject to the qualifications hereinafter expressed, we are of the opinion that:

1. the Purchaser is a corporation without share capital continued pursuant to the Act;

2. the Purchaser is an agency of the Province of Ontario and has the statutory power and authority to conduct its business as presently conducted and to enter into and perform its obligations under the CSA Documents;

3. the CSA Documents have been duly authorized, executed and delivered by the Purchaser and constitute the legal, valid and binding obligations of the Purchaser enforceable against the Purchaser in accordance with their respective terms and the Bill of Sale is effective to convey to Vendor all of the right, title and interest of each Seller (as defined in the Bill of Sale) in the Units of Equipment described in Schedule A to the Bill of Sale;

4. the CSA Documents are obligations of, and are legal, valid, binding and enforceable against, the Province of Ontario as principal of Purchaser, notwithstanding any bankruptcy, insolvency or reorganization of, or other

proceeding under laws of general application limiting the enforcement of creditors' rights generally which affects, the Purchaser;

5. neither the Purchaser nor the Province of Ontario is immune from suit in Ontario;

6. the Minister of Finance of Ontario is required to pay out of the Consolidated Revenue Fund the amount payable by the Province of Ontario under a judgment of a court that is final and not subject to appeal or under a settlement of a proceeding in a court;

7. neither the execution, delivery and performance of any of the CSA Documents by the Purchaser nor compliance by it with any of the provisions thereof contravenes the provisions of the Act, the By-laws or any Applicable Laws;

8. no authorization or approval or other action by, and no notice to or filing with, any Governmental Entity in Canada is required for due execution, delivery or performance by the Purchaser of any of the CSA Documents, except such as have been obtained or made;

9. the Vendor is not required to be licensed to carry on business in Ontario solely by reason of the execution and delivery in Bermuda of the CSA Documents and the registration of the CSA Documents in Ontario;

10. as of the date hereof, no deposit, registration, recording, notice or filing (other than the deposit of the CSA and the CSA Supplement with the Registrar General of Canada pursuant to Section 90 of the *Railway Act* (Canada) and the filing of a financing statement under the PPSA) is necessary under the Applicable Laws of Ontario and the laws of Canada applicable therein to perfect or protect the Vendor's interest in the Equipment pursuant to the CSA and the CSA Supplement;

11. the choice of the laws of Bermuda as the governing law of the CSA and the CSA Supplement is a valid choice of law and in any proceeding brought before a court of competent jurisdiction in the Province of Ontario in respect to the CSA and the CSA Supplement, the laws of Bermuda would, to the extent specifically pleaded and proved as a fact by expert evidence, be recognized and applied by such court to all issues which, under the conflict of law rules of the Province of Ontario, are to be determined in accordance with the proper or governing law of a contract, except that in such

proceeding, any such court will (i) apply those laws of Ontario which it characterizes as procedural, (ii) not apply those laws of Bermuda which it characterizes as being of a revenue, penal or public law nature and (iii) not apply those laws of Bermuda, the application of which would be inconsistent with "public policy", as such term is applied by the courts in Ontario and except further that under the laws of Ontario the validity, perfection and effect of perfection or non-perfection of a security interest in the Equipment is governed by the laws of Ontario; and

12. the laws of Ontario would permit an action to be brought on a final and conclusive *in personam* judgment of a court of a foreign jurisdiction in respect of the CSA and the CSA Supplement, which is not impeachable as void or voidable under the domestic laws of the foreign jurisdiction, for a definite sum of money and without reconsideration of the merits provided that (i) the court rendering such judgment had jurisdiction according to Ontario conflicts of laws rules over the judgment debtor, (ii) such judgment was not obtained by fraud or in a manner contrary to natural justice and the enforcement thereof would not be inconsistent with "public policy" as such term is applied by the courts in Ontario or contrary to any order made by the Attorney-General of Canada under the *Foreign Extraterritorial Measures Act* (Canada) or by the Competition Tribunal under the *Competition Act* (Canada) in respect of certain judgments (as therein defined) or contrary to any other statute of Canada or Ontario that specifically provides for an order as to the non-enforceability of foreign judgments in Ontario, (iii) the enforcement of such judgment does not constitute, directly or indirectly, the enforcement of foreign revenue, penal or public laws, (iv) no new admissible evidence relevant to the proceeding is discovered prior to the rendering of judgment by the court in the Province of Ontario and (v) there has been compliance with the *Limitations Act* (Ontario), which provides that any action to enforce a foreign judgment must be commenced within six years of the date of the foreign judgment.

This opinion is subject to the following qualifications:

(a) the enforceability of the CSA Documents against the Purchaser is subject to applicable bankruptcy, insolvency, reorganization, and other laws of general application limiting the enforcement of creditors' rights generally and to the fact that equitable remedies are available only in the discretion of the court;

(b) where in a proceeding against the Purchaser or the Province of Ontario any relief is sought that might be granted by way of injunction or specific performance, the court shall not, as against the Purchaser or the Province of Ontario, grant an injunction or make an order for specific performance, but in lieu thereof may make an order declaratory of the rights of the parties;

(c) no execution or attachment or process in the nature thereof may be issued out of any court against the Purchaser or the Province of Ontario;

(d) in a proceeding against the Purchaser or the Province of Ontario in which the recovery of personal property is claimed, the court shall not make an order for recovery or delivery of such property;

(e) no action for a claim shall be commenced against the Province of Ontario unless the claimant has at least sixty days before the commencement of the action, served on the Province of Ontario a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose;

(f) the *Currency Act* (Canada) precludes a Canadian court from giving a judgment for an amount expressed in a currency other than Canadian currency;

(g) we express no opinion as to the enforceability of Section 22.1(e) of the CSA, provided that the failure by the Purchaser to perform its obligations under such Section will not relieve the Province of Ontario from the obligations as principal of Purchaser under the CSA Documents;

(h) the validity and enforceability of Section 25.1 of the CSA would be determined only in the discretion of a court;

(i) we express no opinion as to the submission by the parties to the CSA to the exclusive jurisdiction of a particular court; and

(j) costs of legal proceedings are in the discretion of the court.

This opinion is rendered solely for use by the addressees hereof in connection with the transactions noted herein and may not be relied upon by any other person or for any other purpose without our prior written consent. This opinion may be relied upon by any Specified Party.

Yours very truly,

EXHIBIT C
to
CONDITIONAL SALE AGREEMENT NO. 3
FORM OF OPINION OF
APPLEBY, SPURLING & KEMPE
SPECIAL BERMUDA COUNSEL TO PURCHASER

31st March, 1994

Toronto Area Transit
Operating Authority,
1120 Finch Avenue West,
Toronto (Downsview), ONTARIO,
CANADA M3J 3JA.

Asset Finance (Bermuda) Limited,
31 Church Street,
Hamilton,
BERMUDA.

Dear Sirs,

Re: Sale and Sale-Back of Locomotives
and Commuter Rail Coaches

We have acted as special Bermuda counsel to the Toronto Area Transit Operating Authority (the "Purchaser") in connection with (i) the sale today by the Purchaser to Asset Finance (Bermuda) Limited (the "Vendor") of certain locomotives and bi-level commuter rail coaches pursuant to a sale agreement dated as of 30th March, 1994 between the Purchaser as seller and the Vendor as purchaser (the "Sale Agreement") and (ii) the conditional sale back today to the Purchaser by the Vendor of certain of such locomotives and commuter rail coaches pursuant to a conditional sale agreement no.3 dated as of 30th March, 1994 between the Vendor as seller and the Purchaser as purchaser (the "CSA"), as supplemented by a conditional sale agreement supplement no.3 dated as of 30th March, 1994 between the Vendor as seller and the Purchaser as purchaser (the "CSA Supplement").

The Sale Agreement, the bill of sale dated as of 31st March, 1994 by the Purchaser and by the Province of Ontario as represented by the Minister of Finance in favour of the Vendor (the "Bill of Sale"), the CSA and the CSA Supplement are

by which they are expressed to be governed;

(iv) the genuineness of all signatures on the documents which we have examined;

(v) the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies, whether certified or otherwise; and

(vi) the truth, accuracy and completeness as of the date hereof of all recitals, warranties and representations as to factual matters made in the CSA Documents and any certificates provided for therein.

Based on and subject to the foregoing and subject to the reservations mentioned below and any matters not disclosed to us, we are of the opinion that:

1. the Vendor is a company duly incorporated and validly existing under the laws of Bermuda and has the corporate capacity and power to execute, deliver and perform its obligations under the CSA Documents;

2. the CSA Documents have been duly authorised, executed and delivered by the Vendor;

3. the CSA Documents constitute legal, valid and binding obligations of the Purchaser and the Vendor, enforceable against the Purchaser and the Vendor in accordance with their respective terms;

4. the execution and delivery of the CSA Documents by the Purchaser and the Vendor and the performance of the respective obligations of the Purchaser and the Vendor thereunder do not and will not conflict with or constitute a breach of (i) the Memorandum of Association and Bye-laws of the Vendor, (ii) the provisions of any applicable law, statute, rule or regulation of Bermuda or (iii) to our knowledge, based solely on the Searches, any judgment, order or decree of any Bermuda court;

5. the Vendor having been designated non-resident for the purposes of the Exchange Control Act, 1972, it is not necessary or advisable to obtain any authorisation, approval, consent, order or permission of any Bermudian body, authority or agency in respect of any of the acts or transactions involved in the execution and delivery of the CSA Documents and the performance by the Purchaser or the Vendor of their respective obligations thereunder;

collectively referred to herein as the "CSA Documents". Terms used and not otherwise defined herein are used with the meanings ascribed thereto in Annex 1 to the CSA.

This opinion is being delivered pursuant to Section 2.2 (ix) of the CSA.

For the purpose of this opinion, we have been supplied with and reviewed executed copies of the CSA Documents.

We have also examined and relied upon:

(a) a Certificate of Compliance in respect of the Vendor issued by the Registrar of Companies in Bermuda on [ ] March, 1994.

(b) certified copies of the Certificate of Incorporation, Memorandum of Association and Bye-laws of the Vendor;

(c) a copy of the letter dated 21st December, 1993 from the Bermuda Monetary Authority designating the Vendor as non-resident for exchange control purposes;

(d) certified copies of the resolutions of the board of directors and shareholders of the Vendor passed on 28th March, 1994 (the "Resolutions"); and

(e) a certificate of Thomas E. Schrickel, the President of the Vendor, as to the incumbency of the directors and officers of the Vendor and certain other factual matters.

We have also relied upon our searches of documents of public record in relation to the Vendor maintained by the Registrar of Companies in Bermuda made on 31st March, 1994 and the Cause Book maintained by the Registrar of the Supreme Court of Bermuda made on 31st March, 1994 (the "Searches"). We have also considered such questions of law as we have deemed relevant or necessary as the basis for the opinions expressed herein.

We have assumed:

(i) the capacity, power and authority of the Purchaser and Province of Ontario as represented by the Minister of Finance to execute, deliver and perform the CSA Documents;

(ii) the due execution and delivery of the CSA Documents by the Purchaser and the Province of Ontario as represented by the Minister of Finance;

(iii) that the CSA Documents, other than the CSA and the CSA Supplement, constitute legal, valid and binding obligations enforceable in accordance with their respective terms under the laws of Ontario

6. it is not necessary or advisable to ensure the legality, validity, enforceability or admissibility in evidence of the CSA Documents, that they or any other document be notarised or subjected to any other formality or be filed, recorded, registered or enrolled with any Bermudian court, authority or agency or that any other action be taken;

7. no requirement of registration or filing with any Bermudian authority or of qualification in Bermuda is applicable to the Purchaser or the Vendor by virtue only of the execution, delivery, performance and enforcement of the CSA Documents;

8. no Bermudian income, registration, capital, issue, stamp, documentary, transfer, turnover, withholding or other tax, duty or similar charge is applicable or payable in respect of any of the acts or transactions involved in:

   (i) the negotiation, execution or delivery of the CSA Documents;

   (ii) any payment to be made under the CSA Documents;

   (iii) the performance of any other obligation under the CSA Documents; or

   (iv) the enforcement of the CSA Documents or, subject to paragraph 9, any foreign judgment in the Bermudian courts;

9. we refer to the enforceability in Bermuda of judgments of foreign courts under which a sum of money is payable (not being a sum of money payable in respect of taxes or other charges of a like nature, in respect of a fine or other penalty, or in respect of "multiple damages" as defined in the Protection of Trading Interests Act 1981. If the foreign court is situated in a country to which The Judgments (Reciprocal Enforcement) Act, 1958 (the "1958 Act") applies, the procedure provided for in the 1958 Act must be followed. The 1958 Act applies to the United Kingdom and has been extended to a number of other countries, but it does not apply to judgments of the courts of Canada or any province or territory thereof or the state or federal courts of the United States of America. Under the 1958 Act, a judgment obtained in the Superior Courts of a country to which it applies would be enforced by the Supreme Court of Bermuda without re-examination of the merits of the case provided that:

   (a) the judgment is final and conclusive,

notwithstanding that an appeal may be pending against it or it may still be subject to an appeal in such country;

(b) the judgment has not been given on appeal from a court which is not a Superior Court; and

(c) the judgment is duly registered in the Supreme Court of Bermuda in circumstances in which its registration is not liable thereafter to be set aside.

Under subsection 3(4) of the 1958 Act, the registration of such a court's judgment in the Supreme Court of Bermuda involves the conversion of the judgment debt into Bermuda dollars as of the date of the foreign court's judgment, but the Bermuda Monetary Authority, Exchange Control Department has indicated that its present policy is to give the consents necessary for any Bermuda dollar award made by the Supreme Court of Bermuda as aforesaid to be recovered in external currency.

If the above procedure is not available, a final and conclusive judgment of a foreign court under which a sum of money is payable (not being a sum payable in respect of taxes or other charges of a like nature, in respect of a fine or other penalty, or in respect of multiple damages as defined in The Protection of Trading Interests Act 1981) may be the subject of enforcement proceedings in the Supreme Court of Bermuda under the common law doctrine of obligation by action for the debt evidenced by the foreign court's judgment, again without re-examination of the merits of the case. A final opinion as to the availability of this remedy should be sought when the facts surrounding the foreign court's judgment are known, but, on general principles, one would expect such proceedings to be successful provided that:

(a) the court which gave the judgment was competent to hear the action in accordance with private international law principles as applied in Bermuda; and

(b) the judgment is not contrary to public policy in Bermuda, has not been obtained by fraud, or in proceedings contrary to natural justice, and is not based on an error in Bermuda law.

Enforcement of such a judgment against assets in Bermuda may involve the conversion of the judgment into Bermuda dollars, but the Bermuda Monetary Authority's

policy is to give the consents necessary to enable recovery in the currency of the obligation;

10. the choice of the laws of Bermuda as the governing law of the CSA and the CSA Supplement is a valid choice of law and such governing law will be applied by the courts of Bermuda to all issues which, under the conflicts of laws rules of Bermuda, are to be determined in accordance with the proper or governing law of the contract;

11. the choice of the laws of Ontario as the governing law of the CSA Documents (other than the CSA and the CSA Supplement) is, assuming it to be valid under the laws, of Ontario, a valid choice of law and in any proceeding brought before the courts of Bermuda in respect of the CSA Documents (other than the CSA and the CSA Supplement), the laws of Ontario would, to the extent specifically pleaded and proven as a fact by expert evidence, be recognised and applied by such court to all issues which, under the conflicts of laws rules of Bermuda, are to be determined in accordance with the proper or governing law of a contract, except that in any such proceeding the courts of Bermuda will (i) apply those laws of Bermuda which it characterises as procedural, (ii) not apply those laws of Ontario which it characterises as being of a revenue, penal or public law nature and (iii) not apply those laws of Ontario the application of which would be inconsistent with public policy as such term is applied by the courts of Bermuda;

12. save in the case of judgements under the 1958 Act referred to in paragraph 9 hereof, the Bermudian Courts have a discretion as to the currency in which they award judgements. In the normal course, we would expect them to exercise that discretion in favour of the currency of the obligation; and

13. the Purchaser will not be deemed to be resident, domiciled or carrying on business in Bermuda by reason only of the execution, delivery, performance and/or enforcement of the CSA Documents.

Our reservations are as follows:

(1) we express no opinion as to any law other than Bermuda law and none of the opinions expressed herein relates to compliance with, or matters governed by, the laws of any jurisdiction except Bermuda. Where an obligation is to be performed in a jurisdiction other than Bermuda, the Courts of Bermuda may refuse to enforce it to the extent that such performance would be illegal or contrary to public policy under the laws of such other jurisdiction;

(2) the legality, validity, binding effect and enforceability of the CSA Documents are subject to general principles of equity, including the fact that equitable remedies, such as specific performance or injunctive relief, may only be awarded in the discretion of the court, and are also subject to any laws from time to time in effect relating to bankruptcy or liquidation or any other laws or other legal procedures affecting generally the enforcement of creditors' rights;

(3) we express no opinion as to:

(i) any matters which are within the discretion of the courts of Bermuda such as the award of costs or questions relating to forum non-conveniens;

(ii) the legality, validity, binding effect or enforceability of any waiver of or obligation to waive any provision of law (whether substantive or procedural) or any right or remedy arising through circumstances not known at the time of entering into the CSA Documents;

(iii) the legality, validity, binding effect or enforceability of any provision providing for any court to have exclusive jurisdiction over any matters arising out of the CSA Documents, or any provision providing for service of documents in connection with court proceedings in any manner other than by personal delivery; and

(iv) the legality, validity, binding effect or enforceability of section 22.1(e) or section 25.1 of the CSA.

(4) section 9 of The Interest and Credit Charges (Regulation) Act 1975 provides that the Bermuda Courts have discretion as to the amount of interest, if any, payable on the amount of a judgment after date of judgment. If the Court does not exercise that discretion, then interest will accrue at the statutory rate which is currently seven per cent (7%) per annum;

(5) any provision providing that certain calculations and/or certificates and/or opinions will be conclusive and binding will not be effective if such calculations, certificates or opinions are fraudulent or erroneous on their face, and will not necessarily prevent enquiry into the merits of any claim by an aggrieved party;

(6) where a party is vested with a discretion or may determine a matter in its opinion, such discretion may have to be exercised reasonably or such an opinion may have to be based on reasonable grounds; and

(7) we have made no investigation of, and express no opinion as to, the title of any person to any asset.

This opinion is issued on the basis that it will be construed in accordance with the provisions of Bermuda law. It is issued solely for the benefit of the addressees in connection with the transactions contemplated by the CSA Documents and may not be relied upon by any other person, firm or entity or for any other purpose, without our prior written consent. This opinion may be relied upon by any Specified Party.

Yours very truly,

EXHIBIT D
TO
CONDITIONAL SALE AGREEMENT NO. 3

Intentionally Deleted

EXHIBIT E

MELLO, HOLLIS, JONES & MARTIN

MICHAEL J. MELLO Q.C., J.P.
WENDELL M. HOLLIS
ELIZABETH L. JONES
ANDREW A. MARTIN
SAUL M. FROOMKIN Q.C., J.P.
PETER D. MARTIN

KIERON F. UNWIN
DAVID W. P. COOKE
STEVEN J. MORRIS
WILHELM C. BOURNE
KAREN E. WILLIAMS-SMITH
TYRONE CHIN

CONSULTANT
PETER J.C. SMITH M.B.E., J.P.

Barristers and Attorneys
Notaries Public

REID HOUSE, 31 CHURCH STREET
HAMILTON HM 12
Mailing Address:
P.O. BOX HM 1564
HAMILTON HM FX, BERMUDA
TEL: (809) 292-1345
(809) 295-7006
FAX: (809) 292-2277
(809) 292-5962

OUR REF.:

YOUR REF.:

DWPC/ml

TO THE PARTIES LISTED ON THE ATTACHED SCHEDULE

31 March 1994

Dear Sirs

Re: Asset Finance (Bermuda) Ltd. (the "Company")

We have acted as special legal counsel in Bermuda to the Company in connection with certain transactions involving bi-level commuter coaches, locomotives and related equipment.

For the purposes of giving this opinion, we have examined the following documents:

A. Certified copies of the Memorandum of Association and the Bye-laws of the Company;

B. A Certificate of Compliance issued by the Registrar of Companies on 30 March 1994;

C. Minutes of Meetings of the Members and the Board of Directors of the Company held on 28 March 1994 (the "Minutes");

D. The six Conditional Sale Agreements (the "CSAs") dated as of 30 March 1994 between the Company and Toronto Area Transit Operating Authority ("GO Transit"), the CSA Supplements (as defined in each CSA), and the Sale Agreement

dated as of 30 March 1994 between GO Transit and the Company (together the "CSA Documents");

E. The six Sale Agreements dated as of 30 March 1994 between the Company and First Security Bank of Utah, National Association, not in its individual capacity but solely as Trustee ("First Security"), the six Leases dated as of 30 March 1994 between the Company and First Security, the six Assignments dated as of 30 March 1994 between the Company and First Security and the six Tax Indemnity Agreements dated 30 March 1994 between the Company and First Security (together with the CSA Documents herein referred to as the "Agreements").

For the purposes of giving this opinion, we have assumed:

i) the genuineness and authenticity of all signatures and all documents submitted as originals and the conformity to the originals of all copies (whether or not certified) and facsimiles;

ii) the authority, power and capacity of each of the parties to the Agreements other than the Company and the due execution and delivery of the Agreements by each of the parties thereto other than the Company;

iii) any of the Agreements not governed by the laws of Bermuda are valid, binding and enforceable under their respective governing laws;

iv) the accuracy and completeness of all factual representations made in the Agreements and the Minutes;

v) that there is no provision of the law of any jurisdiction, other than Bermuda, which would have any implication in relation to the opinions expressed herein.

We express no opinion as to whether any equitable remedy, such as specific performance or injunctive relief, would necessarily be available in respect of any of the obligations set out in the Agreements.

We express no opinion as to the validity or the enforceability of obligations to make any payment at an increased rate on overdue amounts or on the happening of any event of default. A Bermuda Court, whether or not it is applying the laws of a foreign jurisdiction, may not give effect to such provisions which provide for the payment of an amount which is in the nature of a penalty and not in the nature of liquidated damages.

We express no opinion as to the validity or the enforceability of any provisions stipulating that a particular court shall have exclusive jurisdiction over certain disputes.

We express no opinion as to the validity or the enforceability of any provision of the Agreements which purports to fetter the Company's statutory powers, such as the

powers to issue shares to alter the Company's Memorandum of Association or Bye-laws, to amalgamate or to place the Company in liquidation.

We express no opinion as to the validity or enforceability of obligations to any person who is not a party to the Agreements.

The obligations of the parties under the Agreements will be subject to the laws from time to time in effect relating to the bankruptcy, insolvency, liquidation, possessory liens, rights of set-off, re-organisation or any other laws or legal procedures, whether of a similar nature or otherwise, generally affecting the rights of creditors. Further, the enforcement of such obligations may be subject to statutory limitations of the time within which proceedings may be brought.

The enforcement in the Supreme Court of Bermuda of a judgment obtained in a foreign court may involve the conversion of the judgment debt into Bermuda dollars. However, the Bermuda Monetary Authority, Foreign Exchange Control, has indicated that the present policy is to give the consents necessary for a Bermuda dollar award made by the Supreme Court of Bermuda as aforesaid to be converted into external currency.

Our investigation into actions or proceedings against the Company has been limited to a search of the cause book in the Supreme Court of Bermuda conducted on 31 March 1994.

We have made no investigation of and express no opinion in relation to the laws of any country other than Bermuda. This opinion is to be governed by and construed in accordance with the laws of Bermuda. This opinion is limited to and given on the basis of the current law and practice in Bermuda.

This opinion is issued solely for your benefit in connection with the above-mentioned transaction and it is not to be relied upon by any other person, firm or entity or for any other purpose.

On the basis of, and subject to the foregoing, we are of the opinion that:

1. The Company is a company duly incorporated and validly existing under the laws of Bermuda and has full corporate power and authority to execute, deliver and perform its obligations under the Agreements.

2. Each of the Agreements has been duly authorised by all necessary corporate action of the Company and has been duly executed and delivered by the Company or one of its Officers authorised to execute and deliver it on the Company's behalf.

3. Neither the execution and delivery of the Agreements and the consummation of the transactions therein contemplated, nor the compliance with the terms of the Agreements will result in a breach of any of the terms, conditions or provisions of

the organisational documents of the Company or of any Bermuda law or regulation or, to our knowledge, of any order, writ, injunction or decree of any Bermuda Court or Governmental agency of Bermuda.

4. The Agreements constitute the legal, valid and binding obligations of the Company enforceable against the Company in accordance with the terms thereof, except as such terms may be limited by principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5. There are, to our knowledge, no pending or threatened actions or proceedings in Bermuda against the Company by or before any Court or administrative agency or arbitrator which could adversely affect the Company's ability to perform its obligations under the Agreements.

6. Save as set out in paragraph 7 below, there are no taxes, fees, withholdings, levies, duties or other charges now due or imposed or which under the present laws of Bermuda will in the future become imposed, which are or will be payable by the Company to the Government of Bermuda or any Governmental sub-division thereof in connection with the execution and delivery by the Company of the Agreements.

7. It is not necessary or advisable to ensure the enforceability in Bermuda of the Agreements that it, or a document relating thereto, be registered in any register kept by, or filed with a Governmental authority or regulatory body in Bermuda, save that it may be desirable to ensure the priority in Bermuda of any document that, under the law governing it, creates a charge over the assets of a Bermuda company, that such document be registered in the Register of Charges in accordance with Section 55 of the Companies Act 1981 as amended. On registration, any such document shall have priority over any unregistered charge and over any subsequently registered charge in respect of the assets which are the subject of such document. A registration fee of $385.00 is payable in respect of the registration.

Yours faithfully

MELLO, HOLLIS, JONES & MARTIN

Schedule of Addressees

I. Toronto Area Transit Operating Authority

II. The Equity Participant, as defined in each Lease (a "Lease") dated as of 30 March 1994 between the Company and First Security

III. The Loan Participants, as defined in Annex 1 to each Lease

Exhibit F
Conditional Sales Agreement No. 3
1988 Locomotives

Payment Date	Basic Rent
7/1/06	0.00
1/1/07	34,179.33
7/1/07	99,061.92
1/1/08	31,681.35
7/1/08	101,559.90
1/1/09	28,991.03
7/1/09	104,250.22
1/1/10	26,093.55
7/1/10	107,147.70
1/1/11	23,535.59
7/1/11	109,705.66
1/1/12	21,404.25
7/1/12	111,837.00
1/1/13	18,062.42
7/1/13	144,787.96
1/1/14	13,183.49
7/1/14	149,666.89
1/1/15	7,928.88
7/1/15	154,921.51
1/1/16	6,706.78
7/1/16	156,143.60
1/1/17	6,706.78
7/1/17	156,143.60
1/1/18	6,706.78
7/1/18	156,143.60

The above Specified Lease Basic Rent shall be adjusted (upward or downward) to reflect (1) the re-set of the interest rate and reoptimization of the amortization schedule on any loan so that all the obligations to the Indenture Trustee under the Specified Documents are capable of being met (including following the payment of the Specified Lease Deficiency Amount), (2) any taxable income realized upon reconveyance of the related Equipment by Purchaser to Vendor or Vendor's Designee resulting from capital improvements to any Unit of Equipment made by Purchaser after the Closing Date, (3) any deferral of depreciation deductions available in the event a Specified Lessee is a Tax-Exempt Entity, as defined in Section 20.3 of the CSA, (4) the cost of equity funds at such time to the Equity Participant, and (5) any costs of any Specified Party in connection with a Specified Lease.

EXHIBIT G

ASSET FINANCE (BERMUDA) LIMITED

CERTIFICATE

I, **DAVID W. P. COOKE**, Secretary of **ASSET FINANCE (BERMUDA) LIMITED**, a company formed under the laws of Bermuda, (hereinafter referred to as "the Company") **DO HEREBY CERTIFY** pursuant to Section 24 of The Companies Act 1981 that:

(a) Attached hereto as Exhibit A is a true, correct and complete copy of the Bye-Laws of the Company as at the date hereof.

(b) Attached hereto as Exhibit B is a true, correct and complete copy of the Memorandum of Association of the Company as at the date hereof.

WITNESS my hand and the Common Seal of the Company this 31st day of March, 1994.

David W. P. Cooke
Secretary

"A"

BYE-LAWS

of

ASSET FINANCE (BERMUDA) LIMITED

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INTERPRETATION

1. Interpretation

(1) In these Bye-laws the following words and expressions shall, where not inconsistent with the context, have the following meanings respectively:-

(a) "Act" means the Companies Act 1981 as amended from time to time;

(b) "Alternate Director" means an alternate Director appointed in accordance with these Bye-laws;

(c) "Auditor" includes any individual or partnership appointed as auditor of the Company;

(d) "the A Shareholder" means the holder of the Class "A" Shares;

(e) "the B Shareholder" means the holder of the Class "B" Shares;

(f) "Board" means the Board of Directors appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the Directors present at a meeting of Directors at which there is a quorum;

(g) "CSA" means each of the six conditional sale agreements to be dated as of 30 March 1994 between the Company as vendor and Toronto Area Transit Operating Authority as purchaser as the same may be amended or restated in accordance with their respective terms.

(h) "Company" means the company incorporated pursuant to the Act under the name of Asset Finance (Bermuda) Limited on 28 March 1994;

(i) "Director" means a director of the Company and shall include an Alternate Director;

(j) "Member" means the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons as the context so requires;

(k) "notice" means written notice as further defined in these Bye-laws unless otherwise specifically stated;

(l) "Officer" means any person appointed by the Board to hold an office in the Company;

(m) "Positive Cash Flow" shall mean for any period of determination, the positive difference between the income received by the Company under the CSA and the expenses or liabilities paid under the Lease;

(n) "Register of Directors and Officers" means the Register of Directors and Officers referred to in these Bye-laws;

(o) "Register of Members" means the Register of Members referred to in these Bye-laws;

(p) "Secretary" means the person appointed to perform any or all the duties of secretary of the Company and includes any deputy or assistant secretary; and

(q) "Leases" means each of the six lease agreements to be dated as of 30 March 1994 between the Company, as lessee, and First Security Bank of Utah National Association, as trustee, as the same may be amended or restated in accordance with their respective terms.

(2) In these Bye-laws, where not inconsistent with the context:-

(a) words denoting the plural number include the singular number and vice versa;

(b) words denoting the masculine gender include the feminine and neuter genders;

(c) words importing persons include companies, associations or bodies of persons whether corporate or not;

(d) the word:-

(i) "may" shall be construed as permissive;

(ii) "shall" shall be construed as imperative; and

(e) unless otherwise provided herein words or expressions defined in the Act shall bear the same meaning in these Bye-laws.

(3) Expressions referring to writing or written shall, unless the contrary intention appears, include facsimile, printing, lithography, photography and other modes of representing words in a visible form.

(4) Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.

BOARD OF DIRECTORS

2. Board of Directors

Subject to Bye-law 3, the business of the Company shall be managed and conducted by the Board.

3. Management of the Company

(1) In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by statute or by these Bye-laws, required to be exercised by the Company in general meeting subject, nevertheless, to these Bye-laws, the provisions of any statute and to such regulations as may be prescribed by the Company in general meeting.

(2) No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

(3) The Board may procure that the Company pays all expenses incurred in promoting and incorporating and organising the Company.

(4) Notwithstanding any other provision of these Bye-laws, the Company shall not take any of the actions referred to in sub-paragraph (5) of this Bye-law without the prior approval of the Members expressed in the form of a resolution passed by the affirmative vote of Members holding shares of the Company to which are attached not less than 95% of the votes entitled to be cast at a general

meeting of the Company (an "Extraordinary Resolution") and without the prior approval of the Independent Director given at a duly convened meeting of the Board.

(5) The actions referred to in sub-paragraph (4) are as follows:

(a) any change in the Memorandum of Association or Bye-laws of the Company;

(b) any change in the authorized or issued capital (including the issuance of new shares) of the Company;

(c) the entering into of any agreement or the making of any offer or the granting of any right capable of becoming an agreement to allot or issue any shares of the Company;

(d) any action which may lead to or result in a material change in the nature of the business of the Company as contemplated by its Memorandum of Association;

(e) the entering into of any agreement other than in accordance with the existing object of the Company;

(f) the borrowing of any money other than pursuant to the existing object of the Company;

(g) the taking of any steps to wind-up or terminate the corporate existence of the Company, or the making of a voluntary assignment or the commencement of a voluntary case, or the taking of any other proceedings under any bankruptcy, insolvency, reorganisation or creditor relief law of any jurisdiction;

(h) dealing with the property or assets of the Company in whole or in part other than as contemplated by the existing object of the Company;

(i) the taking, holding, subscribing for or agreeing to purchase or acquire shares in the capital of any other body corporate;

(j) the entering into of any arrangements for the sharing of profits, joint venture or reciprocal concession with any person;

(k) the entering into of an amalgamation, merger or consolidation with any other body corporate;

(l) the continuance of the Company in a jurisdiction other than Bermuda;

(m) the payment of dividends or the making of other distributions provided that the Company shall dividend all Positive Cash Flow, to the extent permitted under the Act.

4. Power to appoint managing director or chief executive officer

Subject to Bye-law 3 the Board may from time to time appoint one or more Directors to the office of managing director or chief executive officer of the Company who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company.

5. Power to appoint manager

Subject to Bye-law 3 the Board may appoint a person to act as manager of the Company's day to day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business as contemplated by the Company's object.

6. Power to authorise specific actions

Subject to Bye-law 3 the Board may from time to time and at any time authorise any company, firm, person or body of persons to act on behalf of the Company for any purposes contemplated by the Company's object and in connection therewith to execute any agreement, document or instrument on behalf of the Company.

7. Power to appoint attorney

Subject to Bye-law 3 and within the object of the Company the Board may from time to time and at any time by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection

and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney. Such attorney may, if so authorised under the seal of the Company, execute any deed or instrument under such attorney's personal seal with the same effect as the affixation of the seal of the Company.

8. Power to delegate to a committee

Subject to Bye-law 3 the Board may delegate any of its powers to a committee appointed by the Board and every such committee shall conform to such directions as the Board shall impose on them.

9. Power to appoint and dismiss employees

Subject to Bye-law 3 the Board may appoint, suspend or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties provided however that at all times the Company shall maintain Positive Cash Flow.

10. Power to borrow and charge property

Subject to Bye-law 3 the Board may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party provided however that at all times the Company shall maintain Positive Cash Flow.

11. Power to continue the Company

Subject to Bye-law 3 the Board may exercise all the powers of the Company to continue the Company in a named country or jurisdiction outside Bermuda pursuant to Section 132G of the Act.

12. Election of Directors

The Board shall consist of three Directors of which (i) one Director will be a person who is not (and has not been) a director, officer or employee, shareholder or stockholder of Newcourt Capital USA Inc., Toronto Area Transit Operating Authority, any party to any of the Agreements, as that term is defined in the

Memorandum of Association of the Company or any Affiliate (as that term is defined in the CSA) thereof (an "Independent Director") who shall be appointed by the B Shareholder and who shall hold office for such term as the B Shareholder may determine or, in the absence of such determination, until the next annual general meeting or until his successor is appointed or his office is otherwise vacated; and (ii) two Directors, neither of whom is or has been a director, officer or employee, shareholder or stockholder of Toronto Area Transit Operating Authority or any party to any of the Agreements, as that term is defined in the Memorandum of Association of the Company, who shall be appointed by the A Shareholder and who shall hold office for such term as the A Shareholder may determine or, in the absence of such determination, until the next annual general meeting or until their successors are appointed or their offices are otherwise vacated.

13. Defects in appointment of Directors

All acts done bona fide by any meeting of the Board or by a committee of the Board or by any person acting as a Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director, provided that this Bye-law 13 shall not apply where the requirements of Bye-laws 12 and 14 regarding the appointment of an Independent Director have not been met.

14. Alternate Directors

(1) Subject to the requirement that any alternate to an Independent Director is required to meet the same qualifications that the Independent Director is required to meet as set out in Bye-law 12, unless the Members otherwise resolve, any Director may appoint a person or persons to act as a Director in the alternative to himself or herself by notice in writing deposited with the Secretary. Any person so appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present.

(2) An Alternate Director shall be entitled to receive notice of all meetings of the Board and to attend and vote at any such meeting at which a Director for whom such Alternate Director was appointed in the alternative is not personally present and generally to perform at such meeting all the functions of such Director for whom such Alternate Director was appointed.

(3) An Alternate Director shall cease to be such if the Director for whom such Alternate Director was appointed ceases for any reason to be a Director but may be re-appointed by the Board as alternate to the person appointed to fill the vacancy in accordance with these Bye-laws.

15. Removal of Directors

(1) Subject to any provision to the contrary in these Bye-laws, the Members may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 days before the meeting and at such meeting such Director shall be entitled to be heard on the motion for such Director's removal.

(2) A vacancy on the Board created by the removal of a Director under the provisions of subparagraph (1) of this Bye-law may be filled in accordance with Bye-law 12.

16. Vacancies on the Board

(1) The Board may act notwithstanding any vacancy in its number, subject to compliance with Bye-law 12, but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting of the Company or (ii) preserving the assets of the Company.

(2) The office of Director shall be vacated if the Director:-

(a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;

(b) is or becomes bankrupt or makes any arrangement or composition with his creditors generally;

(c) is or becomes of unsound mind or dies;

(d) resigns his or her office by notice in writing to the Company.

17. Notice of meetings of the Board

(1) A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Board.

(2) Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to such Director verbally in person or by telephone or otherwise communicated or sent to such Director by post, cable, telex, telecopier, facsimile or other mode of representing words in a legible and non-transitory form at such Director's last known address or any other address given by such Director to the Company for this purpose.

18. Quorum at meetings of the Board

The quorum necessary for the transaction of business at a meeting of the Board shall be two Directors.

19. Meetings of the Board

(1) The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit provided that all Board meetings shall be held in Bermuda.

(2) Directors may participate in any meeting of the Board by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

(3) A resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail.

20. Unanimous written resolutions

A resolution in writing signed by all the Directors which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution. For the purposes of this Bye-law only, "Director" shall not include an Alternate Director.

21. Contracts and disclosure of Directors' interests

(1) Any Director, or any Director's firm or partner or any company with whom any Director is associated, may act in a professional capacity for the Company and such Director or such Director's firm or partner or such company shall be entitled to remuneration for professional services as if such Director were not a Director, provided that nothing herein contained shall authorise a Director or Director's firm or partner or such company to act as Auditor of the Company.

(2) A Director who is directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of such interest as required by the Act.

(3) Following a declaration being made pursuant to this Bye-law, and unless disqualified by the chairman of the relevant Board meeting, a Director may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum at such meeting.

22. Remuneration of Directors

The remuneration, (if any) of the Directors shall be determined by the Company in general meeting and shall be deemed to accrue from day to day. The Directors may also be paid all travel, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board, any committee appointed by the Board, general meetings of the Company, or in connection with the business of the Company or their duties as Directors generally provided however that the Company at all times shall maintain Positive Cash Flow.

OFFICERS

23. Officers of the Company

The Officers of the Company shall consist of a President and a Vice President or a Chairman and a Deputy Chairman, a Secretary and such additional Officers as the Board may from time to time determine all of whom shall be deemed to be Officers for the purposes of these Bye-laws.

24. Appointment of Officers

(1) The Board shall, as soon as possible after the statutory meeting of Members and after each annual general meeting appoint a President and Vice President or a Chairman and Deputy Chairman who shall be Directors.

(2) The Secretary and additional Officers, if any, shall be appointed by the Board from time to time.

25. Remuneration of Officers

The Officers shall receive such remuneration as the Board may from time to time determine; provided that the Company at all times shall maintain Positive Cash Flow.

26. Duties of Officers

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

27. Chairman of meetings

Unless otherwise agreed by a majority of those attending and entitled to attend and vote thereat, the Chairman, if there be one, and if not the President shall act as chairman at all meetings of the Members and of the Board at which such person is present. In their absence the Deputy Chairman or Vice President, if present, shall act as chairman and in the absence of all of them a chairman shall be appointed or elected by those present at the meeting and entitled to vote.

28. Register of Directors and Officers

(1) The Board shall cause to be kept in one or more books at its registered office a Register of Directors and Officers and shall enter therein the following particulars with respect to each Director and Officer, that is to say:

(a) first name and surname; and

(b) address.

(2) The Board shall, within the period of fourteen days from the occurrence of -

(a) any change among its Directors or Officers; or

(b) any change in the particulars contained in the Register of Directors and Officers,

cause to be entered on the Register of Directors and Officers the particulars of such change and the date on which such change occurred.

(3) The Register of Directors and Officers shall be open to inspection at the office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each business day be allowed for inspection.

MINUTES

29. Obligations of Board to keep minutes

The Board shall cause minutes to be duly entered in books provided for the purpose:-

(a) of all elections and appointments of Officers;

(b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and

(c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, meetings of managers and meetings of committees appointed by the Board.

INDEMNITY

30. Indemnification of Directors and Officers of the Company

The Directors, Secretary and other Officers for the time being of the Company and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company and every one of them, and their heirs, executors and administrators, shall be indemnified and secured harmless, but not from, and the Directors, Secretary and other Officers of the Company and the liquidator or trustees (if any), hereby expressly waive any right to indemnification out of, the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, PROVIDED THAT this indemnity shall not extend to any matter in respect of any wilful negligence, wilful default, fraud or dishonesty which may attach to any of said persons.

31. Waiver of claim by Member

Each Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company, PROVIDED THAT such waiver shall not extend to any matter in respect of any wilful negligence, wilful default, fraud or dishonesty which may attach to such Director or Officer.

MEETINGS

32. Notice of annual general meeting

The annual general meeting of the Company shall be held in each year other than the year of incorporation at such time and place as the President or the Chairman or any two Directors or any Director and the Secretary or the Board shall appoint. At least five days notice of such meeting shall be given to each Member stating the date, place and time at which the meeting is to be held, that the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

33. Notice of special general meeting

The President or the Chairman or any two Directors or any Director and the Secretary or the Board may convene a special general meeting of the Company whenever in their judgment such a meeting is necessary, upon not less than five days' notice which shall state the time, place and the general nature of the business to be considered at the meeting.

34. Accidental omission of notice of general meeting

The accidental omission to give notice of a general meeting to, or the non-receipt of notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

35. Meeting called on requisition of Members

Notwithstanding anything herein, the Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-twentieth of such of the paid-up share capital of the Company as at the date of the deposit carries the right to vote at general meetings of the Company, forthwith proceed to convene a special general meeting of the Company and the provisions of section 74 of the Act shall apply *mutatis mutandis*.

36. Short notice

A general meeting of the Company shall, notwithstanding that it is called by shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a

majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.

37. Postponement of meetings

The Board may postpone any general meeting called in accordance with the provisions of these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement is given to each Member before the time for such meeting. Fresh notice of the date, time and place for the postponed meeting shall be given to each Member in accordance with the provisions of these Bye-laws.

38. Quorum for general meeting

At any general meeting of the Company two persons present in person and representing in person or by proxy in excess of 50% of the total issued voting shares in the Company throughout the meeting shall form a quorum for the transaction of business, PROVIDED that in the case of any general meeting to consider any of the matters referred to in Bye-law 3(5), two persons present in person and representing in person or by proxy in excess of 95% of the total issued voting shares in the Company shall form a quorum for the transaction of business, FURTHER PROVIDED that if the Company shall at any time have only one Member, one Member present in person or by proxy shall form a quorum for the transaction of business at any general meeting of the Company held during such time. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time or place as the Board may determine.

39. Adjournment of meetings

The chairman of a general meeting may, with the consent of the Members at any general meeting at which a quorum is present (and shall if so directed), adjourn the meeting. Unless the meeting is adjourned to a specific date and time, fresh notice of the date, time and place for the resumption of the adjourned meeting shall be given to each Member in accordance with the provisions of these Bye-laws.

40. Attendance at meetings

Members may participate in any general meeting by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

41. Written resolutions

(1) Subject to subparagraph (6), anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members of the Company, may, without a meeting and without any previous notice being required, be done by resolution in writing signed by, or, in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members who at the date of the resolution would be entitled to attend the meeting and vote on the resolution.

(2) A resolution in writing may be signed by, or, in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, all the Members, or any class thereof, in as many counterparts as may be necessary.

(3) For the purposes of this Bye-law, the date of the resolution is the date when the resolution is signed by, or, in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member to sign and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.

(4) A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be: and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly.

(5) A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of sections 81 and 82 of the Act.

(6) This Bye-law shall not apply to:-

(a) a resolution passed pursuant to section 89(5) of the Act; or

(b) a resolution passed for the purpose of removing a Director before the expiration of his term of office under these Bye-laws.

42. Attendance of Directors

The Directors of the Company shall be entitled to receive notice of and to attend and be heard at any general meeting.

43. Voting at meetings

(1) Subject to the provisions of the Act and these Bye-laws and in particular, and without limitation, to Bye-law 3, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with the provisions of these Bye-laws and in the case of an equality of votes the resolution shall fail.

(2) No Member shall be entitled to vote at any general meeting unless such Member has paid all the calls on all shares held by such Member.

(3) At any general meeting a resolution put to the vote of the meeting shall, unless the meeting unanimously agrees to the contrary, be voted upon by way of a poll.

(4) Upon such a poll, every person present at such meeting shall have one vote for each share of which such person is the holder or for which such person holds a proxy and such vote shall be counted in the manner set out in sub-paragraph (5) of this Bye-Law or in the case of a general meeting at which one or more Members are present by telephone in such manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting.

(5) Upon each poll, each person present and entitled to vote shall be furnished with a ballot paper on which such person shall record his or her vote in such manner as shall be determined at the meeting having regard to the nature of

the question on which the vote is taken, and each ballot paper shall be signed or initialled or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. At the conclusion of the poll, the ballot papers shall be examined and counted by a committee of not less than two Members or proxy holders appointed by the chairman for the purpose and the result of the poll shall be declared by the chairman.

44. Seniority of joint holders voting

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

45. Instrument of proxy

The instrument appointing a proxy shall be in writing in the form, or as near thereto as circumstances admit, of Form "A" in the Schedule hereto, under the hand of the appointor or of the appointor's attorney duly authorised in writing, or if the appointor is a corporation, either under its seal, or under the hand of a duly authorised officer or attorney. The decision of the chairman of any general meeting as to the validity of any instrument of proxy shall be final.

46. Representation of corporations at meetings

A corporation which is a Member may, by written instrument, authorise such person as it thinks fit to act as its representative at any meeting of the Members and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member. Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he or she thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

SHARE CAPITAL AND SHARES

47. Rights of shares

The share capital of the Company shall be divided into:

(i) 11,280 Class "A" shares the holders of which shall, subject to the provisions of these Bye-laws:-

(a) be entitled to one vote per share;

(b) be entitled to any dividends which the Board may from time to time declare;

(c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to any surplus assets of the Company; and

(ii) 720 Class "B" shares the holders of which shall, subject to the provisions of these Bye-laws:-

(a) be entitled to one vote per share;

(b) not be entitled to any dividends or distributions whatsoever that may be declared or paid or by the Company.

48. Power to issue shares

(1) Subject to these Bye-laws and Bye-law 3 in particular the Board shall have power to issue any unissued shares of the Company on such terms and conditions as it may determine.

(2) The Board shall, in connection with the issue of any share, have the power to pay such commission and brokerage as may be permitted by law.

(3) The Company shall not give, whether directly or indirectly, whether by means of loan, guarantee, provision of security or otherwise, any financial assistance for the purpose of a purchase or subscription made or to be made by any person of or for any shares in the Company.

49. Variation of rights and alteration of share capital

(1) Subject to Bye-law 3 and to the provisions of Sections 42 and 43 of the Act any preference shares may be issued or converted into shares that, at a

determinable date or at the option of the Company, are liable to be redeemed on such terms and in such manner as the Company before the issue or conversion may by resolution of the Members determine.

(2) Subject to Bye-law 3 if at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class in accordance with Section 47 (7) of the Act. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking pari passu therewith.

(3) Subject to Bye-law 3, the Company may from time to time by resolution of the Members change the currency denomination of, increase, alter or reduce its share capital in accordance with the provisions of Sections 45 and 46 of the Act. Subject to Bye-law 3 where, on any alteration of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit including, without limiting the generality of the foregoing, the issue to Members, as appropriate, of fractions of shares and/or arranging for the sale or transfer of the fractions of shares of Members.

50. Registered holder of shares

(1) The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable or other claim to, or interest in, such share on the part of any other person.

(2) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or draft sent through the post directed to the Member at such Member's address in the Register of Members or, in the case of joint holders, to such address of the holder first named in the Register of Members, or to such person and to such address as the holder or joint holders

may in writing direct. If two or more persons are registered as joint holders of any shares any one can give an effectual receipt for any dividend paid in respect of such shares.

51. Death of a joint holder

Where two or more persons are registered as joint holders of a share or shares then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to the said share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

52. Share certificates

(1) Every Member shall be entitled to a certificate under the seal of the Company (or a facsimile thereof) specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, how much has been paid thereon. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means. Each share certificate shall have the following legend printed on the face thereof: "The shares represented by this certificate are subject to the restrictions on transfer set out in the Bye-laws of the Company".

(2) The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom such shares have been allotted.

(3) If any such certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.

53. Calls on shares

(1) The Board may from time to time make such calls as it thinks fit upon the Members in respect of any monies unpaid on the shares allotted to or held by such Members and, if a call is not paid on or before the day appointed for payment thereof, the Member may at the discretion of the Board be liable to pay the

Company interest on the amount of such call at such rate as the Board may determine, from the date when such call was payable up to the actual date of payment. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

(2) The Board may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment of such calls.

54. Forfeiture of shares

(1) If any Member fails to pay, on the day appointed for payment thereof, any call in respect of any share allotted to or held by such Member, the Board may, at any time thereafter during such time as the call remains unpaid, direct the Secretary to forward to such Member a notice in the form, or as near thereto as circumstances admit, of Form "B" in the Schedule hereto.

(2) If the requirements of such notice are not complied with, any such share may at any time thereafter before the payment of such call and the interest due in respect thereof be forfeited by a resolution of the Board to that effect, and such share shall thereupon become the property of the Company and may be disposed of as the Board shall determine.

(3) A Member whose share or shares have been forfeited as aforesaid shall, notwithstanding such forfeiture, be liable to pay to the Company all calls owing on such share or shares at the time of the forfeiture and all interest due thereon.

REGISTER OF MEMBERS

55. Contents of Register of Members

The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the following particulars:-

(a) the name and address of each Member, the number and, where appropriate, the class of shares held by such Member and the amount paid or agreed to be considered as paid on such shares;

(b) the date on which each person was entered in the Register of Members; and

(c) the date on which any person ceased to be a Member for one year after such person so ceased.

56. Inspection of Register of Members

The Register of Members shall be open to inspection at the registered office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given by advertisement in an appointed newspaper to that effect, be closed for any time or times not exceeding in the whole thirty days in each year.

57. Determination of record dates

Notwithstanding any other provision of these Bye-laws, the Board may fix any date as the record date for:-

(a) determining the Members entitled to receive any dividend; and

(b) determining the Members entitled to receive notice of and to vote at any general meeting of the Company.

TRANSFER OF SHARES

58. Instrument of transfer

(1) An instrument of transfer shall be in the form or as near thereto as circumstances admit of Form "C" in the Schedule hereto or in such other common form as the Board may accept. Such instrument of transfer shall be signed by or on behalf of the transferor and transferee provided that, in the case of a fully paid share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been transferred to the transferee in the Register of Members.

(2) The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

59. Restriction on transfer

(1) The Board may in its absolute discretion and without assigning any reason therefor refuse to register the transfer of a share. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained.

(2) If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.

60. Transfers by joint holders

The joint holders of any share or shares may transfer such share or shares to one or more of such joint holders, and the surviving holder or holders of any share or shares previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.

TRANSMISSION OF SHARES

61. Representative of deceased Member

In the case of the death of a Member, the survivor or survivors where the deceased Member was a joint holder, and the legal personal representatives of the deceased Member where the deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by such deceased Member with other persons. Subject to the provisions of Section 52 of the Act, for the purpose of this Bye-law, legal personal representative means the executor or administrator of a deceased Member or such

other person as the Board may in its absolute discretion decide as being properly authorised to deal with the shares of a deceased Member.

62. Registration on death or bankruptcy

Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in the form, or as near thereto as circumstances admit, of Form "D" in the Schedule hereto. On the presentation thereof to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member but the Board shall, in either case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.

DIVIDENDS AND OTHER DISTRIBUTIONS

63. Declaration of dividends by the Board

The Board may, subject to these Bye-laws and in accordance with Section 54 of the Act, declare a dividend to be paid to the Members, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets; provided however that the Company shall dividend all Positive Cash Flow to the extent permitted by the Act and the Agreements as that term is defined in the Memorandum of Association of the Company.

64. Other distributions

The Board may, subject to these Bye-laws, declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company; provided however that the Company shall maintain Positive Cash Flow.

65. Reserve fund

The Board may from time to time before declaring a dividend set aside, out of the surplus or profits of the Company, such sum as it thinks proper as a reserve fund to be used to meet contingencies or for equalising dividends or for any other special purpose.

66. Deduction of Amounts due to the Company

The Board may deduct from the dividends or distributions payable to any Member all monies due from such Member to the Company on account of calls or otherwise.

CAPITALISATION

67. Issue of bonus shares

(1) Subject to Bye-law 3, the Board may resolve to capitalise any part of the amount for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such sum in paying up unissued shares to be allotted as fully paid bonus shares pro rata to the Members.

(2) Subject to Bye-law 3, the Company may capitalise any sum standing to the credit of a reserve account or sums otherwise available for dividend or distribution by applying such amounts in paying up in full partly paid shares of those Members who would have been entitled to such sums if they were distributed by way of dividend or distribution.

ACCOUNTS AND FINANCIAL STATEMENTS

68. Records of account

The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:-

(a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;

(b) all sales and purchases of goods by the Company; and

(c) the assets and liabilities of the Company.

Such records of account shall be kept at the registered office of the Company or, subject to Section 83 (2) of the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

69. Financial year end

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 31st December in each year.

70. Financial statements

Subject to any rights to waive laying of accounts pursuant to Section 88 of the Act, financial statements as required by the Act shall be laid before the Members in general meeting.

AUDIT

71. Appointment of Auditor

Subject to Section 88 of the Act, at the annual general meeting or at a subsequent special general meeting in each year, an independent representative of the Members shall be appointed by them as Auditor of the accounts of the Company. No Director, Officer or employee of the Company shall, during his or her continuance in office, be eligible to act as an Auditor of the Company.

72. Remuneration of Auditor

The remuneration of the Auditor shall be fixed by the Company in general meeting or in such manner as the Members may determine.

73. Vacation of office of Auditor

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the Board shall, as soon as practicable, convene a special general meeting to fill the vacancy thereby created.

74. Access to books of the Company

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers of the Company for any information in their possession relating to the books or affairs of the Company.

75. Report of the Auditor

(1) Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to Section 88 of the Act, the accounts of the Company shall be audited at least once in every year.

(2) The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards and the report of the Auditor shall be submitted to the Members in general meeting.

(3) The generally accepted auditing standards referred to in subparagraph (2) of this Bye-law may be those of a country or jurisdiction other than Bermuda. If so, the financial statements and the report of the Auditor must disclose this fact and name such country or jurisdiction.

NOTICES

76. Notices to Members of the Company

A notice may be given by the Company to any Member either by delivering it to such Member in person or by sending it to such Member's address in the Register of Members or to such other address given for the purpose. For the purposes of this Bye-law, a notice may be sent by mail, courier service, cable, telex, telecopier, facsimile or other mode of representing words in a legible and non-transitory form.

77. Notices to Enforcer

Any notice required to be given to a Member shall, if such Member is a trustee of a trust in respect of which there is an enforcer, also be given to such enforcer.

78. Notices to joint Members

Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.

79. Service and delivery of notice

Any notice shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in proving such service, it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted, and the time when it was posted, delivered to the courier or to the cable company or transmitted by telex, facsimile or other method as the case may be.

SEAL OF THE COMPANY

80. The seal

The seal of the Company shall be in such form as the Board may from time to time determine. The Board may adopt one or more duplicate seals for use outside Bermuda.

81. Manner in which seal is to be affixed

The seal of the Company shall not be affixed to any instrument except attested by the signature of a Director and the Secretary or any two Directors, or some other person appointed by the Board for the purpose, provided that any Director, or Officer, may affix the seal of the Company attested by such Director or Officer's signature only to any authenticated copies of these Bye-laws, the incorporating documents of the Company, the minutes of any meetings or any other documents required to be authenticated by such Director or Officer.

WINDING-UP

82. Winding-up/distribution by liquidator

If the Company shall be wound up the liquidator may, subject to these Bye-laws and with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

ALTERATION OF BYE-LAWS

83. Alteration of Bye-laws

No Bye-law shall be rescinded, altered or amended and no new Bye-law shall be made until the same has been approved by a resolution of the Board and by the Members in accordance with Bye-law 3.

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SCHEDULE - FORM A (Bye-law 48)

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PROXY

I
of
the holder of share in the above-named Company hereby appoint
..... or failing him/her
..... or failing him/her
..... as my proxy to vote on my behalf at the General Meeting of the Company to be held on the day of , 19
, and at any adjournment thereof.

Dated this day of , 19

*GIVEN under the seal of the company

*Signed by the above-named

.....

.....
Witness

*Delete as applicable.

SCHEDULE - FORM B (Bye-law 57)

NOTICE OF LIABILITY TO FORFEITURE FOR NON PAYMENT OF CALL

You have failed to pay the call of [amount of call] made on the ..... day of ....., 19.. last, in respect of the [number] share(s) [numbers in figures] standing in your name in the Register of Members of the Company, on the ..... day of ....., 19.. last, the day appointed for payment of such call. You are hereby notified that unless you pay such call together with interest thereon at the rate of ..... per annum computed from the said ..... day of ....., 19... last, on or before the ..... day of ....., 19... next at the place of business of the said Company the share(s) will be liable to be forfeited.

Dated this ..... day of ....., 19...

[Signature of Secretary]
By order of the Board

SCHEDULE - FORM C (Bye-law 61)

TRANSFER OF A SHARE OR SHARES

FOR VALUE RECEIVED .....[amount] .....[transferor] hereby sell assign and transfer unto .....[transfereror]..... [address]

.....

[number of shares] shares of .....[name of Company]

Dated .....

.....
(Transferor)

In the presence of:

.....
(Witness)

.....
(Transferee)

In the presence of:

.....
(Witness)

SCHEDULE - FORM D (Bye-law 65)

TRANSFER BY A PERSON BECOMING ENTITLED ON DEATH OF A MEMBER

I/We having become entitled in consequence of the death of [name of the deceased Member] to [number] share(s) numbered [number in figures] standing in the register of members of [Company] in the name of the said [name of deceased Member] instead of being registered myself/ourselves elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee his or her executors administrators and assigns subject to the conditions on which the same were held at the time of the execution thereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

WITNESS our hands this ..... day of ....., 19...

Signed by the above-named)
[person or persons entitled])
in the presence of:)

Signed by the above-named)
[transferee])
in the presence of:)

FORM NO. 2

BERMUDA

THE COMPANIES ACT 1981

MEMORANDUM OF ASSOCIATION OF
COMPANY LIMITED BY SHARES
(Section 7(1) and (2))

MEMORANDUM OF ASSOCIATION

OF

ASSET FINANCE (BERMUDA) LIMITED
(hereinafter referred to as "the Company")

1. The liability of the members of the Company is limited to the amount (if any) for the time being unpaid on the shares respectively held by them.

2. We, the undersigned, namely,

NAME	ADDRESS	BERMUDIAN STATUS	NATIONALITY	NUMBER OF SHARES SUBSCRIBED
PETER DAVID MARTIN	'Crewkerne' 23 Tuckers Town Road St. Georges Parish	Yes	British	1
DAVID WILLIAM PETER COOKE	'Stanley House' 17 Paradise Lane Flatts Village Hamilton Parish FL 04	Yes	British	1
SHELLEY RENEE HARVEY	4 Tribe Road Number 6 Southampton Parish SN 04	Yes	British	1

do hereby respectively agree to take such number of shares as may be allotted to us respectively by the provisional directors of the Company, not exceeding the number of shares for which we have respectively subscribed, and to satisfy such calls as may be made by the directors, provisional directors or promoters of the Company in respect of the shares allotted to us respectively.

3. The Company is to be an exempted Company as defined by the Companies Act 1981.

4. The Company shall not have power to hold land situated in Bermuda.

5. The authorised share capital of the Company is $12,000.00 divided into shares of $1.00 each. The minimum subscribed share capital of the Company is $12,000.00.

6. The object for which the Company is formed and incorporated is -

   To purchase certain railroad equipment consisting of locomotives and bi-level commuter coaches (the "Equipment") pursuant to a Sale Agreement dated as of 30 March 1994 between the Company and Toronto Area Transit Operating Authority and to deal with the Equipment, and to enter into contracts and to engage in all activities related to or incidental thereto, all as and to the extent contemplated by six Conditional Sale Agreements dated as of 30 March 1994 between the Company and Toronto Area Transit Operating Authority, six Sale Agreements dated as of 30 March 1994 between the Company and First Security Bank of Utah, as trustee, six Leases dated as of 30 March 1994 between the Company and First Security Bank of Utah, as trustee, and other instruments and documents related thereto (together the "Agreements").

7. The Company shall have the powers set out below, and shall not have any of the powers set out in the First Schedule to the Companies Act 1981 unless such powers are expressly set out below:

   (a) to purchase, lease, take in exchange, hire or otherwise acquire any personal property and any rights or privileges that the Company considers necessary or convenient for the purposes of its business, but only in accordance with the Agreements.

   (b) to cause the Company to be registered and recognised in any foreign jurisdiction, and designate persons therein according to the laws of that foreign jurisdiction to represent the Company and to accept service for and on behalf of the Company of any process or suit.

   (c) to pay all costs and expenses of or incidental to the incorporation and organisation of the Company.

   (d) to invest and deal with the moneys of the Company not immediately required for the objects of the Company but only in accordance with the Agreements.

   (e) To borrow or raise money for a term not exceeding 365 days in any currency or currencies and to grant security with respect thereto in connection with the aforesaid Sale Agreement and to issue a promissory note or enter into an overdraft agreement with respect to such borrowing, but not otherwise.

(f) to issue and allot securities of the Company for cash, but only in accordance with the transactions contemplated by the Agreements.

(g) to do any of the things authorised by this memorandum of association either alone or in conjunction with others.

(h) To do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Company.

8. Interpretation

In this Memorandum unless there be something in the context inconsistent therewith

(i) the word "company" shall (except where referring to the Company) include any person or partnership or other body of persons, whether incorporated or not incorporated, and whether formed, incorporated, resident or domiciled in Bermuda or elsewhere;

(ii) "securities" shall include any fully, partly or nil paid or no par value share, stock, debenture or loan stock, deposit receipt, bill, note, warrant, coupon, right to subscribe or convert, or similar right or obligation;

(iii) the words "other" and "otherwise" shall not be construed *ejusdem generis* with any foregoing words where a wide construction is possible and the words "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not limit or prejudice the generality of any foregoing words.

Signed by each subscriber in the presence of at least one witness attesting the signature thereof -

....
PETER D. MARTIN

....
DAVID W.P. COOKE

....
SHELLEY R. HARVEY

(Subscribers) (Witnesses)

SUBSCRIBED this 10th day of December, 1993.

FORM NO. 1a

BERMUDA

THE COMPANIES ACT 1981

CONSENT

Pursuant to section 6 (1)

In exercise of the powers conferred upon him by section 6 (1) of the Companies Act 1981, the Minister of Finance hereby gives his consent to

ASSET FINANCE (BERMUDA) LIMITED

to be registered as an exempted Company under the Companies Act 1981, subject to the provisions of the said Act.

Dated this 25th day of March, 1994

Minister of Finance

RC2

E.L.

EXHIBIT H TO THE
CONDITIONAL SALE AGREEMENT

Pre-Approved Specified Lessees

Pre-Approved

GECC
Norfolk Southern
Union Pacific
Conrail

Pre-Approved with Acceptable Letter of Credit

CitiRail/Citicorp
Amtrak
Burlington Northern
EMD-General Motors
Santa Fe
GATC

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Elizabeth A. Doherty, a Notary Public in the State of New York, Qualified in Westchester County, Certificate filed in New York County, do hereby depose and say that I have compared the attached copy of Conditional Sale Agreement No. 3 with the original of such document and have found the attached copy to be complete and identical in all respects to the original document.

Date: May 17, 1994

Notary Public

ELIZABETH A. DOHERTY
Notary Public, State of New York
No. 5001316
Qualified in Westchester County
Certificate filed in New York County
Commission Expires September 5, 1994

[Notarial Seal]