

RESTATED TRANSACTION AGREEMENT

BRITISH COLUMBIA RAILWAY COMPANY

AND

BCR PROPERTIES LTD.

AND

CANADIAN NATIONAL RAILWAY COMPANY

November 25, 2003

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RESTATED TRANSACTION AGREEMENT

THIS AGREEMENT made the 25th day of November, 2003, and amended on July 13, 2004 and July 14, 2004,

AMONG:

BRITISH COLUMBIA RAILWAY COMPANY, a company continued under the *British Columbia Railway Act* having an office at 221 West Esplanade, North Vancouver, British Columbia, V7M 3J1,

(“**BCRC**”)

AND:

BCR PROPERTIES LTD., a company incorporated under the laws of British Columbia having an office at 221 West Esplanade, North Vancouver, British Columbia, V7M 3J1,

(“**BCR Properties**”)

(BCRC and BCR Properties are herein collectively, the “**Vendors**”)

AND:

CANADIAN NATIONAL RAILWAY COMPANY, a corporation continued under the laws of Canada and having its registered office at 935 de la Gauchetière Street West, 16th floor, Montreal, Quebec, H3B 2M9,

(the “**Purchaser**”)

AND:

CN ACQUISITION LIMITED, a corporation incorporated under the laws of Canada and having its registered office at 935 de la Gauchetière Street West, 16th floor, Montreal, Quebec, H3B 2M9

(“**CNAL**”)

WITNESSES THAT WHEREAS:

- A. BCRC owns 25% of the issued and outstanding shares in the capital of BC Rail Ltd. (“**Rail**”) and 5% of the issued and outstanding partnership units in BC Rail Partnership (“**BCR Partnership**”);
- B. BCR Properties owns 75% of the issued and outstanding shares in the capital of Rail and 5% of the issued and outstanding partnership units in BCR Partnership;
- C. Rail owns 90% of the issued and outstanding partnership units in BCR Partnership;
- D. The Purchaser wishes to purchase from the Vendors and the Vendors wish to sell to the Purchaser all of the Vendors’ share interests in Rail (the “**Rail Shares**”), and all of the Vendors’ partnership

interests in BCR Partnership (the “**BCR Partnership Units**”), on the terms and conditions of this Agreement;

E.

- (i) **Railbed Transfer:** Rail and BCR Partnership will transfer, and cause the registration of such transfers in the land title office or other appropriate registry offices, of the legal and beneficial ownership of the Railbed Real Property to BCRC;
- (ii) **Assigned Agreements:** Rail and BCR Partnership will assign all their rights, title and interest in and to the Assigned Agreements unto BCRC;
- (iii) **Revitalization Agreement:** BCRC will lease, sublease, assign, license or sub-license, as the case may be, to BCR Partnership the Railbed Real Property, pursuant to the Revitalization Agreement, the whole as more fully set out under Article 2 of the Revitalization Agreement; BCRC will further assign unto Rail and BCR Partnership the Assigned Agreements pursuant to the Revitalization Agreement, the whole as more fully set out under Article 4 of the Revitalization Agreement;
- (iv) **Non-Railbed Transfers:** Rail and BCR Partnership will transfer legal and beneficial ownership of all non-Railbed Real Property to BCRC and/or BCR Properties; to the extent such transfer cannot be completed prior to Closing, same will be completed thereafter, it being understood that, subject to the terms and conditions set out under the Revitalization Agreement, from and after the Effective Time, BCRC shall assume all risks and expenses related to the non-Railbed Real Property;
- (v) **Headquarter Lease:** BCR Properties will lease to Rail or BCR Partnership the Headquarter Premises pursuant to a lease substantially in the form attached hereto as Schedule Y;
- (vi) **Port Subdivision Operations:** Rail and BCR Partnership will transfer their respective interests, rights, obligations and liabilities in any and all Port Subdivision real property and operations to a BCRC Affiliate;
- (vii) **Transfer of Certain Employees:** Rail will transfer certain employees engaged in the operation of the Port Subdivision and engaged in activities related to non-Railbed Real Property to an Affiliate of BCRC and BCR Properties, as applicable;
- (viii) **Settlement of Benefits of Excluded Employees:** Rail will transfer or otherwise settle all liabilities and obligations to any Excluded Employees under the Benefit Plans, in accordance with Section 7.6;
- (ix) **Finav Disposition:** BCRC and Rail will transfer ownership of any and all Finlay Navigation Limited Partnership operations to either an arm’s length purchaser or, Rail will transfer its interest in such partnership to BCRC or to an Affiliate of BCRC, which transferee shall assume all obligations and liabilities associated with such operations;

- (x) [REDACTED]
- (xi) ***Vancouver Wharves***: Rail will transfer its 75% interest (together with all obligations and liabilities associated therewith) in Vancouver Wharves Limited Partnership to either an arm's length purchaser or to BCRC or a BCRC Affiliate;
- (xii) ***Transfer of Assets Relating to Passenger Service***: Any and all assets, obligations and liabilities relating to the former passenger rail service operated by Rail and BCR Partnership will be transferred out of Rail and BCR Partnership, as the case may be;
- (xiii) ***Elimination of Subsidiaries***: The entities set out in Schedule F, all of which are wholly-owned subsidiaries of Rail, will be transferred to BCRC or an Affiliate of BCRC; and
- (xiv) ***Transfer of Excluded Trademarks***: Rail and BCR Partnership, as the case may be, will transfer all of their respective right, title and interest, including copyright, in, to and associated with the Excluded Trademarks and all goodwill associated with such Excluded Trademarks;
- F. A transaction agreement (the "**Transaction Agreement**") was entered into on November 25, 2003 by BCRC, BCR Properties and the Purchaser concerning the purchase by the Purchaser of the Rail Shares and the BCR Partnership Units;
- G. Pursuant to an Assignment Agreement made the 13th day of July, 2004, the Purchaser partially assigned its right, benefit and interest as purchaser in the Transaction Agreement to CNAL;
- H. The Transaction Agreement was amended (i) on July 13, 2004 by way of a transaction amending agreement between BCRC, BCR Properties, and the Purchaser (the "**First Transaction Amending Agreement**") and (ii) on July 14, 2004 by way of a transaction amending agreement between BCRC, BCR Properties, the Purchaser and CNAL (the "**Second Transaction Amending Agreement**"); and
- I. Pursuant to the Second Transaction Amending Agreement, the parties agreed to create a consolidated version of the Transaction Agreement, the First Transaction Amending Agreement and the Second Transaction Amending Agreement for purposes of public disclosure of these agreements, as well as for administrative convenience.

NOW THEREFORE in consideration of the premises and the mutual covenants set out herein, the parties represent, covenant and agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement:

- (a) "**Aboriginal Claims**" means any and all Claims to Aboriginal rights or title, or treaty rights, and any and all liabilities, costs or damages arising or incurred as a result of, or in relation to:

- (i) Claims of Aboriginal rights or title, or treaty rights, made by or on behalf of any Aboriginal Group whether or not they are:
 - (A) made before or after the Closing;
 - (B) proven in a court of law; or
 - (C) made in legal proceedings; or
- (ii) any duty or obligation to consult or accommodate any Aboriginal Group;
- (b) “**Aboriginal Group**” means any Indian Band, First Nation or Aboriginal Group, house, tribal council or other Aboriginal organization;
- (c) “**Accountants**” means KPMG LLP;
- (d) “**Accounts Receivable**” means accounts receivable, bills receivable, trade accounts, book debts and insurance claims recorded as receivable in the Books and Records (other than any such insurance claims due from an Affiliate and included in Intercompany Amounts) and any other amount due to Rail or BCR Partnership including any refunds and rebates, and the benefit of all security (including cash deposits), guarantees and other collateral held by Rail and BCR Partnership relating to the Business to the extent that they accrued prior to the Closing;
- (e) “**Affiliate**” has the meaning attributed to it under the *Canada Business Corporations Act* (Canada) as it reads as of the date hereof. Notwithstanding the foregoing, for the purposes of this Agreement, “Affiliate” with respect to the Vendors shall be deemed not to include the Province or any corporation or other legal entity owned, directly or indirectly, by the Province, other than through the Vendors.
- (f) “**Agreement**” means the Transaction Agreement, as amended by way of the First Transaction Amending Agreement and Second Transaction Amending Agreement, including the recitals and the Schedules hereto, as the same may be amended or supplemented from time to time;
- (g) “**arm’s length**” has the meaning attributed to it for the purposes of the Tax Act;
- (h) “**assessments**” means notices of assessment, provisional assessment, reassessment, supplementary assessment, penalty assessment or increased assessment;
- (i) “**Assets**” means all of the assets and rights which are required to conduct the Business from and after the Effective Time in all material respects in the manner in which it has heretofore been conducted including all rights, title and interest in and to the assets disclosed in the Proforma Statements and including the Buildings, Material Contracts, Goodwill, Railbed Assets, and Railbed Real Property, Real Property Interests;
- (j) “**Assigned Agreements**” has the meaning ascribed thereto in the Revitalization Agreement;
- (k) “**BCIMC**” means the British Columbia Investment Management Corporation;

- (l) **“BCR Captive”** means BCR Captive Insurance Co. Ltd.;
- (m) **“BCRC”** has the meaning set out on page 1 of this Agreement;
- (n) **“BCR Partnership”** has the meaning set out in Recital A of this Agreement;

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]


[REDACTED]

- (q) **“BCR Partnership Units”** has the meaning set out in Recital D of this Agreement;
- (r) **“BCR Properties”** has the meaning set out on page 1 of this Agreement;
- (s) **“Benefit Plans”** means all plans, agreements, programs, policies, practices or undertakings (whether oral or written, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered) which Rail or BCR Partnership is a party to or bound by or in which the Employees or former employees of the Business participate, or under which Rail or BCR Partnership has or will have any liability or contingent liability, relating to pension, superannuation or retirement savings benefits (including any defined benefit pension plan, defined contribution pension plan, registered retirement savings plan, retirement compensation arrangement, and supplemental pension plan) or any bonus, deferred compensation, incentive compensation, share based compensation (including any share purchase, share appreciation, share option or phantom stock plans) severance or termination pay, hospitalization or other medical benefits, life or other insurance, dental, disability, salary continuation, vacation, supplemental unemployment benefits, profit-sharing, mortgage assistance, employee loan, employee assistance, and each other employee benefit plan or agreement providing for compensation or benefits additional to base pay or salary, in respect of any of the Employees or former employees

of the Business (or their spouses, dependants, survivors or beneficiaries), whether or not subject to any Law, except that the term “**Benefit Plans**” will not include any statutory plans with which Rail or BCR Partnership is required to comply in respect of Employees, including the Canada Pension Plan or plans administered pursuant to applicable provincial health tax, workers’ compensation, workplace safety and insurance and employment insurance legislation;

- (t) “**Books and Records**” means all books, records, books of account, sales and purchase records, employee records, lists of suppliers and customers, credit and pricing information, files, ledgers, correspondence, lists, manuals, reports, texts, notes, engineering, environmental or feasibility studies, memoranda, invoices, receipts, accounts, financial statements, financial working papers, computer discs, tapes or other means of electronic storage, and all other records or documents of any nature or kind whatsoever of or relating to the Business prior to Closing;
- (u) “**Buildings**” means all buildings, structures, improvements and fixtures situated on the Railbed Real Property (other than: (i) the Railbed Assets and (ii) trade fixtures and leasehold improvements owned by tenants, if any, or removable under any leases comprised in the Permitted Encumbrances and (iii) fixtures and improvements provided pursuant to any Material Contract or non-Material Contract and not owned by Rail or BCR Partnership [REDACTED]);
- (v) “**Business**” means the industrial freight railway business and operations carried on by Rail and BCR Partnership prior to the Closing, including the operation and maintenance thereof, and including branches, extensions, sidings, railway bridges, tunnels, stations, depots, rail trackage, rolling stock, equipment, stores, communications or signalling systems and related facilities and equipment used for railway purposes, rail yards, intermodal and other facilities for the loading and unloading, interchange and storage of freight and other works connected with and ancillary to the railway, [REDACTED];
- (w) “**Business Day**” means a day that is not a Saturday, Sunday or a statutory holiday in British Columbia or Quebec;
- (x) “**Charter Documents**” means articles, articles of incorporation, memorandum, memorandum of association, articles of association, partnership agreements, by-laws or any similar constating document of an entity;
- (y) “**Claim**” means any notice (including a notice of defect or non-compliance), assessment, reassessment, order, summons, citation, directive, no action letter, ticket, charge, fine, penalty, liability, expense, cost, damage or loss investigation, letter or other written communication, claim, remediation cost recovery action, demand, suit, action, complaint, grievance, prosecution, petition or proceeding from any Person or Governmental Authority;
- (z) “**Closing**” means, collectively the completion of the purchase and sale of the Purchased Interests on the Closing Date at the Effective Time.
- (aa) “**Closing Balance Sheet**” means a combined balance sheet of Rail and BCR Partnership as at 11:59 pm (PDT) on the Closing Date prepared in accordance with GAAP;

- (bb) “**Closing Consents**” means all notifications, approvals and consents required to be obtained by the Vendors, Rail and BCR Partnership in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement, except for such consents which, if not obtained, would not individually or in the aggregate be reasonably likely to have a Materially Adverse effect, or prevent, materially delay or materially impair the transactions contemplated by this Agreement or the Closing Documents; Closing Consents shall include, but not be limited to, those consents set forth in Schedule BB;
- (cc) “**Closing Date**” means July 14, 2004 or such other date as the Parties agree;
- (dd) “**Closing Debt**” means collectively the debt owed by Rail to BCRC, the debt owed by Partnership to BCRC and the debt owed by BCR Partnership to BCR Properties, [REDACTED]
- (ee) “**Closing Document**” means any document delivered at or subsequent to the Closing as provided in or pursuant to, this Agreement;
- (ff) “**Collective Agreements**” means the collective agreements described in Schedule Q;
- (gg) “**Competition Act Approval**” means:
- (i) the issuance of an advance ruling certificate by the Commissioner under Subsection 102(1) of the *Competition Act* to the effect that the Commissioner is satisfied that the Commissioner would not have sufficient grounds upon which to apply to the Competition Tribunal for an order under section 92 of the *Competition Act* with respect to the transactions contemplated by this Agreement or otherwise in connection with the transfer of the Business to the Purchaser; or
- (ii) the applicable waiting period under section 123 of the *Competition Act* will have expired or the Commissioner will, in accordance with paragraph 113(c) of the *Competition Act*, have waived the obligation to provide a pre-merger notification in accordance with Part IX of the *Competition Act* because substantially similar information was previously supplied in relation to a request for an advance ruling certificate pursuant to subsection 102(1) of the *Competition Act*, and the Purchaser will have received a “no-action” letter from the Commissioner, which letter confirms that the Commissioner is of the view that there are not sufficient grounds to initiate proceedings before the Competition Tribunal under the merger provisions of the *Competition Act* in respect of the transactions contemplated herein or otherwise in connection with the transfer of the Business to the Purchaser; or
- (iii) where, in lieu of the requirements in (i) and (ii) above, at the Purchaser’s election, the waiting period under section 123 of the *Competition Act* will have expired or the Commissioner will, in accordance with paragraph 113(c) of the *Competition Act*, have waived the obligation to provide a pre-merger notification in accordance with Part IX of the *Competition Act* because substantially similar information was previously supplied in relation to a request for an advance ruling certificate pursuant to subsection 102(1) of the *Competition Act*, and neither of the Vendors nor the Purchaser will have been advised in writing by the Commissioner that:

- (A) the Commissioner has determined to make an application for an order under section 92 or 100 of the *Competition Act* in respect of the transactions contemplated by this Agreement or otherwise in connection with the transfer of the Business to the Purchaser, or to commence an inquiry in respect of such transactions or transfer under section 10 of the *Competition Act*; or
 - (B) an application under section 9 of the *Competition Act* has been made to the Commissioner in respect of the transactions contemplated by this Agreement or otherwise in connection with the transfer of the Business to the Purchaser;
- (hh) **“Consent Order Registration”** means that:
- (i) the Purchaser has entered into a consent agreement with the Commissioner under subsection 105(1) of the *Competition Act*; and
 - (ii) the agreement has been filed with and registered by the Competition Tribunal under subsection 105(3) of the *Competition Act*;
- (ii) **“Contaminants”** means any radioactive materials, asbestos, asbestos-containing materials, urea formaldehyde, vermiculite, hydrocarbons, polychlorinated biphenyls (“PCBs”), PCB-containing equipment or materials, lead, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste, hazardous waste, waste, pesticides, defoliants or any other solid, liquid, gas, vapour, odour, radiation or any combination of any of them the storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or Release into the environment of which is prohibited, controlled, regulated or defined under Environmental Laws;
- (jj) **“Contamination”** means the presence of Contaminants in concentrations above applicable numeric standards under Environmental Laws;
- (kk) **“Contract”** means any and all contracts, licenses, leases, agreements, commitments, entitlements or engagements to which Rail or BCR Partnership is a party or by which either of them are bound or under which either of them has, or will have, any liability or contingent liability, and includes quotations, orders or tenders for any contract which remain open for acceptance and warranties or guarantees (express or implied);
- (ll) **“Current Assets”** means the aggregate amount of those assets included in the asset categories described in the Proforma Statements as current assets, as determined in accordance with GAAP, in the Closing Balance Sheet and including, without duplication or limiting the generality of the foregoing, and for greater certainty:
- (i) the amount of any GST credit or refunds available or receivable, without duplication, in respect of GST arising in connection with the Revitalization Agreement;
 - (ii) 

- (iii) the actual amount receivable by Rail from BCRC in respect of certain construction services performed by Rail on behalf of BCRC, currently estimated to be approximately \$768,625;
- (iv) the amount of any Intercompany Amounts that are receivable by Rail or BCR Partnership (whether such amounts are current or long term);

[REDACTED]

[REDACTED]

but excluding any prepaid insurance amounts in respect of BCR Captive, all as determined as at 11:59 pm (PDT) on the Closing Date.

[REDACTED]

[REDACTED]

[REDACTED]

(mm) **“Current Liabilities”** means the aggregate amount of those liabilities included in the liability categories described in the Proforma Statements as current liabilities, as determined in accordance with GAAP, in the Closing Balance Sheet, and including, without duplication or limiting the generality of the foregoing and for greater certainty:

- (i) the accrued amount payable by BCR Partnership to BCRC in respect of grants in lieu payable in 2004 related to the period prior to the Closing Date;
- (ii) the amount of any Intercompany Amounts payable by Rail or BCR Partnership

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

but excluding the current portion of the restructuring accrual, all as determined at 11:59 pm (PDT) on the Closing Date.

For greater certainty, the Current Liabilities will not include the amount payable of approximately \$200,000 with respect to a reimbursement of grants in lieu in respect of the period following the Effective Time.

- (nn) **“Discharged Encumbrances”** means the Encumbrances listed in Schedule G hereto;
- (oo) **“Effective Time”** means 3:00 p.m. (PDT) on the Closing Date;
- (pp) **“Employees”** means all of the employees of Rail and BCR Partnership listed in Schedule O of this Agreement and the independent contractors of Rail and BCR Partnership listed in Part C of Schedule P of this Agreement each engaged in connection with the Business, provided that when Employee refers to an independent contractor, employment means the engagement of the independent contractor and not the employment of such person and, for greater certainty, Employees does not include Excluded Employees;
- (qq) **“Encumbrance”** means, with respect to any asset, any encumbrance, mortgage, pledge, lien, legal notation, claim, charge, security interest of any nature, easement, title retention agreement, adverse claim, exception, restriction, reservation, right of occupation, any matter capable of registration against title, option, pre-emptive right or privilege or any contract to create any of the foregoing;
- (rr) **“Environmental Laws”** means any and all statutes, laws (including common law), regulations, orders, bylaws, standards, policies, directions, guidelines, protocols, (provided that such standards, policies, directions, guidelines and protocols have the force of law), and other lawful requirements of any Governmental Authority having jurisdiction over the Assets or the Business relating to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life or transportation of dangerous goods and which are applicable to the Business and the Assets, including the principles of common law and equity;
- (ss) **“Environmental Permits”** means all permits, licences, approvals, consents and authorizations required under Environmental Laws;
- (tt) **“Environmental Reports”** has the meaning set out in subparagraph 3.1.2(t)(vii) of this Agreement;

- (uu) “**Excluded Employees**” means those employees and former employees of Rail and BCR Partnership who are or previously were: (i) engaged in the operation of the Port Subdivision, (ii) engaged in activities related to non-Railbed Real Property or (iii) not engaged in connection with the Business;
- (vv) “**Excluded Trademarks**” means the trademarks listed in Schedule H;
- (vv.1) “**First Transaction Amending Agreement**” has the meaning set out in Recital H;
- (ww) “**Financial Statements**” means the audited financial statements of Rail and BCR Partnership for the years ending December 31, 2002 and 2001 in the case of Rail and for the years ending December 31, 2002, 2001 and 2000 in the case of the Partnership and the unaudited financial statements of Rail and BCR Partnership for the 9 month period ending September 30, 2003;
- (xx) “**FOIPPA**” means the British Columbia *Freedom of Information and Protection of Privacy Act*;
- (yy) “**GAAP**” means generally accepted accounting principles in Canada, consistently applied;
- (zz) “**Goodwill**” means all of the goodwill, corporate names, trademarks and trade names associated with the whole, or any part of the Business, including the exclusive right to use current corporate names, trademarks and currently used names, except the Excluded Trademarks;
- (aaa) “**Governmental Authority**” means a federal, provincial, regional, municipal or local government or subdivision thereof including an entity or person exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government or subdivision;
- (bbb) “**GST**” means the goods and services tax imposed under Part IX of the *Excise Tax Act*;
- (ccc) “**Headquarter Premises**” means the premises located at Suite 600, 221 West Esplanade, North Vancouver, British Columbia;
- (ddd) “**Historic Properties**” means any real property previously owned or occupied by Rail or BCR Partnership, which is no longer owned or occupied by Rail or BCR Partnership at the Closing Date;
- (eee) “**including**” means “**including without limitation**” and the term “including” will not be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;
- (fff) “**Indemnified Parties**” means the Purchaser, Rail and BCR Partnership and their respective shareholders, directors, officers, employees, agents, representatives, successors and assigns and, in the case of a claim for indemnification in connection with, arising out of or relating to any incorrectness in or any breach by the Vendors of any of the representations and warranties set out in Section 3.1.2(u)(v), (viii), (ix), (ix.1), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) or (xviii) and in Section 4.16 includes any current or future Affiliate of the Purchaser, and such Affiliate’s shareholders, directors, officers,

employees, agents, representatives, successors and assigns, if such Affiliate utilized a tax attribute related to such representation, and “**Indemnified Party**” means any one of the Indemnified Parties;

- (ggg) “**Indemnitee**” means either an Indemnified Party or a Vendor Indemnified Party, as the case may be, as set out in subsection 9.4 of this Agreement;
- (hhh) “**Indemnitor**” means either the Purchaser or BCRC, as the case may be, as set out in subsection 9.4 of this Agreement;
- (iii) “**Independent Accountants**” means Ernst & Young LLP;
- (jjj) “**Intercompany Amounts**” means any and all indebtedness and payables of Rail or BCR Partnership owing to BCRC or to an Affiliate of BCRC or any term indebtedness owing to the Province and all borrowed indebtedness owing to the Province and any and all receivables owing from BCRC, the Province or an Affiliate of BCRC, to Rail or BCR Partnership;
- (kkk) “**Interim Period**” has the meaning set out in subsection 4.6 of this Agreement;
- (lll) “**Inventory**” means all items of inventory, including raw materials, work-in-progress, stock-in-trade, spare parts, finished goods, and supplies of Rail and BCR Partnership, other than rolling stock, relating to the Business;
- (mmm) “**IP**” has the meaning set out in paragraph 3.1.2(j)(i) of this Agreement;
- (nnn) “**Landfill or Disposal Areas**” means an area where waste (as defined under Environmental Laws) is located or placed (excluding scrap steel and railway ties and timbers in whole or chipped format) where the total cost to remove such waste would exceed \$5,000;
- (ooo) “**Law**” means any and all statutes, laws (including common law), regulations, ordinances, rules, codes, orders, bylaws, policies, directions, standards, guidelines and protocols, (where such standards, ordinances, rules, codes, policies, directions, guidelines and protocols have the force of law), and other lawful requirements of any Governmental Authority now or hereafter in effect;
- (ppp) “**Letter Agreement**” has the meaning set out in Section 2.1 of this Agreement;
- (qqq) “**Liabilities**” means obligations, liabilities, settlement payments, awards, judgments, fines, penalties, damages, losses, Taxes arising as a result of an assessment or reassessment, costs (including remediation costs) and expenses (including reasonable fees and disbursements of legal counsel, consultants, expert witnesses and other professionals including any other costs incurred in investigating or pursuing any such claim or any proceeding relating to any claim), deficiencies and other charges;
- (rrr) “**Licences**” means all permits, licences, consents, authorizations, approvals, privileges, waivers, exemptions, orders, certificates, rulings, agreements (with Governmental Authorities) and other concessions;

- (sss) **“Material Contracts”** means any Contract in respect of the Business: (i) involving remaining payments to or by Rail or BCR Partnership in excess of \$3,000,000, in any one year; (ii) which is outside the ordinary course of the Business, (iii) which restricts in any way the Business or activities of Rail or BCR Partnership, or (iv) which, if terminated without the consent of Rail or BCR Partnership, would have a Materially Adverse effect on Rail, BCR Partnership, the Assets or the Business;
- (ttt) **“Materially Adverse”** or similar wording used in this Agreement means, with respect to a Person, a fact, circumstance, event or term that individually or together with other facts, circumstances, events or terms, does or could reasonably be expected to materially and adversely affect (i) the financial condition, business, assets, results or prospects of operation of such Person, on a consolidated basis, (ii) the value of Rail, BCR Partnership or the Business, or (iii) the ability of such Person to perform any material obligations under this Agreement, other than, in the case of clauses (i) and (ii), any such effect arising out of or resulting from (x) changes in economic, regulatory or political developments, applicable to the railway industry generally that do not have a disproportionate effect on such Person, (y) changes in financial markets generally, or (z) the public announcement of the subject matter of this Agreement and the Revitalization Agreement. It is understood and agreed that the Vendors shall bear the burden of establishing that any given Materially Adverse fact, circumstance, event or term is attributable to any of the occurrences listed under subsections (x) through (z) above;

- (www) **“Other Consents”** means all notifications, approvals and consents required to be obtained by the Vendors, Rail and BCR Partnership in connection with the execution, delivery and performance of this Agreement or any other documents and agreements to be delivered under this Agreement, other than the Closing Consents; Other Consents shall include, but not be limited to, those set out in Schedule DD hereto;
- (xxx) **“Party”** means each of BCRC, BCR Properties and the Purchaser and **“Parties”** means all of them;
- (xxx.1) **“Payment Amount”** has the meaning set out in subsection 9.4 of this Agreement;
- (yyy) **“PEC Sublease”** means the sublease made as of the 11th day of April 1974 between Canada Lands Company Limited and Vancouver Wharves Ltd. as amended by an addendum dated May 7, 1987 and a letter agreement dated July 5, 2000;
- (zzz) **“PEC Sublease Tracks”** means that portion of rail tracks 1-5 in the North Vancouver railyard located within the boundaries of the PEC Sublease;
- (aaaa) **“PEC Sublease Track Relocation Capital Cost Estimate”** means \$666,000;

- (bbbb) **“PEC Sublease Track Relocation Plan”** means the plan to relocate the PEC Sublease Tracks [REDACTED]
- (cccc) **“Pension Plan”** means:
- (i) Rail’s registered defined benefit plan applicable to certain participating Employees (the **“Registered Pension Plan”**); and
 - (ii) Rail’s supplemental non-registered plan applicable to certain participating Employees (the **“Supplemental Pension Plan”**);
- (dddd) **“Permitted Encumbrances”** means those Encumbrances listed and described [REDACTED]
- (eeee) **“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, Aboriginal Group, union or any other entity;
- (ffff) **“Personal Information”** means Personal Information within the meaning ascribed to such term under the FOIPPA;
- (gggg) **“Port Subdivision”** means the portion of the operations of Rail and BCR Partnership represented by the 23 mile rail link which extends from a connection at Pratt to the Roberts Bank and DeltaPort facilities of Vancouver;
- (hhhh) **“Prime Rate”** for any day means the rate of interest expressed as a rate per annum that the Canadian Imperial Bank of Commerce establishes at its primary branch in Vancouver as a reference rate of interest that it will charge on that day for Canadian Dollar demand loans to its corporate customers in Canada and which it refers to as its prime rate;
- (iiii) **“Proceedings”** has the meaning set out in subsection 7.3 of this Agreement;
- (jjjj) **“Professional Fees”** means professional fees, including fees of legal counsel on a solicitor and his or her own client basis, and any other costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim;
- (kkkk) **“Proforma Statements”** means the proforma statements of the Business for the 10 month period ending October 31, 2003 [REDACTED]
- (llll) **“Property Guarantee Agreement”** means the guarantee agreement to be entered into on the Closing Date between the Purchaser, the Vendors, BCR Partnership and the Province pursuant to which the Province will provide certain covenants and indemnities to the Purchaser and the Purchaser will provide a guarantee of the obligations of BCR Partnership under the Revitalization Agreement and having the principal terms as set out in Schedule NN hereto;
- (mmmm) **“Province”** means Her Majesty the Queen in Right of the Province of British Columbia;
- (nnnn) **“Purchase Price”** has the meaning set out in subsection 2.1 of this Agreement;

- (oooo) **“Purchased Interests”** means the Rail Shares and the BCR Partnership Units;
- (pppp) **“Purchaser’s Business”** means the industrial freight railway business and operations carried on by the Purchaser;
- (qqqq) **“Purchaser’s Counsel”** means Osler, Hoskin & Harcourt LLP;
- (rrrr) **“Purchaser’s Opinion”** has the meaning set out in paragraph 5.3(c) of this Agreement;
- (ssss) **“Rail”** has the meaning set out in Recital A of this Agreement;
- (tttt) **“Rail Shares”** has the meaning set out in Recital D of this Agreement;
- (uuuu) **“Railbed Assets”** means the following:
- (i) the railbed underneath the railway track, comprising the basic grading and earthworks below the track ballast;
 - (ii) the railway track (including all rail, ties, turnouts, associated hardware, and track ballast); and
 - (iii) all works of infrastructure to support the safety, security and operating integrity of the railway track (including cuttings, embankments, drainage works, bridges, tunnels, culverts, retaining walls, works of stabilization, signals and detection devices, and at-grade road crossings and signals under the authority of Rail or BCR Partnership);
 - (iv) in each case, situate on the Railbed Real Property on the Closing Date;
- (vvvv) **“Railbed Real Property”** means the property that is the subject of the Revitalization Agreement and referred to therein as the “Leased Property” including the property more particularly described in the attached Schedule CC, together with all standing timber;
- (wwww) **“Railcars”** means the railcars owned or leased by BCR Marine Ltd. and leased to BCR Partnership;
- (xxxx) **“Railway Material Contracts”** has the meaning set out in clause 3.1.2(y)(i) of this Agreement;
- (yyyy) **“Real Property Interests”** has the meaning set out in clause 3.1.2(z)(v) of this Agreement;
- (zzzz) **“Release”** means releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, migrating, escaping, leaching, disposing, dumping, depositing, spraying, burying, abandoning, incinerating, seeping or placing, or any similar action defined in any applicable Environmental Law;
- (aaaa) **“Relevant Tax Statute”** means the Tax legislation of each province or territory in Canada, other than Ontario;
- (bbbb) [REDACTED]

(cccc) [*intentionally deleted*];

(dddd) “**Revitalization Agreement**” means the revitalization agreement between BCRC and BCR Partnership concerning the Railbed Real Property and the Assigned Agreements in the form set out in Schedule Z hereto;

(dddd.1) “**Second Transaction Amending Agreement**” has the meaning set out in Recital H;

(eeee) “**Service Improvement Undertaking**” has the meaning set out in Section 5.3(e).

(ffff) “**Tax Act**” means the *Income Tax Act* (Canada);

(gggg) “**Tax Returns**” includes all returns, reports, declarations, elections, notices, filings, forms, statements and other documents (whether in tangible, electronic or other form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed by Law in respect of Taxes;

(hhhh) “**Taxes**” includes any taxes, duties, fees, premiums, assessments, imposts, levies and other charges of any kind whatsoever imposed by any Governmental Authority, including all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority in respect thereof, and including those levied on, or measured by, or referred to as, income, gross receipts, profits, capital, transfer, land transfer, sales, goods and services, harmonized sales, use, value-added, excise, stamp, withholding, business, franchising, property, development, occupancy, employer health, payroll, employment, health, social services, education and social security taxes, all surtaxes, all customs duties and import and export taxes, countervail and anti-dumping, all licence, franchise and registration fees and all employment insurance, health insurance and Canada, Québec and other government pension plan premiums or contributions;

(iiii) “**Third Party Claims**” means any notice (including a notice of defect or non-compliance), assessment, reassessment, order, summons, citation, directive, no action letter, ticket, charge, fine, penalty, investigation, letter or other written communication, claim, remediation cost recovery action, demand, suit, action, complaint, grievance, prosecution, petition or proceeding against an Indemnified Party from any Person (other than an Indemnified Party) or Governmental Authority;

(iiii.1) “**Transaction Agreement**” has the meaning set out in Recital F;

(jjjj) “**Transaction Guarantee Agreement**” means the guarantee agreement to be entered into on the Closing Date between the Purchaser, the Vendors and the Province pursuant to which the Province will provide certain covenants and indemnities to the Purchaser and having the principal terms set out in Schedule NN hereto;

(kkkk) “**Union**” means an organization of employees formed for the purposes that include the regulation of relations between employees and employers and includes a provincial, territorial, national or international union, a certified council of unions, a designated or certified employee bargaining agency, and any organization which has been declared a union pursuant to applicable labour relations legislation;

(llll) “**Vendors**” has the meaning set out in the recitals hereto;

(mmmmm) “**Vendor Indemnified Parties**” means the Vendors and their Affiliates (other than Rail and BCR Partnership) and each of their respective shareholders, directors, officers, employees, agents, representatives, successors and assigns and notwithstanding the definition of Affiliates, includes the Province and its employees, agents and representatives;

(nnnnn) “**Vendors’ Counsel**” means Borden Ladner Gervais LLP;

(ooooo) “**Vendors’ Opinion**” has the meaning set out in paragraph 5.2(h) of this Agreement; and

(ppppp) “**Working Capital Amount**” means the amount, whether positive or negative, by which the Current Assets minus the Current Liabilities, is greater or less than \$7,927,000. Subject to the definitions of Current Assets and Current Liabilities, an example of the calculation of the Working Capital Amount [REDACTED]

1.2 Gender and Number

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing genders include all genders.

1.3 Headings and Table of Contents

The inclusion of headings and a table of contents in this Agreement are for convenience only and will not affect the construction or interpretation of this Agreement.

1.4 Generally Accepted Accounting Principles

All accounting terms not otherwise defined in this Agreement will have the meanings ascribed to them in accordance with GAAP, applied consistently.

1.5 Currency

Except where otherwise expressly provided, all amounts in this Agreement are stated in Canadian currency.

1.6 Governing Law

This Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein. Each of the Parties irrevocably attorn and submit to the non-exclusive jurisdiction of the Courts of British Columbia.

1.7 To the Best of Knowledge

Where any representation or warranty is expressed to be given “*to the best of BCRC’s knowledge*”, or “*to the best of BCR Properties’ knowledge*” or “*to the best of the Vendors’ knowledge*” or is otherwise expressed to be limited in scope to matters known to the Vendors or any one or more of them or of which any of them is aware, it means the actual knowledge, after conducting a reasonably diligent investigation concerning the existence of the relevant fact or other matter, of any individual who is currently serving as an officer or director of BCRC, Rail, BCR Partnership or BCR Properties and the former Vice President General Counsel of BCRC. For greater clarity, reasonably diligent investigation shall not be deemed to include any requirement to conduct new environmental site assessment, audit or study. Further, the

directors shall be deemed to have satisfied their obligation of reasonably diligent investigation if and when relying on the knowledge of appropriate management personal, without further independent investigation. In addition, each Party acknowledges that no personal liability will attach to any of the individuals described above as a result of a breach of any representation or warranty in this Agreement, and, in particular, as a result of such representation or warranty having been qualified by the phrase “to the best of BCRC’s knowledge”, or “to the best of BCR Properties’ knowledge”, or “to the best of the Vendors’ knowledge” or any phrase or expression having a similar effect or as otherwise contemplated in this subsection 1.7.

1.8 Ordinary Course of Business

An action taken by a Person will be deemed to have been taken in the “ordinary course of business” only if: (i) such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person; (ii) such action is not required to be authorized by the board of directors of such Person (or by any Person or group of Persons exercising similar authority); and (iii) such action is similar in nature and magnitude to actions customarily taken, without any authorization by the board of directors (or by any Person or group of Persons exercising similar authority), in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Person.

1.9 Statutory References

Unless otherwise stated herein, any reference to a statute includes all regulations made under that statute and includes all amendments made to the statute and the regulations in force from time to time, and any statute or regulation that supplements or replaces that statute or regulation.

1.10 Schedules

The following Schedules delivered concurrently with, and incorporated into, this Agreement:

<u>Schedule</u>	<u>Subject</u>	<u>First Section Reference</u>
A.	[REDACTED]	[REDACTED]
B.	Intellectual Property	3.1.2(j)(i)
C.	[REDACTED]	[REDACTED]
D.	Share Capital	3.1.2(c)(i)
E.	Partnership Interests/Capital	3.1.2(d)(i)
F.	Subsidiaries to be Transferred	Recital E(xiii)
G.	Discharged Encumbrances	1.1(nn)
H.	Excluded Trademarks	1.1(vv)
I.	Capital Expenditures	3.1.2(n)(vi)
J.	Permits and Licences	3.1.2(k)
K.	[REDACTED]	[REDACTED]
L.	[REDACTED]	[REDACTED]
M.	[REDACTED]	[REDACTED]
N.	Tax Matters	3.1.2(u)(v.1)
O.	[REDACTED]	[REDACTED]
P.	[REDACTED]	[REDACTED]
Q.	Collective Agreements	1.1(ff)
R.	[REDACTED]	[REDACTED]
S.	Vancouver Wharves Rail Service and Track Use	4.19

<u>Schedule</u>	<u>Subject</u>	<u>First Section Reference</u>
T.	[REDACTED]	[REDACTED]
U.	[REDACTED]	[REDACTED]
V.	[REDACTED]	[REDACTED]
W.	Real Property Interests	3.1.2(z)(v)
X.	Interim Operations	4.6
Y.	Headquarters Lease	Recital E(v)
Z.	Revitalization Agreement	1.1(ddddd)
AA.	<i>[Intentionally Deleted]</i>	--
BB.	Closing Consents	1.1(bb)
CC.	Railbed Real Property	1.1(vvvv)
DD.	Other Consents	1.1(www)
EE.	[REDACTED]	[REDACTED]
FF.	[REDACTED]	[REDACTED]
GG.	[REDACTED]	[REDACTED]
HH.	Government Grants	3.1.2(y)(v)
II.	Powers of Attorney	3.1.2(bb)
JJ.	[REDACTED]	[REDACTED]
KK.	Service Improvement Undertaking	5.3(e)
LL.	Passenger Service RFP	4.12
MM.	[REDACTED]	[REDACTED]
NN.	Guarantees Term Sheet	1.1(III)
OO.	Railcar Transfer Term Sheet	2.1
PP.	[REDACTED]	[REDACTED]
QQ.	[REDACTED]	[REDACTED]
RR.	North Vancouver Tunnel	4.18(a)(i)
SS.	[REDACTED]	[REDACTED]
TT.	[REDACTED]	[REDACTED]
UU.	[REDACTED]	[REDACTED]
VV.	[REDACTED]	[REDACTED]
WW.	CNAL Agreements	4.28

1.11 Disclosure Schedules

The Parties acknowledge that the Schedules to the Transaction Agreement have been amended as a consequence of written disclosures made to the Purchaser since the date of the Transaction Agreement, and that at Closing and except as otherwise provided herein, the Schedules and representations and warranties in Section 3.1.1. and 3.1.2. of the Transaction Agreement will be reaffirmed and amended as set out in the Disclosure Schedules, where “**Disclosure Schedules**” means the Disclosure Schedules attached to the officer’s certificates delivered pursuant to Sections 5.2(a) and 6.2(i) of the Transaction Agreement.

1.12 Performance on Holidays

If any action is required to be taken pursuant to this Agreement on or by a specified date, which is not a Business Day, then such action will be valid if taken on or by the next succeeding Business Day.

1.13 Calculation of Time

In this Agreement, a period of days will be deemed to begin on the first day after the event, which began the period, and to end at 5:00 p.m. (Vancouver time) on the last day of the period. If however, the last day of the period does not fall on a Business Day, the period will terminate at 5:00 p.m. (Vancouver time) on the next Business Day.

1.14 Third Party Beneficiaries

Nothing in this Agreement or any Closing Document is intended expressly or by implication to, or will, confer upon any Person other than the Parties, any rights or remedies of any kind, except to the extent provided in Articles 9 and 10 of this Agreement in respect of the Indemnified Parties and the Vendor Indemnified Parties.

1.15 Interest

Any amount owed by one Party to another Party hereunder which is not paid when due, will bear interest until paid at a rate per annum equal to the Prime Rate plus five per cent, compounded monthly on the last Business Day of each month, both before and after default and judgment, with interest on overdue interest at the same rate.

1.16 Disclosure

- (a) The Purchaser acknowledges and agrees that BCRC is owned by the Province and the Province is subject to the FOIPPA and, as a result, may be compelled to disclose information the disclosure of which would otherwise be limited under the terms of this Agreement and that, subject to the following conditions, the disclosure by the Province of information it is compelled to disclose under the FOIPPA shall not be deemed a breach of the conditions of this Agreement. It is understood and agreed that the Province will exercise its discretion in accordance with the provisions of FOIPPA in the event it receives a request under section 5 of that Act and, in all other circumstances, will exercise its discretion such that it will not disclose:
 - (i) any information that would reveal any trade secrets of the Purchaser; or
 - (ii) any commercial, financial, labour relations, scientific or technical information of or about the Purchaser supplied to the Vendors and/or the Province in confidence by the Purchaser,where such disclosure could reasonably be expected to significantly harm the competitive position or interfere significantly with the negotiating position of the Purchaser or result in undue financial loss to the Purchaser.
- (b) Nothing in this subsection 1.15 is intended to in any way limit the exceptions to disclosure set out in Division 2 of Part 2 of FOIPPA in the circumstances of a request for a record made pursuant to FOIPPA.
- (c) Notwithstanding anything contained in any provision of this Agreement, the Purchaser acknowledges and agrees that either BCRC or the Province may disclose some or all of the contents of this Agreement, provided that:

- (i) the Purchaser shall be provided with reasonable notice of an intention to so publish or disseminate some or all of the contents of this Agreement; and
- (ii) the right to publish or disseminate the contents of this Agreement shall be limited to the right to disclose a redacted version of this Agreement, where, in determining what to redact, the Purchaser shall be entitled to assert the FOIPPA exceptions described in Section 1.15(a) above, acting reasonably.

1.17 Consent Agreement

The terms of the Consent Agreement entered into on July 2, 2004, among the Purchaser, BCRC and the Commissioner of Competition, will be taken into account by the Parties in their interpretation of Schedule KK. In the event of any conflict or inconsistency in the interpretation of Schedule KK and the Consent Agreement the terms of Schedule KK in conflict shall be deemed to have the meaning ascribed to them in the Consent Agreement.

1.18 Binding Agreements

In the event of any conflict or inconsistency between the interpretation to be given to a provision of this Restated Agreement and the interpretation to be given to the corresponding provisions of the Transaction Agreement, as amended by the First Transaction Amending Agreement and the Second Transaction Amending Agreement (collectively the "**Binding Agreements**"), the corresponding provisions of the Binding Agreements will prevail.

ARTICLE 2 PURCHASE OF INTERESTS

2.1 Purchase and Sale

The Vendors hereby agree to sell, assign and transfer to the Purchaser, and the Purchaser hereby agrees to purchase from the Vendors the Rail Shares and the BCR Partnership Units, free and clear of all Encumbrances, in accordance with and subject to the terms and conditions of this Agreement for an aggregate of one billion and one dollars (\$1,000,000,001), less the Railcar Purchase Price set out below (the "**Purchase Price**"), subject to adjustment pursuant to this Article [REDACTED]

[REDACTED]. BCRC hereby agrees to cause BCR Marine Ltd. ("**BCR Marine**") to sell, assign and transfer to an Affiliate of the Purchaser, and the Purchaser hereby agrees to cause its Affiliate to purchase all of BCR Marine Ltd.'s right, title and interest in the Railcars, free and clear of all Encumbrances, in accordance with and subject to the terms and conditions of an asset purchase agreement to be entered into between BCR Marine Ltd. and the Affiliate of the Purchaser having the principal terms and conditions set out in Schedule OO for an aggregate of one hundred and twelve million dollars (\$112,000,000) (the "**Railcar Purchase Price**").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

2.3 Payment of Purchase Price Proceeds

On the Closing Date the Purchaser and CNAL shall pay and/or advance to BCRC and BCR Properties the cash consideration relating to the Purchase Price by wire transfer, or by an intrabank transfer, to accounts designated by BCRC and BCR Properties. In addition, on the Closing Date, the Purchaser shall advance \$112,000,000 to BCR Marine, by wire transfer or by an intrabank transfer, to an account designated by BCR Marine as a loan in respect of the transfer of the railcars described in Section 2.1. The Parties acknowledge and agree that pursuant to the terms of the Railcar Transfer Agreement the Railcar Purchase Price shall be paid and satisfied by the issuance by 0698338 BC Ltd. (“Railco”) to BCR Marine of 112,000,000 Class “A” preference shares in the capital stock of Railco.

2.4 Determination of Working Capital Amount

- (a) Closing Balance Sheet: Promptly after the Closing, the Purchaser will prepare the Closing Balance Sheet and a written calculation of the Working Capital Amount based on the Closing Balance Sheet. Within 120 days following the Closing Date, the Purchaser will deliver the Closing Balance Sheet, together with a computation of the Working Capital Amount to BCRC.
- (b) BCRC Review: BCRC, on behalf of the Vendors, will have 30 days following the delivery of the Closing Balance Sheet during which to review the Closing Balance Sheet and the computation of the Working Capital Amount. The Purchaser will provide to BCRC and the Accountants access to the relevant financial Books and Records of Rail and BCR Partnership during normal business hours in connection with the determinations to be made pursuant to this subsection 2.4 as BCRC may reasonably request. If BCRC has not delivered to the Purchaser a proposed modification to the Closing Balance Sheet

or the Working Capital Amount pursuant to paragraph 2.4(c) within 30 days after delivery to BCRC of the Closing Balance Sheet, then the Working Capital Amount, based on the Closing Balance Sheet, will be final and binding and will be paid in accordance with subsection 2.4(e).

- (c) BCRC Proposed Modification: If BCRC delivers to the Purchaser a proposed modification to the Closing Balance Sheet or the Working Capital Amount, in writing setting forth (i) the amount of the proposed modification, (ii) the item or items to which such proposed modification relates, and (iii) the facts and circumstances supporting the reasonableness and propriety of such modifications, then BCRC and the Purchaser will use commercially reasonable efforts for fifteen (15) days after any such proposed modifications to settle each dispute related to the Closing Balance Sheet and to agree upon the Working Capital Amount.
- (d) Resolution of Disputes: Upon the expiration of such 15-day period, either BCRC or the Purchaser may submit in writing for resolution to the Independent Accountants any dispute with respect to such matters which has not been resolved. BCRC and the Purchaser will use commercially reasonable efforts to cause the Independent Accountants to render a decision within fifteen (15) days following submission for resolution of any such dispute. The costs of the Independent Accountants will be divided equally between both the Purchaser and BCRC, unless otherwise determined by the Independent Accountants. The decision of the Independent Accountants with respect to the Closing Balance Sheet or the computation of the Working Capital Amount will be final and binding on each of the Parties.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2.5 Transfer Taxes

The Vendors will be responsible for and will pay when due any sales taxes, social service taxes, conveyancing taxes, goods and services taxes or similar taxes and registration fees payable in respect of the transactions [REDACTED] or in respect of the acquisition of the Railcars described in Section 2.1. For greater certainty, and without limiting the generality of the foregoing, the Vendors will be responsible for and will pay when due any property transfer taxes or other fees payable in connection with the registration of the Revitalization Agreement in the land title office or other appropriate registry offices. If the registration of the Revitalization Agreement occurs prior to the Closing, then the Vendors shall be deemed to have satisfied their obligation to be responsible for any property transfer taxes in connection therewith by the inclusion of such obligation (whether by reduction in cash or increase in payables) through the Working Capital Amount. The Purchaser will be responsible for and will pay when due any sales taxes, social services taxes, conveyancing taxes, goods and services taxes or similar taxes and registration fees payable in respect of the sale and transfer of the Purchased Interests.

[REDACTED]

[REDACTED]

2.7 Grants in Lieu

BCRC and BC Rail Partnership have agreed to allocate financial responsibility between them in respect of grants in lieu payments for 2004 according to the terms of the Agreement re: Grants-in-Lieu dated July 13, 2004.

[REDACTED]

[REDACTED]

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representations and Warranties With Respect To Purchased Interests

BCRC represents and warrants to the Purchaser as to the matters set forth in Sections 3.1.1 and 3.1.2, and each of Rail and BCR Partnership represents and warrants to the Purchaser as to the matters set forth in Section 3.1.2, which representations are given on a joint and several basis, and each of BCRC, Rail and BCR Partnership acknowledges that the Purchaser is relying on such representations and warranties in connection with its purchase of the Purchased Interests:

3.1.1 Vendors

(a) Corporate Status of Vendors:

- (i) *BCRC*: BCRC has been duly continued under the *British Columbia Railway Act* (British Columbia) and is validly subsisting under the laws of British Columbia and has all requisite corporate power and authority to enter into, execute and deliver this Agreement and the Revitalization Agreement and immediately prior to Closing will have the exclusive right to sell, convey, assign, grant, transfer and set over to the Purchaser all of its right, title and interest in and to the Purchased Interests. No proceedings have been taken or authorized by BCRC nor to the best of BCRC's knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of BCRC.
- (ii) *BCR Properties*: BCR Properties has been duly incorporated and is validly subsisting under the laws of British Columbia and has all requisite corporate power and authority to enter into, execute and deliver this Agreement and immediately prior to Closing will have the exclusive right to sell, convey, assign, grant, transfer and set over to the Purchaser all of its right, title and interest in and to the Purchased Interests. No proceedings have been taken or authorized by BCR Properties, nor to the best of BCR Properties' knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of BCR Properties.

- (b) **Due Authorization:** The execution and delivery of this Agreement, the Revitalization Agreement, and the other documents to be executed and delivered by the Vendors hereunder and thereunder and the carrying out of the transactions contemplated hereby by the Vendors and the carrying out of the transactions contemplated by the Revitalization Agreement by BCRC, as landlord, and BCR Partnership, as tenant, and the performance of their respective obligations under the Revitalization Agreement have been duly authorized by all necessary corporate and other action on the part of each of the Vendors and BCR Partnership, including, without limitation, all necessary authorizations and consents under the *Financial Administration Act* (British Columbia), the *Railway Act* (British Columbia) and the *British Columbia Railway Act* and upon Closing, the Vendors and BCR Partnership have, or will have prior to their respective execution, received all necessary approvals of the Province for the execution and delivery of this Agreement, the Revitalization Agreement, and the other documents to be executed and delivered by the Vendors hereunder and thereunder and immediately prior to Closing, the Vendors and BCR Partnership will have received all necessary approvals of the government of the Province to the carrying out of the transactions contemplated hereby and thereby.
- (c) **No Conflicts or Violations:** Subject to obtaining the Closing Consents, the entering into of this Agreement, the Revitalization Agreement and the other documents and agreements to be delivered by the Vendors hereunder and the completion of the transactions contemplated hereby and the carrying out of the transactions contemplated by the Revitalization Agreement and the performance by each of BCRC, as landlord, and BCR Partnership, as tenant, of their respective obligations under the Revitalization Agreement will not result in the violation of, or a breach of any duty under, any Law or any of the terms and provisions of the Vendors' Charter Documents, BCR Partnership's Charter Documents or of any of the Permitted Encumbrances or of any indenture or other agreement, written or oral, to which any one or more of the Vendors or BCR Partnership may be a party or by which it is bound.
- (d) **Enforceability:** This Agreement constitutes and the Revitalization Agreement and each other document to be executed and delivered by the Vendors hereunder will constitute a valid and binding obligation of the Vendors and BCR Partnership, as applicable, enforceable against each of them in accordance with their respective terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors rights generally and applicable equitable principals (whether considered in a proceeding at law or in equity).
- (e) **Residency:** Neither of the Vendors is a non-resident of Canada within the meaning of the Tax Act.

3.1.2 Rail and BCR Partnership

- (a) Status and Authority:
- (i) *Corporate Status:*
- (A) Rail: Rail has been duly incorporated and is validly subsisting under the laws of British Columbia and has all requisite corporate power and capacity to own or lease in its name that portion of the Assets owned or leased by it, and to carry on that portion of the Business carried on by it, if any. No proceedings have been taken or authorized by Rail, or, to the

best of the Vendors' knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of Rail.

(B) BCR Partnership: BCR Partnership has been duly formed and is validly subsisting as a general partnership under the laws of British Columbia and has all requisite power and capacity to own or lease in its name that portion of the Assets owned or leased by it and to carry on the Business. No proceedings have been taken or authorized by BCR Partnership or, to the best of the Vendors' knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of BCR Partnership or with respect to any merger, consolidation, arrangement or reorganization relating to BCR Partnership.

(ii) *Qualifications*: Neither the nature of the Business nor the location or character of any of the Assets requires Rail or BCR Partnership to be registered, licensed or otherwise qualified as an extra-provincial or foreign corporation or to be in good standing in any jurisdiction other than British Columbia where it is duly registered, licensed or otherwise qualified and in good standing for such purpose.

(b) Charter Documents:

(i) *Charter Documents*:

(A) a true copy of the Charter Documents of Rail and BCR Partnership has been made available for review by the Purchaser on or before the date hereof; and

(B) the Charter Documents constitute all of the constating documents of Rail and BCR Partnership and such Charter Documents are complete and correct as of the date hereof.

(ii) *Amendments to Charter*: Neither Rail nor BCR Partnership has made any amendments to its respective Charter Documents or constating documents other than those expressly reflected in its records, copies of which have been made available for review by the Purchaser.

(iii) *Corporate Records – Rail*: [REDACTED] the corporate records and minute books of Rail have been maintained materially in accordance with the Laws and contain complete and accurate:

(A) minutes of all meetings of the directors, any committee thereof and the shareholders of Rail held since May 30, 1984; and

(B) originals or copies where permitted of all resolutions of the directors, any committee thereof and the shareholders of Rail passed by signature in writing since May 30, 1984,

and reflect all actions taken and resolutions passed by the directors and shareholders of Rail where the matters dealt with at such meetings or in such resolutions could have a Materially Adverse effect on the Business. All resolutions contained in such records have been duly passed and all such

meetings have been duly called and held. The share certificates, register of shareholders, register of transfers and register of directors of Rail are complete and accurate. The list of officers and directors in Schedule C constitutes a complete and accurate list of all officers and directors of Rail on the date hereof.

(iv) *Partnership Records – BCR Partnership:* [REDACTED] the partnership records of BCR Partnership have been maintained materially in accordance with the Laws and contain complete and accurate:

(A) minutes of all meetings of the directors, any committee thereof and partners of BCR Partnership since the formation of BCR Partnership; and

(B) originals or copies where permitted of all resolutions of the directors, any committee thereof and the partners of BCR Partnership passed by signature in writing since the date of formation of BCR Partnership,

and reflect all actions taken and resolutions passed by the directors and partners of BCR Partnership since the formation of the partnership where the matters dealt with at such meetings or in such resolutions could have a Materially Adverse effect on the Business. All resolutions contained in such records have been duly passed and all such meetings have been duly called and held. The register of partners is complete and accurate. The list of all officers and directors in Schedule C constitutes a complete and accurate list of all officers and directors of BCR Partnership on the date hereof.

(v) *Other Subsidiaries:* [REDACTED] Rail and BCR Partnership do not own any outstanding shares of any corporation, nor does Rail or BCR Partnership have any agreement or option or right or privilege (whether by law, pre-emptive or contractual), capable of becoming an agreement or option to acquire shares of any other corporation. [REDACTED] none of Rail or BCR Partnership is a partner, beneficiary, trustee, co-tenant, joint-venturer or otherwise a participant in any partnership, trust, joint venture, co-tenancy or similar jointly owned business undertaking and none of Rail or BCR Partnership has significant investment interests in any business owned or controlled by any third party.

(c) Share Capital:

(i) *Share Capital:* The authorized and issued share capital of Rail and the registered and beneficial owners of such shares are accurately described in Schedule D. The shares shown as constituting the issued shares of Rail have been duly and validly issued and are outstanding as fully paid and non-assessable shares. The Rail Shares are the only shares of Rail that are outstanding.

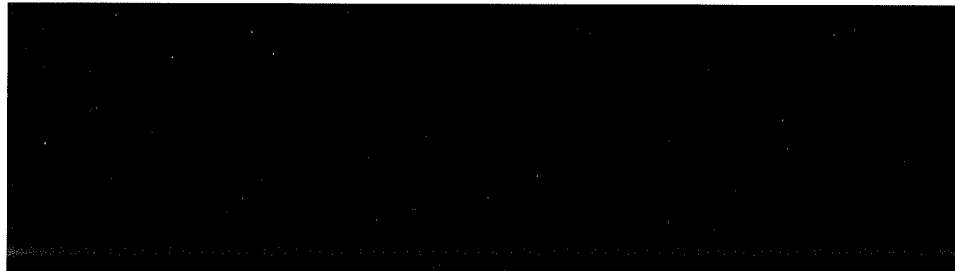
(ii) *Right to Acquire Securities:* No Person other than the Purchaser, has any oral or written agreement, option, warrant, right, privilege or any other right capable of becoming any of the foregoing (whether legal, equitable, contractual or otherwise),

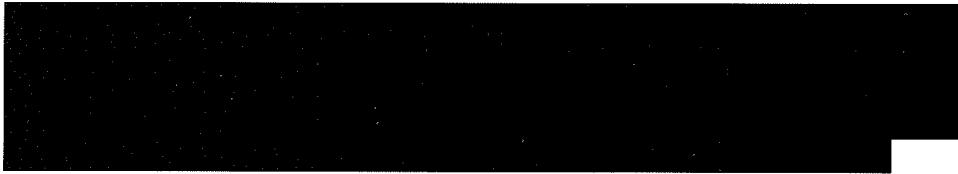
(A) for the purchase, subscription or issuance of any shares or securities of Rail; or

- (B) to require Rail to purchase, redeem or otherwise acquire any of its shares or securities.
 - (iii) *No Court Order*: No court has made an order that purports to prohibit or prevent the Vendors from selling all or any of the Rail Shares to the Purchaser.
 - (iv) *Share Ownership*: Immediately prior to Closing, the Vendors will be the sole registered and beneficial owners of the Rail Shares and on Closing, the Vendors will have the right to transfer to the Purchaser the legal and beneficial ownership of the Rail Shares free and clear of all Encumbrances.
- (d) Partnership Interests:
- (i) *Partnership Interests*: Schedule E accurately describes the partnership interests of BCR Partnership.
 - (ii) *Right to Acquire Interest*: No Person has any agreement, option, right or privilege, present or future, (whether by law, pre-emptive, or contractual), or any interest capable of becoming an agreement, option, right or privilege to purchase or otherwise acquire any of the partnership interests of BCR Partnership.
 - (iii) *No Court Order*: No court has made an order that purports to prohibit or prevent the Vendors from selling any of the BCR Partnership Units to the Purchaser.
 - (iv) *Partnership Interest Ownership*: Immediately prior to the Closing, the Vendors will be the sole legal and beneficial owners of the BCR Partnership Units and on Closing, the Vendors will have the right to transfer to the Purchaser the legal and beneficial ownership of the BCR Partnership Units free and clear of all Encumbrances.
- (e) Absence of Conflicting Agreements: Subject to obtaining the Closing Consents and the Other Consents, none of the execution and delivery of, or the observance and performance by each Vendor and BCR Partnership of, any covenant or obligation under this Agreement, the Revitalization Agreement or any Closing Document to which such Vendor or BCR Partnership is a Party, [REDACTED] or Closing by the Vendors:
- (i) contravenes or results in, or will contravene or result in, a violation of or a default or breach of a duty under (with or without the giving of notice or lapse of time, or both) or in the acceleration of any obligation under:
 - (A) any Law;
 - (B) any Licence;
 - (C) the Charter Documents or the directors', shareholders' or partnership resolutions, if any, of Rail, BCR Partnership or either of the Vendors;
 - (D) the provisions of any contract to which any Vendor, Rail or BCR Partnership is a party, or by which any of them are bound;

- (E) any judgement to which either of the Vendors, Rail or BCR Partnership is subject or by which any of them is affected;
 - (F) any Permitted Encumbrance;
 - (ii) relieves any other party to any Material Contract of any of that party's obligations thereunder or enables it to terminate any obligation thereunder;
 - (iii) results in the creation or imposition of any Encumbrance on the Purchased Interests; or
 - (iv) will result in the termination of BCR Partnership or the creation of a new deemed or actual partnership.
- (f) Consents, Approvals: Except for the *Competition Act* Approval, the Closing Consents, completion of conditions of closing under this Agreement and the Other Consents, no third party consent, approval, licence, order, authorization, registration or declaration of, or filing with, any Governmental Authority or other Person is required by either of the Vendors, Rail or BCR Partnership, in connection with:
- (i) the Closing;
 - (ii) the execution and delivery by a Vendor or BCR Partnership of this Agreement, the Revitalization Agreement or the Closing Documents to which it is a party; or
 - (iii) the observance and performance by either of the Vendors of its obligations under this Agreement or the Closing Documents to which it is a party.
- (g) Assets:
- (i) *Ownership:* [REDACTED] other than the Railcars owned by BCR Marine Ltd. and leased to BCR Partnership, BCRC, Rail and BCR Partnership, as the case may be, will be the sole legal and beneficial and (where their interests are registrable) the sole registered owners or holders of the Assets, free and clear of all Encumbrances, except for the Permitted Encumbrances. In particular, without limiting the generality of the foregoing, there will have been no assignment, subletting or granting of any licence (of occupation or otherwise) of or in respect of any of BCRC's, Rail's or BCR Partnership's Assets or any granting of any agreement or right capable of becoming an agreement or option for the purchase of any of such Assets other than pursuant to the provisions of, or as disclosed in, this Agreement or in the ordinary course of the Business.

(ii)





- (iii) *Ownership of Railbed Real Property:* At Closing, BCRC will be the sole legal and beneficial and (where its interests are registrable) the sole registered owner or holder of the Railbed Real Property and hold legal title to certain of the Assigned Agreements pursuant to the Revitalization Agreement free and clear of all Encumbrances, except for the Permitted Encumbrances (as defined in the Revitalization Agreement).
 - (iv) *Business Operation:* [REDACTED] the Assets constitute all of the rights, properties, assets and materials used to operate the Business as it has been operated by Rail and BCR Partnership, as the case may be, in the ordinary course.
- (h) Revitalization Agreement:
- (i) *Revitalization Agreement:* At Closing, the Revitalization Agreement will have been duly authorized, executed and delivered by BCRC, as landlord, and BCR Partnership, as tenant, and will be in full force and effect unamended and will contain the entire agreement between BCRC, as landlord, and BCR Partnership, as tenant, relating to the Railbed Real Property and the Assigned Agreements. At Closing, neither BCRC nor BCR Partnership will be in default of its obligations contained in the Revitalization Agreement and the Revitalization Agreement will be in good standing.
 - (ii) *No Other Leases:* Other than the Revitalization Agreement there are no leases, agreements to lease, tenancy arrangements or licences to which Rail or BCR Partnership is a party as tenant or subtenant.
 - (iii) *No Changes:* Neither Rail nor BCR Partnership has previously assigned or sublet the Railbed Real Property [REDACTED]. [REDACTED] neither Rail nor BCR Partnership nor BCRC has released any of the other parties to any of the assignment or sublease agreements [REDACTED] from the performance of any of their material obligations thereunder.
 - (iv) *No Breaches:* [REDACTED] neither BCRC nor Rail nor BCR Partnership is in breach of any of the terms of any of the assignment or sublease agreements [REDACTED]. To the best of the Vendors' knowledge, no other parties to the assignment or sublease agreements [REDACTED] are in breach of any of the terms of such agreement and no event has occurred which, either immediately or after notice or lapse of time or both, could constitute a default under such agreements or otherwise give rise to the cancellation or termination of any of such agreements.
 - (v) *No Pre-Paid, etc.:* [REDACTED] there are no prepaid rents, rent-free periods or outstanding lessor's contributions or obligations for lessee incentives under any of the assignment or sublease agreements [REDACTED]

██████████ which are subleases under which BCRC, Rail or BCR Partnership is the sublessor. ██████████ none of the sublessees under any of the subleases has any right of abatement, set-off or deduction in respect of the rent payable by the sublessees.

- (i) Rights to Assets: ██████████ no Person has any oral or written agreement, option, warrant, right, privilege or any other right capable of becoming any of the foregoing (whether legal, equitable, contractual or otherwise) to purchase or otherwise acquire, lease or have possession of any of the Assets, other than Persons who acquire Inventory or equipment from BCR Partnership or Rail in the ordinary course of business, lessors of leased equipment and the holders of Permitted Encumbrances.
- (j) Intellectual Property:
 - (i) Schedule B accurately reflects all registered copyrights, patents, trademarks, trade names, and other similar registered intellectual property rights (or rights for which applications for registration have been filed) owned by Rail or BCR Partnership relating to the Business, all computer software and rights related thereto owned by Rail or BCR Partnership and all licences and sub-licences of computer software and other intellectual property held by Rail or BCR Partnership (collectively, “IP”), but does not include any unregistered rights or interests in the IP.
 - (ii) Each of Rail and BCR Partnership is using or holding any of the IP of which it is not the sole beneficial and registered owner with the consent of or a licence from the owner of such IP, all of which such consents or licences are in full force and effect and no default exists on the part of Rail or BCR Partnership or, to the knowledge of the Vendors, on the part of any of the parties thereto.
 - (iii) To the best of the Vendors’ knowledge, the carrying on of the Business and the use, possession, reproduction, distribution, sale, licensing, sublicensing or other dealings involving the IP does not breach, violate, infringe or interfere with any rights of any other Person.
 - (iv) To the best of the Vendors’ knowledge, there are no infringements of, passing-off Claims related to, or other interference with the IP by third parties.
 - (v) To the best of the Vendors’ knowledge, the IP is in full force and effect and has not been used or enforced or failed to be used or enforced in a manner that would result in its abandonment, cancellation or unenforceability. Each of Rail and BCR Partnership has taken commercially reasonable precautions and made commercially reasonable efforts to protect the IP and to secure the confidentiality of its customer lists, and other proprietary information. These customer lists have not been disclosed to any Person other than (i) the Purchaser and its authorized agents; (ii) Persons who have signed a confidentiality agreement; (iii) the shareholders, directors, officers, employees and agents of Rail and BCR Partnership; and (iv) as otherwise required in the ordinary course of business.
- (k) Licences: ██████████ Rail and BCR Partnership have acquired, and currently hold, all Licences granted by or entered into with any Governmental Authority that are required and material in connection with, or applicable

to, the Assets or the Business and all of the foregoing are listed in Schedule J, are in full force and effect in accordance with their terms, are in good standing, are being complied with in all material respects and there have been no violations of such Licences. All steps have been taken and filings made on a timely basis with respect to each License and its renewal and no proceedings are pending or, to the best of Vendors' knowledge, threatened, which could result in their revocation or limitation.

(l) Compliance with Laws: [REDACTED] Rail and BCR Partnership are operating and using the Assets, and are conducting the Business, in compliance in all material respects with the Laws of each jurisdiction in which the Assets are located or in which the Business is conducted.

(m) Financial Statements/Proforma Statements:

(i) *Financial Statements*: The Financial Statements:

(A) have been prepared in accordance with GAAP;

(B) present fairly in all material respects the assets, liabilities and financial position of Rail and BCR Partnership as at their respective reporting dates [REDACTED]; and

(C) present fairly in all material respects the sales, earnings, results of operation and changes in financial position of Rail and BCR Partnership for their respective reporting periods [REDACTED];

(ii) *Proforma Statements*: The Proforma Statements:

(A) are complete and accurate in all material respects; and

(B) have been prepared in accordance with GAAP.

(n) No Material Change:

Except as otherwise expressly set forth in this Agreement [REDACTED] during the period from September 30, 2003 up to the date hereof, the Business has been carried on in the ordinary course of business and there has been no Materially Adverse change in the Business, financial or otherwise, nor has there been any development or, to the best of the Vendors' knowledge, any threatened or probable development having or which could reasonably be expected to have a Materially Adverse effect on the Business. In addition, [REDACTED] since September 30, 2003, neither Rail nor BCR Partnership has:

(i) (A) declared, set aside or paid any dividends on, or made any other payments or distributions in respect of any of its shares or partnership interests other than distributions required by or provided for under the partnership agreement in respect of BCR Partnership;

(B) split, combined or reclassified any of its shares or partnership interests or issued or authorized the issuance of any other securities in respect of, in

lieu of or in substitution for its shares or partnership interests, as the case may be; or

- (C) purchased, redeemed, retired or otherwise acquired any shares or a partnership interest, as the case may be, or any other securities thereof or any rights, warrants or options to acquire any such shares or partnership interests, as the case may be, or other securities;
- (ii) issued, delivered, sold, pledged or otherwise encumbered any Purchased Interest or any other shares or securities of Rail or BCR Partnership;
- (iii) adopted, proposed or agreed to amend any of its Charter Documents;
- (iv) sold, leased, licensed, mortgaged or otherwise encumbered, voluntarily subjected to or permitted to exist any Encumbrance or otherwise disposed of any of its Assets, whether tangible or intangible, other than in the ordinary course of business;
- (v) discharged or satisfied any Encumbrance, or paid any obligation or liability (fixed or contingent) other than liabilities included in the Proforma Statements and liabilities incurred since the date of the Proforma Statements in the ordinary course of business;
- (vi) made or agreed to make any acquisition (other than of Inventory and rolling stock in the ordinary course of business) or capital expenditure in excess of \$40,000,000 in the aggregate on an annual basis, which includes the acquisitions or capital expenditures set out in Schedule I pursuant to agreements and commitments entered into prior to the date of this Agreement and previously made available to the Purchaser;
- (vii) incurred any indebtedness for borrowed money or guaranteed any such indebtedness other than Intercompany Amounts;
- (viii) except for loans, advances, capital contributions or investments specified in [REDACTED] Schedule I, made any loans, advances or capital contributions to, or investments in, any other Person;
- (ix) except as otherwise provided in this section 3.1.2 or as otherwise disclosed in this Agreement, entered into any Material Contracts, modified or amended any Material Contracts, or waived, released or assigned any rights or claims under any such Material Contracts that are significant to such Material Contracts;
- (x) made any material change to its accounting methods, principles or practices, except as may be required by GAAP;
- (xi) changed the manner of billing of any of its customers;
- (xii) suffered any damage, destruction, loss, labour dispute, organizing drive, application for certification or other event, development or condition of any character (whether or not covered by insurance) Materially Adverse to the

Business, the Assets, the properties or future prospects of Rail or BCR Partnership;

- (xiii) subject to Section 5.2(g), granted any bonuses, whether monetary or otherwise, or made any general wage or salary increases in respect of its Employees, other than as provided for in the Collective Agreements, or changed the terms of employment for any Employee or, except in the ordinary course of business, entered into a written contract with any Employee;
 - (xiv) except for arrangements entered into during the ordinary course of business, as required by applicable Law or as otherwise disclosed in this Agreement, entered into, adopted or materially amended or changed the funding, payment or accrual practices of any bonus, profit sharing, compensation, severance, termination or other Benefit Plan or (except for normal increases in the ordinary course of business) materially increased in any manner the compensation or fringe benefits of any Employee or former employee of the Business or paid any benefit not required by any existing Benefit Plan or other such arrangement or entered into any contract, agreement, commitment or arrangement to do any of the foregoing; or
 - (xv) authorized or committed to agree to take any of the foregoing actions.
- (o) Books and Records: The Books and Records fairly and correctly set out and disclose in all material respects the financial position of Rail and BCR Partnership and all of Rail and BCR Partnership's material financial transactions (individually and in the aggregate) in relation to the Business.
- (p) Liabilities: Neither Rail nor BCR Partnership has any debts or liabilities (whether accrued, contingent, absolute or otherwise) which continue to be outstanding except:
- (i) liabilities or obligations disclosed on or in, reflected in, or provided for in the Proforma Statements;
 - (ii) liabilities or obligations incurred in the ordinary course of business since September 30, 2003 that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse effect on the Business; and
 - (iii) other liabilities or obligations disclosed in or arising under this Agreement.
- (q) Accounts Receivable: All Accounts Receivable reflected in the Proforma Statements, the Financial Statements and the Closing Balance Sheet, net of allowances for doubtful accounts as reflected thereon and as determined in accordance with GAAP, are valid receivables arising in the ordinary course of the Business and subject to no set-offs or counterclaims and are current and collectible.
- (r) Banking:
- (i) *Loans and Credit Facilities:* [REDACTED], neither Rail nor BCR Partnership have entered into, or otherwise arranged for, any loans, operating lines of credit or other credit

facilities (including interest rate or currency swaps, hedging contracts, forward loan or rate agreements or other financial instruments), and do not have outstanding any bonds, debentures, mortgages, notes or other similar indebtedness and neither Rail nor BCR Partnership are obligated to create or issue any bonds, debentures, mortgages, notes or other similar indebtedness. The only security interests granted or created by Rail or BCR Partnership in connection with the forgoing indebtedness are Permitted Encumbrances. [REDACTED] neither Rail nor BCR Partnership has given or agreed to give, or is a party to or bound by, any guarantee in respect of indebtedness, or other obligations, of any Person, or any other commitment by which Rail or BCR Partnership is, or is contingently, responsible for such indebtedness or other obligations.

(ii) *Bank Facilities*: [REDACTED] complete and accurate listing showing the name of each bank, trust company or similar financial institution in which Rail or BCR Partnership has an account, safety deposit box or other banking facility and the names of all Persons that have signing authority to draw on such accounts or safety deposit boxes.

(s) Insurance:

(i) *Insurance Policies*: Each of Rail and BCR Partnership maintains such insurance policies, issued by responsible insurers, as are appropriate to its operations, property and assets.

(ii) *List of Policies*: [REDACTED] complete and accurate listing of all insurance policies of Rail and BCR Partnership, including all property damage, general liability, motor vehicle, director and officer liability and life policies.

(iii) *Good Standing*: Each of the insurance policies [REDACTED] is in good standing, all premiums required to be paid by Rail and BCR Partnership have been properly paid, there have been no misrepresentations or failures to disclose material facts, there has been no refusal to renew any of the policies and Rail and BCR Partnership are not in default under the terms thereof.

(iv) *Outstanding Claims*: [REDACTED] no threatened or actual material claims relating to the Business, Rail or the BCR Partnership or their respective activities, operations or assets against any of the policies [REDACTED] have been made since January 1, 2000. In this subsection 3.1.2(s)(iv) "material" means an insurance claim over \$1 million or any workers' compensation claim extending longer than 41 weeks or for a fatality. Each of Rail and BCR Partnership shall, after Closing, continue to be entitled to the proceeds of any outstanding claims relating to the Business made before Closing. Each of Rail and BCR Partnership has given timely notice to the insurer of all claims against it. Neither Rail nor BCR Partnership has received any refusal of coverage or any notice that a defence will be afforded with a reservation of rights or that the insurer of any insurance policy is not willing to perform its obligations thereunder.

(v) *Termination*: Any insurance policies held by Rail and BCR Partnership and issued by BCR Captive terminate in accordance with their terms and conditions as

of the Closing, without prejudice to any claims made thereunder prior to the Closing and without any impairment, adverse effect or prejudice on the payment of any such claim.

(t) Environmental:

The Purchaser acknowledges on behalf of itself and the Indemnified Parties that the sole representations and warranties with respect to the environmental condition of, or any environmental matters relating to Rail, BCR Partnership, the Assets and the Business are set out in this section 3.1.2(t) and, without limiting the foregoing, that all other representations and warranties in this Agreement shall be construed to exclude such environmental conditions and environmental matters. Except as disclosed in Schedule M or in the Environmental Reports:

- (i) *Current Compliance with Environmental Laws:* Rail and BCR Partnership are operating and using the Assets, and are conducting the Business, in compliance in all respects with all Environmental Laws.
- (ii) *Historic Compliance with Environmental Laws:* To the best of the Vendors' knowledge, Rail and BCR Partnership have at all times operated, used the Assets and conducted the Business in compliance in all respects with all Environmental Laws in effect at the relevant time.
- (iii) *Environmental Permits:* Rail and BCR Partnership hold all material Environmental Permits required in connection with the Assets or the operation of the Business and all such Environmental Permits are listed in Schedule M are in good standing and are being complied with in all respects.
- (iv) *Condition of Railbed Real Property:* To the best of the Vendors' knowledge, there is no Contamination in, on, at or under the Railbed Real Property.
- (v) *Claims:* There are no pending Third Party Claims, nor to the best of the Vendors' knowledge, are any Third Party Claims threatened, against Rail or BCR Partnership alleging any breach of, default or liability under Environmental Laws with respect to the Assets or the Business or relating to any Contamination on, at, or migrating from or to the Railbed Real Property.
- (vi) *No tanks, Landfill or Disposal Area:* Except as set out in Schedule M, to the best of the Vendors' knowledge, there are no Landfill or Disposal Areas, underground tanks or above-ground tanks owned or leased by Rail or Partnership at the Railbed Real Property, excluding above-ground tanks having a disposal cost (including any remediation costs associated therewith) of less than \$500,000 in the aggregate.
- (vii) *Environmental Reports:* The Vendors have made available to the Purchaser all material environmental reports, environmental site assessments, environmental audits, and environmental studies in the possession or control of the Vendors with respect to the environmental condition and operation of the Business or the Assets (collectively, the "**Environmental Reports**").

(u) Tax Matters:

For the purposes of this subparagraph 3.1.2(u), the term "Rail" means Rail and any of its subsidiary entities including BCR Partnership.

- (i) *Tax Returns:* Rail has prepared and duly and timely filed all Tax Returns required to be filed by it on or before the date hereof with all appropriate Governmental Authorities for all fiscal periods ending prior to the date hereof [REDACTED] and has duly, completely and correctly reported all income and all other amounts and information required to be reported thereon.
- (ii) *Payment of Taxes:* Rail has duly and timely paid all Taxes due and payable by it, including all instalments on account of Taxes for the current year, and has duly and timely paid all assessments and reassessments it has received in respect of Taxes except amounts which are disputed in good faith [REDACTED]. Rail has made adequate provision in the Financial Statements and Proforma statements for the payment of any Taxes for the current taxation year that are not yet due and payable. [REDACTED] the provisions for Taxes reflected in the Financial Statements and Proforma Statements are sufficient to cover all liabilities for Taxes, whether or not assessed, that are payable in respect of its operations and property for the periods covered by the Financial Statements, the Proforma Statements and all prior periods. Except to the extent provided for in the Financial Statements and Proforma Statements, Rail is not liable for any Taxes as at the date hereof or for the payment of any instalments in respect of Taxes due in its current taxation year and, except as aforesaid, no such Taxes are required to be provided for.
- (iii) *Reassessments:* [REDACTED] there are no reassessments of Taxes that have been issued and are outstanding with respect to Rail. [REDACTED], no Governmental Authority has challenged, disputed or questioned Rail in respect of Taxes or of any Tax Returns. [REDACTED] the Vendors are not aware of any contingent liabilities of Rail for Taxes or any grounds for an assessment or reassessment. [REDACTED] to the best of the Vendors' knowledge no assessment or reassessment is proposed in respect of any Taxes, regardless of its merits. [REDACTED] Rail has not executed or filed with any Governmental Authority any agreement extending the period for assessment, reassessment or collection of any Taxes or the time within which to file any Tax Return.
- (iv) *Withholdings:* [REDACTED] Rail has duly and timely withheld from each amount paid or credited by it (including each amount paid or credited to any of its past or present directors, officers and employees, and to any non-resident of Canada), the amount of all Taxes and other deductions required to be withheld therefrom and has paid the same to the proper Governmental Authority within the time required under any applicable Law.
- (v) *Tax Status:* Rail is a taxable Canadian corporation for the purposes of the Tax Act and any Relevant Tax Statute and has been a taxable Canadian corporation for these purposes since January 1, 1988, and no other provision of the Tax Act or any Relevant Tax Statute would apply in a manner that would deny or ignore this status. In addition, the provisions of subsection 149(10) of the Tax Act or any

corresponding provision in any Relevant Tax Statute will not apply and have not applied to Rail in respect of a taxation year ending on or before Closing and no provision of the Tax Act or any Relevant Tax Statute will apply in respect of such taxation year to cause or determine consequences similar to those that would have arisen if subsection 149(10) of the Tax Act had applied.

- (v.1) Each Vendor is not a non-resident of Canada, as defined in the Tax Act. Each of Rail and BCR Partnership is a registrant for the purposes of the GST and their registration numbers are set forth on Schedule N.
- (vi) *Other Jurisdictions:* [REDACTED] neither Rail nor BCR Partnership is currently required to file any returns, elections or designations with any taxation authority located in any jurisdiction outside of British Columbia or Canada.
- (vii) Rail has duly and timely collected all amounts on account of any sales or transfer taxes, including goods and services, harmonized sales and provincial or territorial sales taxes, required by Law to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such amounts required by Law to be remitted by it.
- (viii) Except pursuant to this Agreement, for purposes of the Tax Act and any other applicable Tax statute, no Person or group of Persons has since January 1, 1996 acquired or had the right to acquire control of Rail.
- (ix) None of sections 80, 80.01, 80.02, 80.03 or 80.04 of the Tax Act or any equivalent provision of the Tax legislation of any province or other jurisdiction have applied or will apply to Rail or BCR Partnership at any time up to and including Closing.
- (ix.1) [REDACTED] Section 78 of the Tax Act or any equivalent provision of the Tax legislation of any province or other jurisdiction has not, and will not have, applied to Rail or BCR Partnership at any time up to and including the Closing and section 78 of the Tax Act or any equivalent provision of the Tax legislation of any province or other jurisdiction will not apply with respect to amounts accruing in respect of taxation years of Rail or BCR Partnership ending on or before Closing.
- (x) None of BCRC, BCR Properties or Rail is or has ever been a “limited partner” of BCR Partnership within the extended meaning of that phrase in subsection 96(2.4) of the Tax Act or any corresponding provision in any applicable provincial legislation.

(xi) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(v) Employee and Benefit Plan Matters:

- (i) *List of Employees:* The list of employees [REDACTED] is a comprehensive list of employees, which shows, as of October 31, 2003 the employer, category, bonuses, benefits, total remuneration including salary, job title, length of service and working location of each Employee and whether each Employee is active or inactive (*i.e.* short-term or long term disability leave, parental leave, extended absence, or receiving workers' compensation benefits) and the list of independent contractors [REDACTED] is comprehensive list of independent contractors and shows as of October 31, 2003 the material contracting terms including the contracting parties, fees and other payment arrangements, services to be performed and termination provisions. There have been no material variations to either of these summaries since October 31, 2003 except such changes as have occurred in the ordinary course of business.
- (ii) *Employment Contracts:* [REDACTED]
 - (A) neither Rail nor BCR Partnership are party to any oral or written labour services contract or similar agreement for the services of a particular individual; and
 - (B) none of the Employees other than independent contractors is employed on other than an indefinite hiring basis terminable on reasonable notice according to Law without further liability to Rail or BCR Partnership.
- (iii) *Collective Agreements:* Except as disclosed in Schedule Q, neither Rail nor BCR Partnership, nor any of its respective Affiliates, is a party to or bound by, either directly or by operation of Law, any Collective Agreement which could affect the Employees. Except as disclosed in Schedule Q, no trade union, council of trade unions, employee bargaining agency or affiliated bargaining agent holds bargaining rights with respect to any of the Employees by way of certification, interim certification, voluntary recognition, or successor rights or through any related or associated activities or businesses under the common control or direction of Rail or BCR Partnership, or has applied or threatened to apply to be certified as the bargaining agent of any of the Employees. To the Vendors' best knowledge, except as disclosed in Schedule Q, there are no threatened or pending union organizing activities involving the Employees and no material labour problems that would in a material manner affect the operations of the Business or lead to an interruption of operations of the Business. Rail, BCR Partnership and any of their respective Affiliates are conducting the Business in compliance in all material respects with the Collective Agreements.

- (iv) *Labour Disputes:* [REDACTED] there are no pending or threatened work stoppages or labour disputes, grievances, Proceedings, charges of unfair labour practice or charges of violation of individual or collective rights by or on behalf of: (a) any present or former employee of the Business, or (b) any union.
- (v) *Occupational Health and Safety:* The Vendors have made available for review by the Purchaser all inspection reports relating to the Business under occupational health and safety Laws relating to each of Rail and BCR Partnership. [REDACTED] there are no outstanding inspection Claims nor any pending or threatened charges made under any such Laws relating to Rail, BCR Partnership or the Business. There have been no fatal or critical accidents within the last year, which might lead to charges under such Laws. Rail and BCR Partnership have complied in all material respects with any orders issued under such Laws. There are no appeals of any orders under such Laws relating to Rail or BCR Partnership that are currently outstanding.
- (vi) *Workers' Compensation:* [REDACTED] there are no assessments or any other communications related thereto which Rail or BCR Partnership has received from any workers' compensation or workplace safety and insurance board or similar authorities in British Columbia in the past year and there are no assessments which are unpaid or not properly accrued for on the date hereof relating to the Employees or which will be unpaid or not properly accrued for at the Effective Time and to the best of the Vendors' knowledge, there are no facts or circumstances which may result in a material increase in liability to Rail or BCR Partnership relating to the Employees from any applicable workers' compensation or workplace safety and insurance legislation, regulations or rules after the Effective Time. [REDACTED] each of Rail and BCR Partnership's accident cost experience is such that there are no material pending or, to the Vendors' knowledge, possible assessments, and there are no claims or, to the Vendors' knowledge, potential claims which may Materially Adversely affect any of Rail or BCR Partnership's accident cost experience.
- (vii) *List of Plans:* [REDACTED] a true and complete list of each Benefit Plan. Current and complete copies of all written Benefit Plans as amended to date or, where oral, written summaries of the terms thereof, have been delivered or made available to the Purchaser together with current and complete copies of all documents relating to the Benefit Plans.
- (viii) *Changes to Plans:* There is no formal plan or commitment by Rail or BCR Partnership, [REDACTED] neither Rail nor BCR Partnership have received notice of any formal plan or commitment, whether legally binding or not, to create any additional Benefit Plan or to change any existing Benefit Plan, except such change as may be required to secure the continued registration of any existing Benefit Plan with each applicable Governmental Authority.

- (ix) *Plan Contributions:* With respect to the Pension Plans, no representation is made as to funded status or status of unfunded liabilities, solvency or wind up deficiencies except that all contributions or premium payments required to be made by Rail or BCR Partnership, as the case may be, to the date hereof have been made and all employee contributions or premium payments to each Pension Plan to the date hereof have been properly withheld by Rail or BCR Partnership, as the case may be, and remitted to the funding arrangements for the respective plan. With respect to the Benefit Plans, other than the Pension Plans, all contributions or premium payments required to be made by Rail or BCR Partnership, as the case may be, to the date hereof have been made and all employee contributions or premium payments to each Benefit Plan (other than the Pension Plans) to the date hereof have been properly withheld by Rail or BCR Partnership, as the case may be, and remitted to the funding arrangements for the respective plan. No Benefit Plan requires or permits a retroactive increase in premiums or payments, and the level of insurance reserves, if any, under any insured plan is reasonable and sufficient to provide for all incurred but unreported claims.
- (x) **[intentionally deleted]**
- (xi) *Plan Administration:* Each Benefit Plan is, and has been, established, registered, qualified, administered and invested, in compliance with the terms of such Benefit Plan (including the terms of any documents in respect of such Benefit Plan), all Law and the Collective Agreements, as applicable. [REDACTED] neither Rail nor BCR Partnership has received any notice from any Person questioning or challenging such compliance (other than in respect of any claim related solely to that Person). Rail and BCR Partnership have complied with all of their obligations in respect of the Benefit Plans and Rail and BCR Partnership have no knowledge of any default or violation by any other Person in relation to obligations under any Benefit Plan. [REDACTED] there is no investigation by a Governmental Authority, or Claim (other than routine claims for payment of benefits) pending or threatened involving any Benefit Plan or their assets, and Rail and BCR Partnership have no knowledge of any facts which could reasonably be expected to give rise to any such investigation or Claim.
- (xii) *Withdrawal of Assets:* There has been no withdrawal by Rail or BCR Partnership of assets from any Pension Plan, neither Rail nor BCR Partnership have made any application for approval of a withdrawal of assets to any Governmental Authority, and neither Rail nor BCR Partnership have received notice of any proposed withdrawal of assets from any Pension Plan. Any application by Rail or BCR Partnership of surplus assets in any of the Pension Plans to offset required employer contributions to such Pension Plans have been permitted by Law, the Collective Agreements and the terms of the relevant Pension Plan and any associated funding agreement. No distributions, transfers or other payments (including payments of fees and expenses) have been made from the assets of the Benefit Plans to any Person in breach of the terms of the Benefit Plan, any Collective Agreements or Law.

- (xiii) *Revocation or Wind Up:* No event has occurred respecting any Pension Plan which would result in the revocation of the registration of such Pension Plan (where applicable) or entitle any Person (without the consent of Rail and BCR Partnership) to wind-up or terminate any Pension Plan, in whole or in part, or which could otherwise reasonably be expected to adversely affect the tax status of any such plan.
- (xiv) *Effect of Transaction:* To the best of the Vendors' knowledge, [REDACTED] or for amounts arising from claims based on constructive dismissal resulting solely from the actions of the Purchaser following Closing, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will:
 - (A) result in any payment (including severance, unemployment compensation, golden parachute or otherwise) becoming due or payable under any Benefit Plan, (B) result in the acceleration of the time for payment or vesting of benefits under any Benefit Plan, or (B) increase the amount of benefits payable under or contributions due to any Benefit Plan.
- (xv) *Employee Data:* All Employee data necessary to administer the employment relationship of each Employee and each Benefit Plan is in the possession of Rail or BCR Partnership and is in a form which is sufficient for the proper administration of such employment relationships and the Benefit Plan in accordance with its terms and all Law and to the knowledge of the Vendors such data is complete and correct.

(w) Personal Information:

- (i) *Privacy Policy:* Rail and BCR Partnership, to the extent required by Law, have a written privacy policy which governs the collection, use and disclosure of Personal Information and which complies with the applicable industry privacy codes, and Rail and BCR Partnership are in compliance in all material respects with their respective privacy policies.
- (ii) *Personal Information Provided to Purchaser:* All Personal Information provided to the Purchaser, and the manner in which such Personal Information has been obtained and provided to the Purchaser, in connection with the purchase and sale of the Purchased Interests, complies with all Laws and with Rail and BCR Partnership's respective written privacy policy, and all required consents to the collection or use of Personal Information or to the disclosure of Personal Information to the Purchaser or any other Person have been obtained.

(x) Litigation and Claims:

- (i) *Adverse Proceedings:* The list and description of outstanding Claims [REDACTED] [REDACTED] a complete and accurate listing of all material outstanding Claims by or against each of Rail and BCR Partnership, and there is no other Materially Adverse Claim pending or to the best of the Vendors' knowledge threatened by, against, or relating to, Rail, BCR Partnership, the Purchased Interests, the Assets or any of the Business. The Vendors are not aware of any basis for any other Claim which if pursued would have a significant likelihood of

resulting in or creating a liability in excess of \$1,000,000. The Vendors make no representation or warranty with respect to Aboriginal Claims.

- (ii) *Audit Response Letters:* The Purchaser has been provided with copies of all of the audit response letters from counsel to Rail and BCR Partnership for the last five years that relate to the Business.
 - (iii) *Notice of Default/Claims:* [REDACTED] neither Rail nor BCR Partnership have received any notice of any default, violation or termination of any Material Contract, any material Law or material Licence nor are they aware of any event or occurrence which will, or is likely to, result in such a default, violation or termination.
 - (iv) *No Seizure:* There is no appropriation, expropriation or seizure of any of the Assets that is pending or, which to the best of the Vendors' knowledge, has been threatened against Rail, BCR Partnership or the Business.
 - (v) *No Judgement:* There is no judgement, decree, injunction, ruling or order of any Governmental Authority or arbitrator outstanding against Rail or BCR Partnership.
- (y) **Contracts and Commitments:**
- (i) *Material Contracts:* [REDACTED] a complete and accurate listing and description of all Material Contracts to which Rail and BCR Partnership are party, by which Rail and BCR Partnership are bound or under which Rail and BCR Partnership are entitled to any benefits or have any liabilities relating to the Business (collectively the "**Railway Material Contracts**"). To the best of the Vendors' knowledge, other than the Railway Material Contracts, there are no other contracts or agreements that are essential to carrying out the Business that are not readily replaceable.
 - (ii) *Good Standing:* [REDACTED] neither Rail nor BCR Partnership is in breach or default of any of the terms of the Railway Material Contracts and to the best of the Vendors' knowledge are not aware of any breach or default of any of the terms of the Railway Material Contracts by any other party thereto. Each of the Railway Material Contracts is in good standing and in full force and effect without amendment thereto and to the best of the Vendors' knowledge no state of facts exists which, either immediately or after notice or lapse of time or both, would constitute a default or breach of any of the material terms thereof or, which could give rise to the cancellation or termination of any of the Railway Material Contracts.
 - (iii) *Arm's Length Terms:* [REDACTED] all Material Contracts and all other agreements, commitments, and legally binding instruments entered into by Rail or BCR Partnership, have been negotiated on an arm's length basis and no Material Contract or other agreement or legally binding instrument entered into by Rail or BCR Partnership has been entered into out of the ordinary course of the Business. [REDACTED] no director or officer, former director or officer, shareholder or Employee of, or any other Person not dealing at arm's length with, Rail or BCR Partnership or the Vendor is engaged

in any transaction or arrangement with or is a party to a Contract with, or has any indebtedness, liability or obligation to, Rail or BCR Partnership, except for employment arrangements with Employees, the terms of which are disclosed [REDACTED].

- (iv) *Major Suppliers and Customers:* The Purchaser has been provided with a comprehensive listing of each supplier of goods and services to, and each customer of, Rail and BCR Partnership to whom Rail and BCR Partnership paid or billed in excess of \$2,000,000 in the aggregate during the 12 month period ending September 30, 2003, together with, in each case, the amount so billed or paid. To the knowledge of the Vendors, except as being specifically disclosed by the Vendors in writing to, and acknowledged by the Purchaser, no supplier or customer has provided written notice to Rail or BCR Partnership of any intention to change the terms or conditions upon which it conducts business with Rail or BCR Partnership.
- (v) *Government Grants:* Schedule HH sets forth a complete list of all Contracts relating to grants or other forms of assistance including loans with interest at below market rates, received by Rail or BCR Partnership from any Governmental Authority.
- (vi) *Copies of Material Contracts:* Current and complete copies of the Material Contracts have been delivered or made available to the Purchaser, and, subject to [REDACTED] there are no current or pending negotiations with respect to the renewal, repudiation or amendment of any such Contract, plan or policy.
- (vii) *Restrictive Covenants:* [REDACTED] none of Rail or BCR Partnership is a party to or bound or affected by any Contract, arrangement, undertaking or other understanding (whether written or oral):
 - (A) limiting the freedom of Rail or BCR Partnership to compete in any line of business or any geographic area, acquire goods or services from any supplier, establish the prices at which it may sell any goods or services, sell goods or services to any customer or potential customer, or transfer or move any of its assets or operations; or
 - (B) which has a Materially Adverse effect on its business practices, operations or financial condition or the continued operation of the Business after the Closing substantially as presently carried on.
- (z) Railbed Real Property:
 - (i) *Ownership or Holding of Interests:* Subject to the Permitted Encumbrances (as defined in the Revitalization Agreement), Rail or BCR Partnership owns, or leases, or holds an easement, right of way, licence of occupation or other similar interest or right over, the real property comprising the Railbed Real Property and will, on Closing, lease, sublease, sublicense, or otherwise hold an easement, right of way, licence of occupation or other similar interest or right over the real property comprising the Railbed Real Property.

- (ii) *Right of Entry:* [REDACTED] Rail and BCR Partnership and BCRC hold such legal rights of entry to and exit from the Railbed Real Property as are reasonably necessary to carry on the Business in the manner in which it is currently carried on.
- (iii) *Improvements:* To the best of the Vendors' knowledge, there are no material work orders outstanding against the Railbed Real Property or Rail's or BCRC's or BCR Partnership's improvements on the Railbed Real Property and neither the Vendors nor Rail nor BCR Partnership have received any deficiency notices, requests or written advice of any material breach of any Law in respect of the foregoing which could, if not corrected, become a material work order or could require performance of material work or expenditure of money to correct.
- (iv) *Encroachments:* To the best of the Vendors' knowledge, except for encroachments of track outside the Railbed Real Property arising from settlement, erosion or the forces of nature [REDACTED] there are no material encroachments of the Buildings, Railbed Assets or Rail's or BCRC's or BCR Partnership's improvements on the Real Property Interests, beyond the boundaries of the Railbed Real Property.
- (v) *Third Party Interests:* [REDACTED] all easements, rights-of-way, licences of occupation and other similar appurtenant interests necessary for the continued use and operation of the Business in addition to the fee simple Railbed Real Property are listed in Schedule W (collectively, the "**Real Property Interests**").
- (vi) *Valid and Subsisting:* Subject to any Aboriginal Claims, the Real Property Interests are in full force and effect without amendment thereto.
- (vii) *No Changes:* Neither the Vendors nor Rail nor BCR Partnership has previously assigned the Real Property Interests or sublet or sublicensed its interest in any of the Real Property Interests [REDACTED]. Neither the Vendors nor Rail nor BCR Partnership have released any of the other parties to such Real Property Interests from the performance of any of their obligations thereunder. On Closing, neither Vendors, nor Rail nor BCR Partnership shall have assigned the Real Property Interests or sublet or sublicensed its interest in any of the Real Property Interests [REDACTED].
- (viii) *No Breaches:* [REDACTED] neither BCRC, nor Rail nor BCR Partnership is in breach of any of the material terms of any Real Property Interest. To the best of the Vendors' knowledge, no other parties to the Real Property Interests are in breach of any of the terms of the Real Property Interests and no event has occurred which, either immediately or after notice or lapse of time or both, could give rise to the cancellation or termination of any of the Real Property Interests.
- (aa) *Management Recommendation Letters:* The Purchaser has been provided with copies of all management recommendation letters in respect of Rail and BCR Partnership from the Accountants, or any previous auditor of Rail or BCR Partnership, during the last five years.

- (bb) Powers of Attorney: Schedule II sets out a complete list of every outstanding power of attorney granted by Rail or BCR Partnership and the names of all Persons who have been given the authority to act on behalf of either of them. The Purchaser has been provided with copies of all outstanding powers of attorney granted by Rail or BCR Partnership.
- (cc) Broker: With the exception of CIBC World Markets (whose fees and expenses shall be borne exclusively by the Vendors in accordance with Section 12.8), the Vendors have carried on all negotiations relating to this Agreement and the transactions contemplated in this Agreement directly and without intervention on their behalf of any other party in such manner as to give rise to any valid claim for a brokerage commission, finder's fee or other like payment against the Purchaser, Rail or BCR Partnership.
- (dd) Permitted Encumbrances: None of the Permitted Encumbrances [REDACTED] which has been marked as BCRC bearing the risk with respect to such Permitted Encumbrances:
 - (i) is Materially Adverse;
 - (ii) [REDACTED] is a monetary encumbrance.
- (ee) Accuracy at Closing: Each representation and warranty of the Vendors contained in this Agreement will be true and correct as of the Closing as if made at and as of the Closing except for any representation or warranty which is expressly stated to be made only as of a specific date, which need be true and correct only as of such date, or for any representation or warranty to the extent that it is affected by the occurrence of events or transactions expressly permitted by this Agreement, [REDACTED].

3.2 Acknowledgements of Purchaser and Vendor

The Purchaser hereby acknowledges that it has had, and that in accordance with Section 4.1 will have, the opportunity to examine the Assets and the state of the Business and that the Vendors have not made, nor has the Purchaser relied upon, any other statement, representation, warranty, condition or collateral agreement, express, implied or statutory other than as expressly set out in this Agreement and without limiting the generality of the foregoing, the Vendors have not made any representations warranties or covenants with respect to operations or tax positions of the Vendors or with respect to the effect or potential effect of any Aboriginal Claims on any of the Assets or the Business.

The Vendors hereby acknowledge that no investigations made by or on behalf of the Purchaser at any time shall have the effect of waiving, diminishing the scope of or otherwise affecting any representation or warranty made by the Vendors in or pursuant to this Agreement.

No waiver of any condition or other provisions, in whole or in part, shall constitute a waiver of any other condition or provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

3.3 Purchaser's Representations and Warranties

The Purchaser represents and warrants to the Vendors as follows and acknowledges that the Vendors are relying on such representations and warranties in connection with the sale of the Purchased Interests:

- (a) Status of Purchaser: The Purchaser has been duly incorporated and is validly subsisting under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to execute and deliver this Agreement. No proceedings have been taken or authorized by the Purchaser nor to the best of the Purchaser's knowledge, by any other Person, with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of the Purchaser. The Purchaser has the power and authority to enter into, execute and deliver this Agreement.
- (b) Due Authorization: The execution and delivery of this Agreement, the Transaction Guarantee Agreement, the Property Guarantee Agreement and the other documents to be executed and delivered by the Purchaser hereunder and the carrying out of the transactions contemplated hereby by the Purchaser have been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) No Conflicts or Violations: The entering into of this Agreement, the Transaction Guarantee Agreement, the Property Guarantee Agreement and the other documents and agreements to be delivered by the Purchaser hereunder and the completion of the transactions contemplated hereby and thereby will not result in the violation of any Law or any of the terms and provisions of the Purchaser's Charter Documents or of any indenture or other material agreement, written or oral, to which the Purchaser may be a party or by which it is bound.
- (d) Enforceability: This Agreement constitutes and each other document to be executed and delivered by the Purchaser, including the Transaction Guarantee Agreement and the Property Guarantee Agreement, hereunder will constitute a valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable insolvency, bankruptcy, reorganization, moratorium or other similar laws affecting creditors rights generally and applicable equitable principals (whether considered in a proceeding at law or in equity).
- (e) Residency: The Purchaser is not a non-resident of Canada within the meaning of the Tax Act. The Purchaser is "Canadian" within the meaning of the *Investment Canada Act*.
- (f) Consents, Approvals: Except for the *Competition Act* Approval, no consent, approval, Licence, order, authorization, registration or declaration of, or filing with, any Governmental Authority or other Person is required by the Purchaser, in connection with: (i) the Closing; (ii) the execution and delivery by the Purchaser of this Agreement or the Closing Documents to which it is a party; or (iii) the observance and performance by the Purchaser of its obligations under this Agreement or the Closing Documents to which it is a party.

ARTICLE 4 COVENANTS

4.1 Access to Information and Due Diligence

BCRC will make, or cause to be made, available to the Purchaser and its authorized representatives such access to the Books and Records and such physical review of the Assets for due diligence and transition purposes as may be requested by the Purchaser, acting reasonably. Without limiting the generality of the foregoing, the Vendor shall forthwith, upon request by the Purchaser or Purchaser's Counsel, execute and deliver to the Purchaser all necessary consents to permit the Purchaser to have inspections made and have

existing records released to the Purchaser by the municipal building and zoning department, fire department, public works, environmental agencies, the elevator inspections branch of the provincial or territorial department of labour and other appropriate authorities as the Purchaser may consider advisable between the date of this Agreement and Closing. Such consents shall authorize and direct the release of information to the Purchaser. The Purchaser acknowledges that BCRC may withhold consent for such investigations as are not generally consistent with those investigations conducted by the Purchaser prior to the execution of this Agreement or which are not, in BCRC's reasonable opinion, necessary in order for the Purchaser to determine whether to proceed with the transactions contemplated herein. Notwithstanding the foregoing, the Parties agree that any such investigations shall be completed, and no further requests will be approved by BCRC, at any time after the close of business on the 5th Business Day prior to the Closing Date. The Purchaser will indemnify the Vendor Indemnified Parties for any damage caused by the Purchaser or by any Person for whom the Purchaser is responsible at law prior to Closing while on the premises of Rail, BCR Partnership or either of the Vendors.

4.2 Compliance with Agreement

Subject to the terms and conditions provided in this Agreement, each of the Parties will take such commercially reasonable actions as are within its power to control and will use commercially reasonable efforts to cause or cause to be taken other actions which are not within its power to control so as to ensure compliance with each of the terms and conditions and covenants set forth in this Agreement which are for the benefit of any other Party, including to satisfy the conditions to closing of each Party as set out in Article 5 to the extent reasonably within their respective power and shall use commercially reasonable efforts to cooperate with any other Party in obtaining Closing Consents and satisfying mutual conditions to Closing. The Parties will, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement and each Party will provide such further documents or instruments (on commercially reasonable terms) required by any other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and to carry out its provisions, whether before or after the Closing. Nothing in this Section shall fetter the Crown prerogative with respect to the passage of legislation or the granting of any regulatory approvals.

4.3 Third Party Notices and Consents

The Vendors will, and prior to Closing will cause Rail and BCR Partnership, as appropriate, and from and after Closing the Purchaser will cause Rail and BCR Partnership, as appropriate, to use their respective commercially reasonable efforts to give required notices to third parties and to obtain all Closing Consents in connection with the matters contemplated by this Agreement. In the event of the failure or inability to obtain any of the Closing Consents, the Vendors shall hold any Assigned Agreements in trust for the Purchaser and shall forthwith assign the same to the Purchaser upon the required Closing Consent being obtained or satisfaction of any other applicable condition. Until such time, the Vendors shall, at the request and cost of the Purchaser, perform all obligations under such Assigned Agreements in the name of the Purchaser and all benefits derived therefrom shall be for the account of the Purchaser. BCRC shall indemnify and hold harmless the Indemnified Parties, from and against any and all Claims relating to such Assigned Agreements held in trust by the Vendors, but only to the extent that any such claims or liabilities arise out of or relate to their respective failure to act in accordance with specific instructions from the Purchaser in respect of such Assigned Agreements.

4.4 Books and Records

- (a) Delivery of Books and Records: At the Effective Time, the Vendors will deliver to the Purchaser all of the Books and Records. In addition to any statutory obligations to retain the Books and Records of Rail and BCR Partnership, the Purchaser agrees that it will

preserve the Books and Records so delivered to it for a period of fifteen (15) years from the Closing Date, and that it will preserve environmental and property related Books and Records so delivered indefinitely. Each Party will permit the other Parties or their respective authorized representatives reasonable access to the Books and Records as any of them may reasonably require, to complete financial statements, audits, Tax Returns and other governmental filings or as may reasonably be required to prepare for the pursuit or defence of any Claim. To the extent that any Books and Records so delivered contain information that is unrelated to the Business, the Purchaser shall, and shall cause Rail and BCR Partnership to, maintain the confidentiality of such information, to at least the same extent as the Purchaser maintains for its own confidential information.

In addition, authorized representatives of the Vendors shall have access to such Books and Records, which include information relating to business of the Vendors, Partnership or Rail, as conducted prior to the Closing Date, other than the Business, as they may reasonably require, upon reasonable notice to Rail and/or BCR Partnership, as the case may be, provided such access is not disruptive of Purchaser, Rail or BCR Partnership's operations. The Vendors shall maintain the confidentiality of such information relating to the Business as may be contained in such Books and Records, to at least the same extent as the Vendors maintain for their own confidential information.

- (b) Personal Information: In respect of any Personal Information contained in the Books and Records, the Purchaser covenants and acknowledges:
 - (i) to use and disclose any such Personal Information only for the same purposes for which it was collected, used or disclosed by the Vendors;
 - (ii) all such Personal Information relates directly to one or more of the Parties and/or Rail and BCR Partnership; and
 - (iii) to the extent required by Law, any person whose Personal Information has been disclosed to the Purchaser through the Books and Records will be notified by the Purchaser that the transactions contemplated by this Agreement have taken place and that such Personal Information was disclosed to the Purchaser as a consequence of such transactions.

4.4.1 Books and Records

Despite Section 4.4, BCRC shall retain in its exclusive possession following Closing emergency back up electronic tapes and data (other than the CHARM Tape Car Hire Rate Master) which contain historical information, data and records pertaining to the business affairs generally of BCRC and its Affiliates, including the Business as follows:

- (a) Tivoli Storage Manager ("TSM") which is used for the majority of servers to backup file systems and data. TSM have 2 copies of data stored at Iron Mountain (secure off-site storage) and one copy of the tape stored at BC Rail in the tape robot;
- (b) a customer developed backup program for the Revenue Management server. Backups for Revenue Manager System and SAP Production database have only one copy of the data stored off-site at Iron Mountain;
- (c) a SQL backup script for the SAP production database;

- (d) DLT TK88 tapes for backing up file systems and data; and
- (e) DAT 4mm or 8mm tapes, CD's with zipped files and round reel tapes for archived data.

BCRC shall retain possession of all such emergency back-up electronic tapes and data as described above for a period of two years following the Closing Date, during which time BCRC shall segregate all data and records pertaining to the business affairs generally of BCRC and its Affiliates from those matters pertaining to the Business. At the end of such two year period BCRC shall deliver possession of such segregated material pertaining to the Business to BCR Partnership.

BCRC shall provide the Purchaser and CNAL with reasonable confidential access to these back up tapes and data on a strictly need to have and know basis in the event the Books and Records acquired by the Purchaser and CNAL on Closing and relating to the Business are destroyed or lost. BCRC shall use commercially reasonable efforts to respond to the Purchaser and/or CNAL's requests for reasonable confidential access on a timely basis. Appropriate measures will be taken on the release by BCRC of such back up data or tapes to protect the confidentiality and/or privileged nature of any information or data that may be combined or commingled with the information and data the Purchaser and CNAL have a right of access to hereunder.

4.5 **Press Release and Announcements**

None of the Parties nor any of their respective representatives will make any press release, public announcement or other disclosure of information with respect to this Agreement or the transactions contemplated hereby without the prior written consent of BCRC and the Purchaser, except as may be required by any applicable Laws or by the requirements of any securities regulatory authority or stock exchange, in which case the Party required to make such press release, public announcement or other disclosure of information will use its commercially reasonable efforts to give prior notice to the other Party of such announcement. The Purchaser acknowledges that the Province (and its agents and representatives) is not bound by the obligations contained in this subsection 4.5, either as principal to BCRC or otherwise.

4.6 **Conduct of Business**

Except as otherwise expressly set forth in this Agreement and in Schedule X, during the period from the date of this Agreement through the Effective Time (the "**Interim Period**"), the Vendors shall cause each of Rail and BCR Partnership to carry on the Business in the ordinary course and in compliance in all material respects with all applicable Laws and, to the extent consistent therewith, shall use their reasonable best efforts to cause Rail and BCR Partnership to: (A) preserve intact their current business organizations; (B) keep available the services of their Employees; (C) continue to make all capital expenditures in respect of the fiscal year ending December 31, 2003 in a manner consistent with the capital expenditures set out in Schedule I and in respect of the fiscal year ending December 31, 2004 in the ordinary course of business and consistent with the expenditure practices set forth in Schedule I; (D) preserve their relationships with those persons having business dealings with them, including their Employees, customers and suppliers; (E) continue in force all policies of insurance maintained by or for the benefit of Rail or BCR Partnership and give all notices and present claims under all insurance policies in a timely fashion; and (F) promptly and diligently remedy, repair and/or rebuild any damage by fire or other hazard to the Assets and continue to diligently pursue such remedy, repair and/or rebuilding up to the Closing Date.

Except as otherwise expressly set forth in this Agreement and as set forth in Schedule X, during the Interim Period, the Vendors shall not permit Rail or BCR Partnership, without the prior written consent of

the Purchaser, to enter into any transaction which, if effected before the date of this Agreement, would constitute a breach of the representations, warranties or agreements of the Vendors contained in this Agreement. Without limiting the generality of the foregoing, during the Interim Period, the Vendors shall not permit Rail and BCR Partnership to (without the prior written consent of the Purchaser):

- (a)
 - (i) declare, set aside or pay any dividends on, or make any other payments or distributions in respect of, any of its shares or partnership interests, other than distributions specifically required or provided for under the partnership agreement in respect of BCR Partnership;
 - (ii) split, combine or reclassify any of its shares or partnership interests, as the case may be, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for its shares or partnership interests, as the case may be; or
 - (iii) purchase, redeem, retire or otherwise acquire any shares or partnership interests, as the case may be, or any other securities thereof or any rights, warrants or options to acquire any such shares or partnership interests, as the case may be, or other securities;
- (b) issue, deliver, sell, pledge or otherwise encumber any Purchased Interest or any other shares or securities of Rail or BCR Partnership;
- (c) adopt, propose or agree to amend any of its Charter Documents;
- (d) sell, lease, license, mortgage or otherwise encumber, voluntarily subject to or permit to exist any Encumbrance or otherwise dispose of any of its Assets, whether tangible or intangible other than in the ordinary course of business and as contemplated pursuant to this Agreement and the Revitalization Agreement;
- (e) discharge or satisfy any Encumbrance, or pay any obligation or liability (fixed or contingent) other than liabilities included in the Proforma Statements and liabilities incurred since the date of the Proforma Statements in the ordinary course of business;
- (f) make or agree to make any acquisition (other than of Inventory in the ordinary course of business) or capital expenditure for the fiscal year ending December 31, 2003 and for the fiscal year ending December 31, 2004 in excess of \$40,000,000 in the aggregate, in each year, on an annual basis, which includes the acquisitions or capital expenditures for the fiscal year ending December 31, 2003 set out in Schedule I pursuant to agreements and commitments entered into prior to the date of this Agreement and previously made available to the Purchaser or fail to make any capital expenditure they would otherwise make in the ordinary course of business;
- (g) incur any indebtedness for borrowed money or guarantee any such indebtedness other than Intercompany Amounts except for borrowings in the ordinary course of business;
- (h) except for loans, advances, capital contributions or investments specified in Schedule I [REDACTED], make any loans, advances or capital contributions to, or investments in, any other Person;

- (i) except as otherwise provided in this section 4.6 and as contemplated pursuant to [REDACTED] and X, enter into any Material Contracts, modify or amend any Material Contracts, or waive, release or assign any rights or claims under any such Material Contracts that are significant to such Material Contracts;
- (j) make any material change to its accounting methods, principals or practices, except as may be required by GAAP;
- (k) change the manner of billing of any of its customers;
- (l) except for arrangements entered into during the ordinary course of business, enter into, modify or amend any freight transportation contract or agreement, freight rates or tariffs, or waive, release or assign any rights or claims under any such freight transportation contract or agreement, freight rates or tariffs that are significant to a freight transportation contract or agreement, freight rates or tariffs;
- (m) subject to Section 5.2(g), grant any bonuses (other than bonuses payable to Employees for fiscal 2003 pursuant to bonus plans as disclosed to the Purchaser and payments to be made under Rail's long term incentive plan for fiscal 2002 and 2003 as disclosed to the Purchaser), whether monetary or otherwise, or make any general wage or salary increases in respect of its Employees, other than as provided for in the Collective Agreements, or change the terms of employment for any Employee or, except in the ordinary course of business, enter into a written contract with any Employee;
- (n) except for arrangements entered into during the ordinary course of business or as required by applicable Law, enter into, adopt or materially amend or change the funding or accrual practices of any bonus, profit sharing, compensation, severance, termination, pension, retirement, deferred compensation or other Benefit Plan for the benefit or welfare of any Employee (except for normal increases in the ordinary course of business) or materially increase in any manner the compensation or fringe benefits of any Employee or pay any material benefit not required by any existing Benefit Plan or other such arrangement or enter into any contract, agreement, commitment or arrangement to do any of the foregoing;
- (o) authorize or commit to agree to take any of the foregoing actions.

4.7 Notice of Material Developments

Each Party will, prior to Closing, give prompt written notice to the other Party of: (a) any variances in respect of any of its representations or warranties contained in this Agreement; (b) any breach of any covenant under this Agreement by such Party; and (c) any other material development which may render any of the conditions to Closing contained in this Agreement incapable of being satisfied or which could have a Materially Adverse effect on the Business, the Purchased Interests, Rail or BCR Partnership.

4.8 First Nations

The Purchaser acknowledges having had an opportunity to review and obtain information with respect to the following:

- (a) existing Protocol Agreements with Aboriginal groups;

- (b) Rail's existing Aboriginal Relations Protocol Policy;
- (c) Rail's existing Aboriginal scholarship program; and
- (d) Rail's skills training program for Aboriginals to conduct vegetation control programs with respect to those portions of Rail's right of way which pass through Indian reserves.

4.9 **Discharged Encumbrances**

The Vendors shall, at their sole cost, no later than Closing, discharge or cause to be discharged from title to the Railbed Real Property the Discharged Encumbrances and shall deliver to the Purchaser on or before Closing, evidence of the registration of such discharges.

4.10 **Insurance**

The Purchaser acknowledges that it, directly or indirectly, shall be responsible, from and after the Closing, for obtaining and providing all insurance coverages with respect to the Assets and the Business, including the provision of "tail insurance" coverages. The Purchaser covenants to cause Rail and BCR Partnership to provide assistance to BCR Captive from and after Closing with respect to any claims for subrogation that BCR Captive may have in respect of insurance claims relating to the Business, including where reasonably required, reasonable access to the Books and Records and reasonable assistance from Employees provided such access is not disruptive of Purchaser, Rail or BCR Partnerships operations.

4.11 **Purchaser Commitments**

The Purchaser covenants to perform its obligations and commitments under the Service Improvement Undertaking in accordance with the terms thereof.

4.12 **Tourist Train**

Purchaser covenants, and BCRC covenants to cause BCR Partnership to carry out, on a joint basis with Purchaser, a public Request For Proposal Process ("RFP") for proposals for tourist train service on the rail network comprising the Business and for interconnection on the Purchaser's rail network, the basic terms and conditions (including the scheduled timetable) of such RFP to be in the form attached as Schedule LL hereto. The Purchaser agrees to BCR Partnership carrying out this RFP prior to Closing and covenants to complete the RFP following Closing. Prior to Closing the Vendor shall cause BCR Partnership to establish a committee consisting of three persons, one appointed by each of the Vendor and the Purchaser and the third appointed jointly by the Vendor and the Purchaser to review the responses to the RFP received by BCR Partnership either prior to or after Closing. In the event the RFP process is completed prior to Closing, the Purchaser shall have the absolute right to accept or reject the accepted proposal, including, without limitation, the identity of the accepted party and the terms and conditions of the proposal.

4.13 **Reduction of Rail Stated Capital**

Prior to Closing, the Vendors shall cause the stated capital account maintained for the Rail Shares to be reduced to \$1 in the aggregate.

4.14 Review of Subdivision Plans

The Purchaser shall promptly review and comment on the subdivision plans for the Railbed Real Property marked "XX" in Schedule CC upon presentation of such plans to it by the Vendors, Rail or BCR Partnership.

4.15 Submission to the Commissioner of Competition

The Purchaser covenants that it will file its Open Gateway Plan included in its Service Improvement Undertakings in connection with its submission to the Commissioner of Competition to obtain the *Competition Act* Approval.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.18 North Vancouver Tunnel

Prior to entering the Revitalization Agreement, BCRC shall prepare and register in its favour the following, in a form satisfactory to BCRC and the Purchaser, each acting reasonably, and which shall form part of the Railbed Real Property:

- (a) a volumetric statutory right of way over that portion of Lot 3 of the Bed of Burrard Inlet lying in front of District Lot 271, Plan 18595 (Parcel Identifier: 007-136-943) located immediately south of Lot 4, District Lot 271 and the Bed and Foreshore of Burrard Inlet, Plan 18650 (Parcel Identifier: 007-124-589) and that portion of Lot 4 containing any encroachment of the Railbed Assets, which right of way shall have the following dimensions:
 - (i) 3 inches less than the distance to the walls, ceiling and drain pipe shown in Schedule RR; and

- (ii) 6 inches below grade calculated from the bottom of the rail ballast together with an underground corridor for the underground rail fibre optic cable or other such existing cables, if any, for the Business if any such cables are not otherwise within the said 6 inch area; and

- (b) a statutory right of way over the balance of Lot 3.

BCRC shall prepare and register the statutory rights of way, including any survey plans, at its own cost. The volumetric statutory right of way shall provide that notwithstanding the dimensions in paragraph 4.18(a)(ii), if the Purchaser lowers the track below the existing grade, the Purchaser shall, at its own cost, relocate any existing utilities (other than the utilities for the Business) located in such 6 inch area in accordance with all applicable Laws and indemnify the Vendors for any Claims and Liabilities arising from any events occurring as a result of the relocation during the time period of the relocation of utilities.

4.19 Vancouver Wharves

BCRC and the Purchaser undertake and agree to negotiate in good faith and to cause BCR Partnership to negotiate in good faith with Vancouver Wharves Limited Partnership with respect to the provision of rail services and the usage of certain tracks, from and after the Closing Date, the whole upon terms and conditions substantially consistent with the principles set forth in Schedule S. BCRC and the Purchaser further undertake and agree to negotiate in good faith and to cause BCR Partnership to negotiate in good faith with Vancouver Wharves Limited Partnership such agreements (including amendments to existing agreements, as the case may be) as may be required to implement those principles.

4.20 Rights of First Offer

The Purchaser agrees that notwithstanding anything in this Agreement to the contrary, [REDACTED] against title to the Railbed Real Property on Closing shall not constitute a breach of any title representation in this Agreement or covenant by the Vendors to clear title of Encumbrances other than Permitted Encumbrances and any remedy of the Purchaser in respect of these Encumbrances shall be pursuant to the terms and conditions of the Revitalization Agreement wherein these Encumbrances are not Permitted Encumbrances.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.25 Canadian Stevedoring

- (a) Despite [REDACTED] of this Agreement and the inclusion of Canadian Stevedoring Company Limited (“CSCL”) on Schedule F of this Agreement, the Parties acknowledge that CSCL is still in the process of being wound-up, but has not yet been formally dissolved and agree that CSCL will remain a wholly-owned subsidiary of Rail after Closing, until dissolved according to the directions of BCRC or is otherwise dissolved.
- (b) The Parties acknowledge that the winding up and dissolution of CSCL [REDACTED]. The Parties waive the condition to Closing specified in Section 5.1(d) of this Agreement solely as it applies to the requirement for CSCL to be dissolved or transferred to BCRC before Closing.
- (c) BCRC shall indemnify, defend and hold harmless the Purchaser, Rail and CNAL and each of their respective shareholders, officers, directors, employees, agents, representatives, successors and assigns (the “Indemnitees”) from and against any Claims and Liabilities in connection with, arising out of or relating to any assets, liabilities or operations of CSCL including any Claim or Liability in connection with, arising out of or relating to litigation which CSCL may be a part of as more particularly described in the Litigation Management Agreement. This indemnity: (i) shall not be subject to any term or condition in this Agreement or the Revitalization Agreement, including without limitation Article 9 of this Agreement, except for Section 9.4 and 9.5 that shall apply; and (ii) shall survive the Closing.

4.26 Railcar Transfer Agreement

- (a) Schedule OO of the Transaction Agreement sets out a Term Sheet for the transfer by BCR Marine of railcars used in the Business to the Purchaser (or an Affiliate) as provided for by Section 2.1 of the Transaction Agreement. Since the signing of the Transaction Agreement, the Parties have

negotiated and settled the definitive terms and conditions of the Railcar Transfer Agreement contemplated by Schedule OO but with certain modifications or changes. Upon execution and delivery of the Railcar Transfer Agreement on Closing the Parties shall be deemed to have satisfied their obligations pursuant to Section 2.1 of the Transaction Agreement, notwithstanding the modifications and changes to the terms of transfer as described herein.

- (b) The Parties acknowledge and agree that fifty-five (55) two-unit articulated container flat wagons, identification numbers BCOL 7300 to BCOL 7354 inclusive, are not Assets and are not utilized in the operation of the Business.




4.28 Additional Purchaser

Pursuant to an Assignment Agreement made between the Purchaser and CNAL dated July 13, 2004, CN assigned a portion of its interest and rights as Purchaser under the Transaction Agreement to CNAL. The obligations and liabilities of the Purchaser and CNAL as Purchasers under the Transaction Agreement and under the supplemental agreements set out in Schedule WW shall be joint and several.

4.29 Assets and Obligations


- (a) In the event that any cheques, money or other assets or payables or other obligations are received or incurred by Rail and/or BCR Partnership that are not assets or liabilities relating to the Business (other than, for greater certainty, the Closing Intercompany Amounts), the Parties acknowledge that Rail and/or BCR Partnership, as the case may be, will take all necessary actions to assign the benefit of such assets to BCRC (or as BCRC may direct) including endorsing cheques and that BCRC (or such party designated by BCRC) shall take all necessary actions to assume such obligations including payment of such payables.
- (b) In the event that any cheques, money or other assets or payables or other obligations are received or incurred by BCRC or BCR Properties that are assets or liabilities relating to the Business (other than, for greater certainty, the Closing Intercompany Amounts), the Parties acknowledge that BCRC will take, or will cause to be taken, all necessary actions to assign the benefit of such assets to Rail or BCR Partnership (as BCR Partnership may direct) including endorsing cheques and that Rail and/or BCR Partnership (as designated by BCR Partnership) shall take all necessary actions to assume such obligations including payment of such payables.

ARTICLE 5
CONDITIONS OF CLOSING

5.1 Mutual Conditions

The obligation of the Vendors to complete the sale of the Purchased Interests contemplated by this Agreement and of the Purchaser to complete the purchase of the Purchased Interests as contemplated by this Agreement is subject to fulfillment of the following conditions on or before the Closing Date:

- (a) No Order or Proceedings: No injunction, declaration, restraining order or judgment of a court or administrative tribunal of competent jurisdiction will be in effect which, directly or indirectly, restricts or prohibits the transactions contemplated by this Agreement and no action or proceeding will have been instituted and remain pending before any such court or administrative tribunal to restrict or prohibit any of the transactions contemplated hereby.
- (b) *Canada Transportation Act* Approval: The Purchaser shall have received a certificate of fitness pursuant to the provisions of the *Canada Transportation Act* with respect to the operation of the Business.
- (c) *Competition Act* Approval: Obtaining *Competition Act* Approval without conditions which would have any Materially Adverse effects on the Purchaser, the Purchaser's Business or the value of the Assets, Purchased Interests or the Business, provided, however, that any Consent Order Registration is hereby deemed not to have any Materially Adverse effects on the Purchaser, the Purchaser's Business or the value of the Assets, Purchased Interests or the Business.

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- (e) Revitalization Agreement: The Revitalization Agreement will have been entered into by BCRC and BCR Partnership, on terms and conditions set out in Schedule Z hereto.
 - (f) Legislation: The Legislature of the Province shall have passed such amendments to the *British Columbia Railway Act*, and any other applicable laws which may be required to authorize and permit the consummation of the transaction contemplated in this Agreement and the other documents to be executed and delivered pursuant hereto.

The foregoing conditions are inserted for the mutual benefit of the Vendors and the Purchaser and may be waived in whole or in part only if jointly waived by BCRC, on behalf of the Vendors, and the Purchaser, in their respective sole discretion.

5.2 Purchaser's Conditions

The obligation of the Purchaser to complete the purchase of the Purchased Interests contemplated by this Agreement is subject to fulfillment of the following conditions on or before the Closing Date:

- (a) Representations and Warranties: Each of the representations and warranties of BCRC contained in or pursuant to this Agreement will be true and correct in all material

respects, except such representations and warranties expressly qualified by their terms as to materiality and the representations and warranties set out in Sections 3.1.1(a), (b) and (d), 3.1.2(a)(i), (c) and (d) and 3.1.2(h)(i), which representations and warranties will be true and correct, as at the Closing Date and with the same effect as though made on and as of the Closing Date (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Purchaser shall have received a certificate from senior officers of each of the Vendors confirming the truth and correctness of such representations and warranties.

- (b) **Performance of Obligations:** All obligations and covenants to be performed or complied with by the Vendors hereunder on or before Closing pursuant to this Agreement will have been performed or complied with and the Purchaser shall have received a certificate from senior officers of each of the Vendors confirming such performance or compliance, as the case may be.
- (c) **No Adverse Material Change:** Since the date of this Agreement there will not have occurred any Materially Adverse change in, or discovery of any previously undisclosed fact which has or could reasonably be expected to have any Materially Adverse effect on the Business, the Purchased Interests, Rail or BCR Partnership, either individually or taken as a whole.
- (d) **No Change in Laws:** No Laws shall have been enacted, introduced or announced which, in the reasonable opinion of the Purchaser, has or could reasonably be expected to have any Materially Adverse effect on the Business, the Purchased Interests, Rail or BCR Partnership, either individually or taken as a whole.
- (e) **Closing Consents:** Obtaining all Closing Consents required to be obtained by the Parties, without conditions which has or could reasonably be expected to have any Materially Adverse effect on the Business, the Purchased Interests, Rail or BCR Partnership, either individually or taken as a whole.
- (f) **Receipt of Closing Documentation:** All Closing Documents relating to the due authorization and completion of the sale and purchase of the Purchased Interests under this Agreement and all actions and proceedings taken on or prior to the Closing in connection with the performance by the Vendors of their obligations under this Agreement, shall be satisfactory to the Purchaser, acting reasonably, and the Purchaser shall have received copies of all such documentation or other evidence as it may reasonably request in order to establish the consummation of the transactions contemplated by this Agreement.
- (g) **Collective Agreements Renewal:** The renewal terms, if any, of the Collective Agreements shall be in accordance with the terms set [REDACTED].
- (h) **Legal Opinion:** The Vendors will have delivered to the Purchaser a legal opinion on terms and conditions satisfactory to the Vendor and the Purchaser acting reasonably (the “**Vendors’ Opinion**”), which opinion, shall include, amongst other matters, an opinion that each of the Property Guarantee Agreement and the Transaction Guarantee Agreement has been duly authorized and validly entered into by, and is enforceable against the Province.

- (i) **Directors:** Those directors specified in writing by the Purchaser, not less than five Business Days prior to the Closing Date, to resign will have resigned in favour of nominees of the Purchaser effective as of the Closing Date and will have granted to each of Rail and BCR Partnership a full release of all claims which they had, have or may in the future have against such entity.
- (j) **Releases:** The Vendors shall have released any Employees from any confidentiality or non-competition agreements or non-solicitation covenants with the Vendors;
- (k) **Encumbrances:** The Purchaser shall have received evidence satisfactory to it that all Discharged Encumbrances have been discharged and that the Assets are free and clear of all Encumbrances other than Permitted Encumbrances.
- (l) **Guarantee:** The Transaction Guarantee Agreement and the Property Guarantee Agreement shall have been entered into by the Province on terms and conditions set out in Schedule NN hereto.

The above conditions are for the exclusive benefit of the Purchaser and may be waived by the Purchaser, in its sole discretion, in whole or in part. If any such condition has not been fulfilled and the Purchaser waives fulfillment thereof, such waiver will constitute a waiver of any rights or claims that the Purchaser may have in respect of the subject matter of that waiver.

5.3 Vendors' Conditions

The obligation of the Vendors to complete the sale of the Purchased Interests contemplated by this Agreement is subject to fulfillment of the following conditions on or before the Closing Date:

- (a) **Representations and Warranties:** The representations and warranties of the Purchaser contained in or pursuant to this Agreement will be true and correct in all material respects, except the representations and warranties set out in Section 3.3(a), (b) and (d) which representations and warranties will be true and correct, as at the Closing Date and with the same effect as though made on and as of the Closing Date (except as such representations and warranties may be affected by the occurrence of events or transactions expressly contemplated and permitted by this Agreement) and the Vendor shall have received a certificate from senior officers of the Purchaser confirming the truth and correctness of such representations and warranties.
- (b) **Performance of Obligations:** All obligations and covenants to be performed or complied with by the Purchaser hereunder on or before Closing pursuant to this Agreement will have been performed or complied with and the Vendors shall have received a certificate from senior officers of the Purchaser confirming such performance or compliance, as the case may be.
- (c) **Legal Opinion:** The Purchaser will have delivered to the Vendors a legal opinion on terms and conditions satisfactory to the Purchaser and the Vendor acting reasonably (the "**Purchaser's Opinion**").
- (d) **Purchaser Guarantor:** The Purchaser shall have entered into the Property Guarantee Agreement and Transaction Guarantee Agreement on terms and conditions set out in Schedule NN hereto.

- (e) Service Improvement Undertaking: Purchaser undertakes to offer a service improvement undertaking (the “**Service Improvement Undertaking**”) including an “Open Gateway Rate and Service Commitment” pursuant to which the Purchaser will publish and maintain a competitive and proportional rate matrix between geographical zones and railway interchanges), the whole as more fully set out in Schedule KK;
- (f) Officer’s Certificate: The Vendors shall receive a certificate from senior officers of the Purchaser confirming certain information, [REDACTED];

The above conditions are for the exclusive benefit of the Vendors and may be waived by BCRC, in its sole discretion, on behalf of the Vendors, in whole or in part. If any such condition has not been fulfilled and BCRC, on behalf of the Vendors, waives fulfillment thereof, such waiver will constitute a waiver of any rights or claims that the Vendors may have in respect of the subject matter of that waiver.

ARTICLE 6 CLOSING

6.1 Time and Place

The Closing will take place at the offices of Borden Ladner Gervais LLP, 1200 – 200 Burrard Street, Vancouver, British Columbia at 10:00 a.m. (Vancouver time) on the Closing Date, or such other time and place as mutually agreed to by the Parties.

6.2 Vendors’ Closing Documents

At the Closing, the Vendors will deliver the following to the Purchaser:

- (a) share certificates representing the Rail Shares, duly endorsed for transfer to the Purchaser;
- (b) a BCR Partnership agreement amendment making the Purchaser a partner and providing for the withdrawal of the Vendors as partners;
- (c) shareholder resolutions of BCRC and BCR Properties regarding the sale of substantially all of the assets;
- (d) a certified copy of a resolution of the directors of each of the Vendors authorizing the sale of the Purchased Interests as contemplated by this Agreement and the execution and delivery of this Agreement and all documents to be executed and delivered by each of the respective Vendors pursuant thereto;
- (e) a certified copy of resolutions of the directors of Rail approving the transfer of the Rail Shares to the Purchaser;
- (f) a certified copy of resolutions of the directors of BCR Partnership approving the transfer of the BCR Partnership Units to the Purchaser;
- (g) resignations and releases from all directors of Rail specified by the Purchaser pursuant to Section 5.2(i);

- (h) a certificate of the *President* and the *Chief Financial Officer* of each of the Vendors as to the accuracy as of the Closing Date of the Vendors' representations and warranties and the performance of its covenants to be performed at or before the Closing;
- (i) the corporate seal and minute books of Rail and BCR Partnership;
- (j) the Vendors' Opinion;
- (k) such confirmations of Closing Consents as may be satisfactory to the Purchaser, acting reasonably;
- (l) executed originals of the Revitalization Agreement and of the lease for the Headquarter Premises;
- (m) executed originals of the Transaction Guarantee Agreement and Property Guarantee Agreement; and
- (n) such other Closing Documents as may be reasonably necessary to complete the transactions provided for in this Agreement.

6.3 Purchaser's Closing Documents

At the Closing the Purchaser will deliver the following to the Vendors:

- (a) confirmation of payment of the Purchase Price;
- (b) a certified copy of resolutions of the directors of the Purchaser authorizing the purchase of the Purchased Interests as contemplated by this Agreement and the execution and delivery of this Agreement and all documents required to be executed by the Purchaser pursuant hereto;
- (c) a certificate of the *President* and *Chief Financial Officer* of the Purchaser directed to the accuracy as of the Closing Date of the representations and warranties of the Purchaser and the performance by the Purchaser of the covenants to be performed at or before the Closing with particulars of any inaccuracy or non-performance;
- (d) the Purchaser's Opinion;
- (e) releases in a customary form, executed by each of the Purchaser, Rail and BCR Partnership in respect of each of the Vendor Indemnified Parties and the directors and officers of each of Rail and BCR Partnership and Affiliates;
- (f) such confirmations of Closing Consents as may be satisfactory to BCRC, on behalf of the Vendors, acting reasonably;
- (g) an executed original of the Property Guarantee Agreement and Transaction Guarantee Agreement;
- (h) a certificate from senior officers of the Purchaser confirming certain information, in the form set out in Schedule PP hereto;

- (i) cheques or confirmation of wire transfers of payments to certain Employees as required pursuant to Section 4.21 hereto; and
- (j) such other documents as may be reasonably necessary to complete the transactions provided for in this Agreement

6.4 **Books and Records**

Immediately following the Closing, the Vendors will deliver or make available to the Purchaser, all Books and Records in the possession or control of the Vendors.

ARTICLE 7 EMPLOYMENT AND PENSION PLAN MATTERS

7.1 **Continuation of Employment**

The Purchaser acknowledges and agrees that:

- (a) none of the Vendors, Rail or BCR Partnership are obligated to terminate the employment of any Employee at or prior to Closing;
- (b) the Closing of the transactions contemplated by this Agreement will not change the employment status of any Employee; and
- (c) Rail and BCR Partnership continue to be bound by the terms of the Collective Agreements as required by Law until their termination, expiration or replacement.

7.2 **Transition Plan**

BCRC acknowledges that the Purchaser has provided it with an Employee transition plan, describing the Purchasers' communication and transition plan regarding the transactions generally and specifically relating to pensions, benefits and other employment-related matters and BCRC confirms that it is satisfied with such Employee transition plan.

7.3 **Labour Disputes**

Grievances, references and arbitrations under the Collective Agreements, applications, complaints, disputes, claims, actions, suits, demands or other proceedings (collectively "**Proceedings**") relating to the Employees (and former employees engaged in the Business) which are made, filed, commenced or instituted before or after the Closing Date, including those based substantially on events or circumstances that occurred, existed or were initiated before the Closing Date, will be the sole responsibility of Rail, BCR Partnership or the Purchaser, as the case may be.

7.4 **General Responsibility**

The Purchaser, Rail and BCR Partnership will be responsible for all claims, demands, actions, causes of action, losses, damages, costs or expenses whatsoever, including legal fees, arising in respect of the employment of the Employees as contemplated by this Article 7, regardless of whether such matters arose before or after the Closing Date, unless such event is a breach of a representation or warranty or covenant of the Vendors pursuant to this Agreement.

7.5 Pension Plan Matters

Rail and BCR Partnership, as applicable, shall cause a written notice to be sent to BCIMC, not later than the Closing Date, requesting that BCIMC redeem the units of every pooled investment fund then being held in respect of each Pension Plan on the Closing Date or as soon thereafter as is reasonably practicable. Such redemption shall be in cash or in such marketable securities as may be acceptable to the Purchaser and shall be transferred by BCIMC to the trustee for the applicable Pension Plan. Any costs incurred in relation to such redemption shall be borne by the Purchaser and shall not be deducted from the proceeds of such redemption or included in any calculation of the Working Capital Amount.

7.6 Excluded Employee Obligations

- (a) Prior to the Closing Date [REDACTED], the Vendors shall, in respect of any Benefit Plans in which Excluded Employees participate:
- (i) cause each Excluded Employee to cease participating in and accruing benefits under the applicable Benefit Plan;
 - (ii) in accordance with the terms of such Benefit Plan and applicable Law, seek approval to pay, settle or otherwise transfer from the applicable Benefit Plan, any benefits to which the Excluded Employee is entitled based on his or her service up to the date on which he or she ceases to actively participate in such Benefit Plan; and
 - (iii) in respect of the Pension Plans, cause each Excluded Employee with vested benefits to become a deferred vested member of the Pension Plan and give each such employee the option to transfer the commuted value of his or her accrued benefits from the Pension Plan, in accordance with applicable Law.
- (b) Notwithstanding anything to the contrary in this Agreement, the Vendors shall be responsible for and shall satisfy any and all liabilities or obligations to Excluded Employees, including any and all liabilities or obligations to Excluded Employees under or in respect of the Benefit Plans, which are not fully settled or transferred prior to the Closing Date in accordance with this Section 7.6.

ARTICLE 8 POST CLOSING MATTERS

8.1 Use of Vendors' Name and Designs

From and after the Closing, each of the Purchaser, Rail and BCR Partnership shall be precluded from, directly or indirectly:

- (i) using, claiming, applying to register, or registering any of the Excluded Trademarks in association with any business, goods or services whatsoever in Canada or in any other jurisdiction;
- (ii) challenging the validity of any of the Excluded Trademarks or the Vendors' interests in any of the Excluded Trademarks; and
- (iii) doing anything that might impair the Vendors' rights in the Excluded Trademarks.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.3 Transition Agreement

The Purchaser and the Vendors covenant to enter into at Closing a transition services agreement with respect to the segregation of certain communal information technology systems shared by the Vendors, certain affiliates of the Vendors, Rail and BCR Partnership. The terms and conditions of such transition agreement shall be such as are reasonable and customary for agreements of such type having regard to the circumstances.

**ARTICLE 9
SURVIVAL AND INDEMNIFICATION**

9.1 Survival of Representations and Warranties

- (a) Subject to paragraph 9.1(b), all representations, warranties, acknowledgments and covenants contained in this Agreement on the part of each of the Parties will survive the Closing, the execution and delivery under this Agreement of any share or security transfer instruments or other documents of title to any of the Purchased Interests and the payment of the consideration for the Purchased Interests.

- (b) The representations and warranties:

- (i) set out in Sections 3.1.1(a), (b), (d) and (e) and 3.1.2(a)(i) of this Agreement shall survive indefinitely;



- (iv) set out in 3.1.2(t) shall survive for a period of ten (10) years from the Closing Date;
 - (v) all other representations and warranties shall only survive for a period of three (3) years from the Closing Date; and
 - (vi) for the purposes of subparagraph (ii) above, "Rail" means Rail and any of its subsidiary entities.
- (c) If no claim has been made under this Agreement for any incorrectness in or breach of any representation or warranty made in this Agreement prior to the expiry of these survival periods, the Party having made such representation and warranty will have no further liability under this Agreement with respect to such representation or warranty.
- (d) Notwithstanding the limitations set out in Section 9.1(b), any Claim which is based on title to the Purchased Interests, intentional misrepresentation or fraud may be brought at any time.

9.2 Indemnification by BCRC

Subject to the limitations set forth in this Article 9, BCRC on behalf of the Vendors, will indemnify, defend and hold harmless the Indemnified Parties from and against any Claims against an Indemnified Party and any Liability suffered or incurred by an Indemnified Party (whether or not arising out of a Claim) in connection with, arising out of or relating to:

- (a) any incorrectness in or a breach by the Vendors of any representation or warranty given under this Agreement, or any of the certificates or other instruments or documents furnished by the Vendors pursuant to this Agreement, except for the environmental representations and warranties in section 3.1.2(t);

(b) any non-fulfillment or breach of any covenant, agreement or other provision by the Vendors under this Agreement required to be performed or complied with by the Vendors (whether at or prior to the Closing or after the Closing);

(c) any costs, expenses or liabilities for which the Vendors have agreed to indemnify the Purchaser, Rail and/or BCR Partnership pursuant to a specific provision to that effect in this Agreement;

[REDACTED]

[REDACTED]

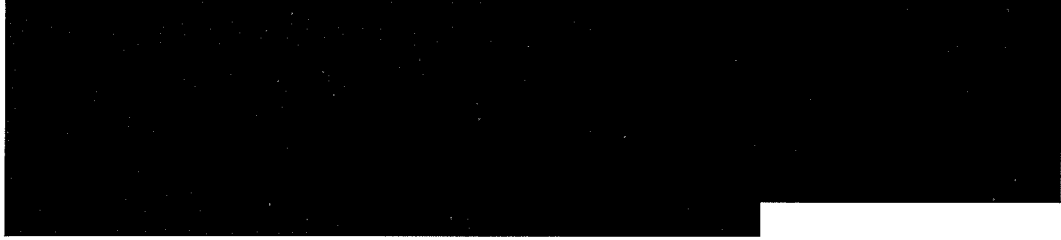
[REDACTED]

(g) any amount properly payable to BC Rail or the BCR Partnership as a result of determined claims under the insurance policies from BCR Captive which amount is not paid in accordance with the terms of the policy as they exist on the Closing Date;

[REDACTED]

[REDACTED]

[REDACTED]



Except in the case of fraud or declaratory or injunctive relief to enforce the provisions of this Agreement, and except as otherwise provided in this Agreement, the rights of the Parties under Articles 9 and 10, for compensation and indemnity shall be the exclusive rights and recourse of the Parties for Claims, Third Party Claims and Liabilities in connection with this Agreement.

9.3 Indemnification by Purchaser

Subject to the limitations set forth in this Article 9, the Purchaser will indemnify, defend and hold the Vendor Indemnified Parties harmless, from and against any Claims against a Vendor Indemnified Party and any Liabilities suffered or incurred by a Vendor Indemnified Party (whether nor not arising out of a Claim) in connection with, arising out of or relating to:

- (a) any incorrectness in or a breach by the Purchaser of any representation or warranty given by it under this Agreement or any of the certificates or other instruments or documents furnished by the Purchaser, as the case may be, pursuant to this Agreement;
- (b) any non-fulfillment or breach of any covenant, agreement or other provision by the Purchaser under this Agreement required to be performed or complied with by the Purchaser at or prior to the Closing or after the Closing or any non-fulfillment or breach of any covenant or agreement by Rail and BCR Partnership under this Agreement required to be performed or complied with by Rail and BCR Partnership after the Closing;
- (c) any Taxes payable by the Vendor Indemnified Party as a result any payment received by it under this indemnity, provided that the Vendor Indemnified Party shall, at the reasonable request of the Purchaser, make any elections available to it under the Tax Act and any applicable provincial legislation in respect of payments received that would reduce the amount of such Taxes; and
- (d) any Liability or Claim suffered or incurred by the Vendor Indemnified Parties relating to the Business on the basis of the fact that under the *Partnerships Act* (British Columbia) partners of a general partnership remain liable for unsatisfied debts and obligations of the BCR Partnership, whether arising out of facts or circumstances which occur prior to or after the Closing Date, provided that no claim for indemnification may be made and the Purchaser will have no obligation to indemnify any Vendor Indemnified Party where the Liability or Claim arises out of any facts or circumstances in respect of which the Purchaser would otherwise be entitled to indemnification from the Vendor Indemnified Party or failure of the Vendor Indemnified Party to comply with the terms and conditions of this Agreement.

Except in the case of fraud or declaratory or injunctive relief to enforce the provisions of this Agreement, and except as otherwise provided in this Agreement, the rights of the Parties under Articles 9 and 10, for

compensation and indemnity shall be the exclusive rights and recourse of the Parties for Claims, Third Party Claims and Liabilities in connection with this Agreement.

[REDACTED]

[REDACTED]

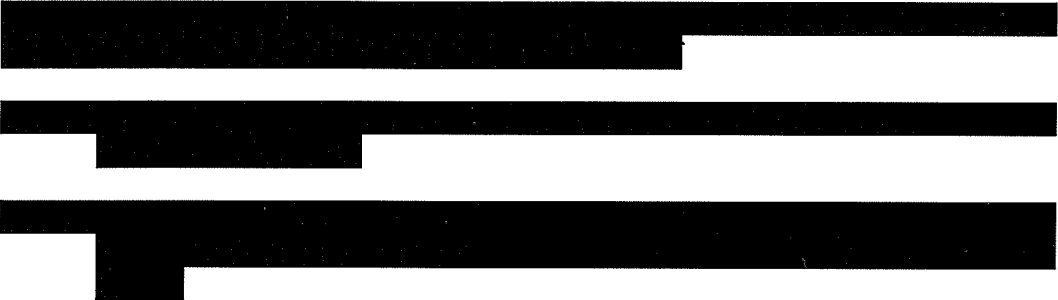
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



9.5 **Defence of Claims**

Any Indemnitee making a claim for indemnification under this Article 9 based upon a third party Claim will notify the Indemnitor of the Claim in writing (a “Notice of Third Party Claim”) promptly after receiving written notice of any Claim against it by a third party describing the Claim, the amount thereof (if known and quantifiable) and the basis thereof; provided that the failure to so notify the Indemnitor will not relieve the Indemnitor of its obligations hereunder unless and to the extent that the Indemnitor will be actually prejudiced by such failure to so notify. If an Indemnitee becomes aware of the commencement of any proceedings, investigations or audits by a third party that could give rise to a Claim against the Indemnitors for which the Indemnitee would be making a claim for indemnification in respect of any incorrectness in or breach by a Vendor of any of the representations given under Section 3.1.2(u), the Indemnitee will, promptly after becoming aware of the commencement of such proceeding, investigation or audit, provide written notice to the Indemnitors (an “**Audit Notice**”), which written notice will set out a description of the proceeding, investigation or audit, provided that the failure to provide an Audit Notice to an Indemnitor will not relieve the Indemnitor of its obligations under this Article 9 unless and solely to the extent that the Indemnitor is actually prejudiced by the failure to so provide an Audit Notice. If an Indemnitee receives a letter or other written notification from a tax authority proposing an assessment or reassessment of Taxes that could give rise to a Claim against the Indemnitors for which the Indemnitee would be making a claim for indemnification in respect of any incorrectness in or breach by a Vendor of any of the representations given under Section 3.1.2(u) (a “**Proposal Letter**”), the Indemnitee will promptly after receiving the Proposal Letter notify the Indemnitor describing the nature and the amount of the proposed assessment or reassessment (a “**Proposal Letter Notice**”), provided that the failure to provide a Proposal Letter Notice to an Indemnitor will not relieve the Indemnitor of its obligations under this Article 9 unless and solely to the extent that the Indemnitor is actually prejudiced by the failure to so provide a Proposal Letter Notice. The Indemnitor will be entitled to participate in the defence of any such Claim giving rise to an Indemnitee’s claim for indemnification at the Indemnitor’s expense, and at its option (subject to limitations herein) will be entitled to assume the defence thereof by appointing a reputable counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defence; provided that:

- (a) the Indemnitee will be entitled to participate in the defence of such Claim and to employ counsel of its choice for such purpose; provided that the fees and expenses of such separate counsel will be borne by the Indemnitee (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnitor effectively assumes control of such defence which, notwithstanding the foregoing, will be borne by the Indemnitor);

- (b) the Indemnitor will not be entitled to assume control of such defence and will pay the fees and expenses of counsel retained by the Indemnitee if an adverse determination with respect to the Claim giving rise to such claim for indemnification will be severely detrimental to or materially injurious to the Indemnitee’s reputation or future business

prospects or the Indemnitor failed or is failing to vigorously prosecute or defend such claim;

- (c) if the Indemnitor will control the defence of any such Claim, the Indemnitor will obtain the prior written consent of the Indemnatee before entering into any settlement of the Claim or ceasing to defend such Claim if, pursuant to or as a result of such settlement or cessation, injunctive or other equitable relief will be imposed against the Indemnatee or if such settlement does not expressly and unconditionally release the Indemnatee from all liabilities and obligations with respect to such Claim, without prejudice.

9.6 Limitations on Indemnification by BCRC

The liability of BCRC, with respect to any claims for indemnity under this Agreement (including any claims for indemnity under Article 10) will be limited as follows:

[REDACTED]

[REDACTED]

[REDACTED]

- (d) BCRC shall have no responsibility for any Liability or Claim with respect to indirect, consequential or punitive damages or damages for loss of profit or opportunity;
- (e) BCRC shall have no responsibility for any Liability or Claim with respect to any increase in Liability, which increase is directly caused by the negligent acts or omissions of an Indemnified Party after the Closing;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9.7 Limitation on Indemnification by Purchaser

The liability of the Purchaser with respect to any claims for indemnity under this Agreement arising out of its representations or warranties will, in the aggregate, be limited as follows:

- (a) no claim for indemnification may be made unless the aggregate amount of the Liability and Claims exceeds \$13,125,000, in which case the Purchaser will be obliged to indemnify for only that portion of such Claims and Liabilities over \$13,125,000 in the aggregate;
- (b) no claim for indemnification may be made for any single Claim or Liability which is less than \$500,000; and

- (c) the maximum aggregate liability of the Purchaser with respect to any such claims for indemnity will not exceed \$262,500,000;
- (d) the Purchaser shall have no responsibility for any Liability or Claim with respect to indirect, consequential or punitive damages or damages for loss of profit or opportunity; and
- (e) the Purchaser shall have no responsibility for any Liability of Claim with respect to any increase in Liability, which increase is directly caused by the negligent or intentional acts or omissions of a Vendor Indemnified Party after the Closing.

9.8 Duty to Mitigate

The Parties' duties to mitigate damages in relation to Claims, Third Party Claims and Liabilities suffered or incurred by it shall be limited solely to those prescribed in the common law.

9.9 Lost Note Indemnity

As a consequence of:

- (a) BCR Properties confirming that a promissory note issued (the "**Properties Note**") by BCR Partnership to BCR Properties dated June 19, 1999 in the principal amount of \$428,745,205.48 having been misplaced, lost or destroyed; and
- (b) BCRC confirming that a promissory note (the "**BCRC Note**") issued by BCR Partnership to BCRC dated December 5, 1997 in the principal amount of \$100,000,000.00 also having been misplaced, lost or destroyed;
 - (i) BCR Properties acknowledges that upon execution and delivery of the Debt Restructuring Agreement (2009 Debt) by BCR Partnership and BCR Properties and the execution and delivery by BCR Partnership to BCR Properties of the new promissory notes to be issued to BCR Properties thereunder, the Properties Promissory Note shall be cancelled and of no further force or effect;
 - (ii) BCR Properties agrees that if BCR Properties subsequently locates the original promissory note, it will surrender the original promissory note to BCR Partnership for cancellation;
 - (iii) BCRC acknowledges that upon the execution and delivery of the Debt Restructuring Agreement (2009 Debt) by BCR Partnership and BCRC, and the execution and delivery by BCR Partnership to BCRC of the new promissory notes to be issued to BCRC thereunder, the BCRC Promissory Note shall be cancelled and have no further force or effect;
 - (iv) BCRC agrees that if BCRC subsequently locates the original promissory note, it will surrender the original promissory note to the BCR Partnership for cancellation; and
 - (v) BCRC on behalf of itself and on behalf of BCR Properties hereby agrees to indemnify, defend and hold harmless the Purchaser, Rail, BCR Partnership and CNAL and each of the respective shareholders, officers, directors, employees,

[REDACTED]

10.2 **Limits on Environmental Indemnity**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (b) The maximum liability of BCRC with respect to any claims for indemnification under clause 10.1(b)(ii) will not exceed \$54,000,000.
- (c) [Intentionally Deleted]
- (d) No claim for indemnification may be made under clause 10.1(b)(ii) and BCRC will have no obligation to indemnify any Indemnified Party under clause 10.1(b)(ii) unless notice has been given by the Indemnified Party in accordance with section 9.4 on or before the third anniversary of the Closing Date.

- (e) [Intentionally Deleted]
- (f) No claim for indemnification may be made under clause 10.1(b)(iv) unless the provisions of section 21.17(c) and (d) of the Revitalization Agreement have been complied with and the term “Tenant Indemnified Party” in that section will be deemed to include all Indemnified Parties under this Agreement.

10.3 Release

The Indemnified Parties (which for purposes of this section 10.3 includes any Affiliates of the Indemnified Parties and the shareholders, directors, officers, agents, employees, successors and assigns of such Affiliates) hereby assume and shall be responsible for and hereby release the Vendor Indemnified Parties from any Claims, Third Party Claims and Liabilities (whether or not arising out of a Third Party Claim), which they have, may have or will have arising from or in any way related directly or indirectly to the environmental condition of, or any environmental matters or issues related to or involving, Rail, BCR Partnership or any of the Assets, the Business or the Historic Properties except for Claims under this Article 10 or Claims under Article 21 of the Revitalization Agreement. The Indemnified Parties shall not directly or indirectly commence, assert or pursue or threaten to commence, assert or pursue any type of Claim (including an order issued by a Governmental Authority) against any of the Vendor Indemnified Parties relating to the environmental condition of, or any environmental matter or issue related to or involving, Rail, BCR Partnership or any of the Assets, the Business or the Historic Properties other than Claims pursuant to Article 10 or Claims under Article 21 of the Revitalization Agreement, including (i) facilitating, assisting, promoting or encouraging any other Person or Governmental Authority to commence, assert or pursue or threaten to commence, assert or pursue a Claim; (ii) threatening, alleging or claiming that the Vendor Indemnified Parties or any of them are responsible for the environmental condition of, or any environmental matter or issue related to or involving, Rail, BCR Partnership or any of the Assets, the Business or the Historic Properties; or (iii) directly or indirectly (including encouraging any Person or Governmental Authority to) taking any step or doing anything that could directly or indirectly circumvent the objective or intent of the foregoing release.

10.4 Retained Rights

The Vendors shall retain all rights to commence and pursue at the Vendors’ cost, and retain all proceeds of, any Claims, whether in the name of the Vendors, Rail or BCR Partnership, the Vendors or any Indemnified Parties may have with respect to all matters subject to BCRC’s indemnification obligations pursuant to this Article 10 and the Purchaser shall, and shall cause Rail and BCR Partnership to provide all reasonable assistance and cooperation the Vendors may request from time to time in respect of such Claims including providing all relevant Books and Records and witnesses and executing any assignment of rights or Claims the Vendors may require to pursue such Claims.

10.5 Vancouver Wharves Amendment

For purposes of Section 10.2(a) of this Agreement and the Revitalization Agreement, BCRC acknowledges and agrees that any Relocation Work requested by VWLP and performed by or on behalf of Purchaser or VWLP pursuant to, and as that term is defined in, the Vancouver Wharves Rail Service and Track Use Agreement, made as of the date hereof, between BCR Partnership and Vancouver Wharves Limited Partnership will be deemed to be services performed in connection with the PEC Sublease Track Relocation Plan.

ARTICLE 11 TERMINATION

11.1 Termination

This Agreement may be terminated before Closing by any of the following:

- (a) by the written agreement of the Parties;
- (b) subject to paragraph (d) below, at the election of the Purchaser if any condition set forth in Article 5 becomes incapable of fulfilment (other than as a direct result of the Purchaser's actions) and is not waived by the Purchaser, at any time on or before the date that is 6 months after the Closing Date;
- (c) subject to paragraph (d) below, at the election of the Vendors if any condition set forth in Article 5 becomes incapable of fulfilment (other than as a direct result of the Vendors' actions) and is not waived by the Vendors, at any time on or before the date that is 6 months after the Closing Date; and
- (d) by either Party any time after the date that is 6 months after the Closing Date provided however, that if the Purchaser's purchase of the Purchased Interests is delayed by (i) an injunction or order made by a court or regulatory authority of competent jurisdiction or an action has been instituted and remains pending seeking such an injunction or order, or (ii) the Purchaser or Vendors not having obtained any Closing Consent, or *Competition Act* Approval then, provided that such injunction, order or action is being contested or appealed or such Closing Consent or *Competition Act* Approval is being actively sought, as applicable, this Agreement shall not be terminated by any Party pursuant to this subparagraph 11.1(d) until the earlier of (i) the date that is 9 months after the Closing Date; and (ii) the fifth business day following the date on which such injunction, order or action ceases to be in effect or such Closing Consent is obtained, as applicable.

A termination by BCRC, on behalf of the Vendors, pursuant to this subsection 11.1 will be deemed to be a termination by both Vendors. Any termination of this Agreement made by a Party pursuant to subparagraph (b) or (c) above will be without prejudice to such Party's rights and remedies under this Agreement accrued to the date of termination, including any related to any breach of any representation, warranty or covenant of another Party.

ARTICLE 12 GENERAL PROVISIONS

12.1 Confidentiality

Subject to Sections 1.15 and 4.5, except as required by Law or by regulatory authority or stock exchange, the Parties acknowledge that this Agreement and all information obtained in connection with the transactions which are the subject matter of this Agreement constitutes commercial and financial information of the Parties, which has been, or will be, disclosed in confidence (including any information that has been disclosed to the Province in connection with the transactions which are subject to this Agreement). The Purchaser reaffirms and acknowledges and agrees that its obligations of confidentiality and the restrictions on use and disclosure of information received by it as set out in the confidentiality agreement previously entered into with BCRC in contemplation of pursuing a possible transaction continue in full force and effect, and shall survive the Closing or any termination of this Agreement.

Subject to Section 1.15 and 4.5 and the requirements of applicable Law, each of BCRC, BCR Properties, Rail and BCR Partnership, agrees to at all times keep confidential all information obtained in connection with the transactions which are the subject matter of this Agreement, and not directly or indirectly disclose, allows access to, transmit or transfer such information to any Person without the Purchaser's prior express written consent, except for information that:

- (i) is or becomes publicly available, other than through a breach of this Agreement or any other confidentiality obligation owed to the Purchaser of which any of BCRC, BCR Properties, Rail or BCR Partnership was aware;
- (ii) is subsequently lawfully and in good faith obtained by BCRC, BCR Properties, Rail or BCR Partnership from an independent third party without breach of this Agreement and without breach of a confidentiality obligation that the third party owed to the Purchaser or its Affiliates or representatives of which any of BCRC, BCR Properties, Rail or BCR Partnership or any of their respective representatives was aware;
- (iii) was in the possession of BCRC, BCR Properties, Rail or BCR Partnership on a non-confidential basis prior to being disclosed under this Agreement; or
- (iv) has been independently acquired or developed by BCRC, BCR Properties, Rail or BCR Partnership or any of their respective representatives without breach of this Agreement or any other confidentiality obligation owed to the Purchaser by any person of which any of BCRC, BCR Properties, Rail or BCR Partnership was aware.

Notwithstanding the foregoing, the Vendors may disclose such information to their respective representatives who have a need to know such information for the purpose of the transactions which are the subject matter of this Agreement (and only to the extent that each has a need to know) and who are aware that such information must be kept confidential.

Such obligations shall survive the Closing or any termination of this Agreement.

The Parties also acknowledge that disclosure of any such information publicly or to third persons could reasonably be expected to harm significantly the competitive position and/or interfere with the negotiating position of the disclosing Party, and further could reasonably be expected to harm the financial or economic interests of the disclosing Party. Accordingly, the Parties confirm their intention that all confidential information disclosed by one of the Parties to another Party will be deemed to be confidential and exempt from disclosure to third persons in accordance with sections 17 and 21 of FOIPPA, as amended.

The parties agree that competitively sensitive information and documents delivered by the Vendors to Purchaser's Counsel in connection with obtaining Competition Act Approval shall not be disclosed to the Purchaser without the express written permission of the Vendors, and that competitively sensitive information and documents delivered by the Purchaser to Vendors' Counsel in connection with obtaining Competition Act Approval shall not be disclosed to the Vendor without the express written permission of the Purchaser. Any party providing such material shall clearly mark it "Privileged and Confidential - External Counsel Only". Any such material will be exchanged in light of the prospect of litigation in the Competition Tribunal and, as such, is protected by privilege. Such material is and shall remain subject to all applicable privileges, including solicitor-client and solicitor work product privileges, and no waiver of any privilege on the part of any party shall be implied by the act of providing such material to another party. Any inadvertent or purposeful disclosure of such material shall not constitute a waiver of any privilege or protection of any party.

BCRC, on behalf of itself and the Province, agrees to assign the confidentiality agreements entered into with BCRC and the Province and other parties interested in completing a transaction similar to that contained in this Agreement, subject to BCRC and the Province retaining rights to pursue any actions for breaches of such agreements whether such breach occurred prior to or after such assignment. In addition, the Parties agree to provide notice to the unsuccessful bidders in connection with the subject matter of this Agreement and the Revitalization Agreement advising of such assignments.

12.2 Indemnified Parties

For greater certainty and without limiting the foregoing, the covenants and agreements the Vendor set forth herein are made expressly by the Vendor and any obligation or liability of the Vendor to any Indemnified Party other than the Purchaser set forth herein shall be directly owed to such Indemnified Party by the Vendor, as shall be held in trust by the Purchaser on behalf of such Indemnified Party, and the Vendor acknowledges that such Indemnified Party shall not be required to make any claim in relation to any such obligation or liability by, through or with the Purchaser.

12.3 Entire Agreement

This Agreement, together with all agreements and documents executed and delivered in connection with [REDACTED] the Closing, constitutes the entire agreement between the Parties and supersedes every previous agreement, communication, expectation, negotiation, representation or understanding, whether oral or written, express or implied, statutory or otherwise, among the Parties with respect to the subject matter of this Agreement except as specifically set out herein.

12.4 Severability

If, in any jurisdiction, any provision of this Agreement or its application to any Party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other Parties or circumstances.

12.5 No Other Representations

No director, officer, employee or agent of any Party has any authority to make any representation, warranty or covenant not contained in this Agreement, and each Party agrees that it has executed this Agreement without reliance upon any such representation or promise.

12.6 Waiver and Consent

No consent or waiver, express or implied, by any Party to or of any breach or default by any other Party of any or all of its obligations under this Agreement will:

- (a) be valid unless it is in writing and stated to be a consent or waiver pursuant to this subsection "*Waiver and Consent*";
- (b) be relied on as a consent to or waiver of any other breach or default of the same or any other obligation;
- (c) constitute a general waiver under this Agreement; or

- (d) eliminate or modify the need for a specific consent or waiver pursuant to this subsection in any other or subsequent instance.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

12.7 Amendments

This Agreement may not be amended except by written agreement among all of the Parties to this Agreement.

12.8 Expenses

Except as expressly otherwise set out herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be paid by the Party incurring such expense. In particular, the Vendors shall be responsible for any fees and expenses of CIBC World Markets Inc. and any other broker or investment advisor retained in connection with the sale of the Purchased Interests and such fees and expenses shall not constitute an obligation of Rail, BCR Partnership or the Purchaser.

12.9 Assignment

No Party may assign any right, benefit or interest in this Agreement without the written consent of the other Parties. Notwithstanding the foregoing, at any time prior to the Effective Time, Purchaser shall be entitled to assign its right, benefit and interest in this Agreement and its obligations hereunder, in whole or in part (other than the obligation of the Purchaser to enter into the Property Guarantee Agreement), to any Affiliate, provided the Purchaser remains liable for or guarantees the performance of its obligations hereunder, (which guarantee will become part of the Transaction Guarantee Agreement).

12.10 Binding Effect

This Agreement will enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

12.11 Time of Essence

Time is of the essence of this Agreement.

12.12 Further Assurances

Each Party will, at its own expense, execute and deliver all such further agreements and documents and do such further acts and things as may be reasonably required to give effect to this Agreement.

12.13 English Language

The Parties confirm that it is their wish that this Agreement, as well as any other documents relating to this Agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. *Les signataires confirment leur volonté que la présente convention, de même que tous les documents s'y rattachant, y compris tout avis, annexe et autorisation, soient rédigés en anglais seulement.*

12.14 Counterparts

This Agreement may be executed in any number of counterparts, each of which when delivered, either in original or facsimile form, will be deemed to be an original and all of which together will constitute one and the same document.

12.15 Notices

Every notice, request, demand or direction required or permitted to be given under this Agreement will be in writing and delivered by hand or facsimile transmission or email to the Party which it is to be given as follows:

To the Vendors:

British Columbia Railway Company
221 West Esplanade
North Vancouver BC
V7M 3J3

Attention: President and CEO
Fax No.: (604) 678-4736

with a copy to:

Borden Ladner Gervais LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, BC
V7X 1T2

Attention: Robert R. Shouldice

Fax No.: (604) 687-1415
E-mail: rshouldice@blgcanada.com

To the Purchaser:

Canadian National Railway Company
935 de la Gauchetière Street West
16th Floor
Montreal, QC
H3B 2M9

Attention: Sean Finn, Senior Vice-President
Public Affairs, Chief Legal Officer
and Corporate Secretary

Fax No.: (514) 399-4854
E-mail: sean.finn@cn.ca

with a copy to:

Osler, Hoskin & Harcourt LLP
1000 de la Gauchetière Street West
Suite 2100
Montreal, QC
H3B 4W5

Attention: Ward A. Sellers

Fax No.: (514) 904-8101
E-mail: wsellers@osler.com

or to such other address or facsimile number as is specified by a Party by notice to the other Parties given in accordance with this subsection. Any such notice, request, demand or direction delivered or transmitted to a Party as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a Business Day prior to 5:00 p.m. local time in the place of delivery or receipt. However, if the notice, request, demand or direction is delivered or transmitted after 5:00 p.m. local time or if such day is not a Business Day then it shall be deemed to have been given and received on the next Business Day.

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****TRANSACTION AGREEMENT – SIGNATURES****

Executed as of the day and year first above written.

BRITISH COLUMBIA RAILWAY COMPANY

By: “original signed by”
John R. McLernon
Director and Chair

By: “original signed by”
Robert L. Phillips
President and Chief Executive Officer

BCR PROPERTIES LTD.

By: “original signed by”
Kevin Mahoney
Director

CANADIAN NATIONAL RAILWAY COMPANY

By: “original signed by”
E. Hunter Harrison
President and Chief Executive Officer

By: “original signed by”
Claude Mongeau
Executive Vice-President and Chief Financial Officer

[SIGNATURES CONTINUED ON NEXT PAGE]

****TRANSACTION AGREEMENT – SIGNATURES****

BC RAIL LTD., a company incorporated under the laws of British Columbia having an office at 221 West Esplanade, North Vancouver, British Columbia ("**Rail**").

Rail hereby acknowledges having taken cognizance of the present Agreement and being entirely satisfied therewith and hereby irrevocably and unconditionally agrees to be bound by the terms of sections 3.1.2 and 12.1 hereof. Rail shall be deemed to be a party to this Agreement for all such purposes.

BC RAIL LTD.

By: "original signed by"
John R. McLernon
Director

By: "original signed by"
Robert L. Phillips
Director, President and Chief Executive Officer

BC RAIL PARTNERSHIP, a partnership created under the laws of British Columbia having an office at 221 West Esplanade, North Vancouver, British Columbia ("**BCR Partnership**").

BCR Partnership hereby acknowledges having taken cognizance of the present Agreement and being entirely satisfied therewith and hereby irrevocably and unconditionally agrees to be bound by the terms of sections 3.1.2 and 12.1 hereof. BCR Partnership shall be deemed to be a party to this Agreement for all such purposes.

BC RAIL PARTNERSHIP

By: "original signed by"
Robert L. Phillips
Director and President

CN ACQUISITION LIMITED

By: “original signed by”
Authorized Signatory

SCHEDULE A

Pages A1-A5 redacted.



SCHEDULE B

INTELLECTUAL PROPERTY

A. Trade-Marks

[Note: *The Identifying Information has been provided to assist in the identification of the marks and does not limit or restrict the nature or scope of marks.*]

1. BC Rail Ltd.

<u>Mark</u>	<u>Identifying Information</u>
(a) 	Abandoned Canadian Trade-mark Application No. 770,812, filed on December 6, 1994
(b) BC RAIL	Abandoned Canadian Trade-mark Application No. 770,811, filed on December 6, 1994
(c) 	Canadian Trade-mark Registration No. TMA456,304 registered on March 29, 1996 for 15 years expiring on March 29, 2011

2. BC Rail Partnership Nil

B. Patent

BC Rail Ltd. Nil
BC Rail Partnership Nil

C. Copyright

BC Rail Ltd. Nil
BC Rail Partnership Nil

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE B

Pages B2-B9 redacted.

SCHEDULE C

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SCHEDULE D

SHARE CAPITAL

A. BC Rail Ltd.

1. Authorized Share Capital

45,000,000 shares divided into:

- (a) 5,000,000 common shares with a par value of \$100 each
- (b) 20,000,000 first preferred shares with a par value of \$25 each:
 - (i) of which 8,000,000 shares have been designated as \$2.3125 cumulative, redeemable, retractable first preferred shares, series A;
- (c) 20,000,000 second preferred shares with a par value of \$100 each:
 - (i) of which 3,000,000 shares have been designated as non-cumulative, redeemable second preferred shares, series A;
 - (ii) of which 10,000 shares have been designated as non-cumulative, redeemable, retractable second preferred shares, series B; and
 - (iii) of which 6,200 shares have been designated as non-cumulative, redeemable, retractable second preferred shares, series C.

2. Issued Share Capital

Quantity	Class	Registered and Beneficial Owner
37,500	common shares	BCR Properties Ltd.
12,500	common shares	British Columbia Railway Company
462,669	series A second preferred shares	BCR Properties Ltd.
154,223	series A second preferred shares	British Columbia Railway Company
7,500	series B second preferred shares	BCR Properties Ltd.
2,500	series B second preferred shares	British Columbia Railway Company
4,650	series C second preferred shares	BCR Properties Ltd.
1,550	series C second preferred shares	British Columbia Railway Company

SCHEDULE E

PARTNERSHIP INTERESTS/CAPITAL

The partnership interests of BC Rail Partnership are fully described in the provisions of the Partnership Agreement effective as of the 5th day of December, 1997 among BC Rail Ltd., BCR Properties Ltd. and British Columbia Railway Company, which is hereby incorporated into this Schedule by reference, and which states, *inter alia*:

A. Revenue

Unless otherwise agreed to by the Partners by Ordinary Resolution, all receipts, benefits, rents, income, assets and other remuneration received by any Partner, Director or employee of the Partners, or which may be received by or accrue to any Partner, Director or employee of the Partners in connection with the Business will be for the account of the Partnership and will be paid into the revenue account of the Partnership or otherwise transferred to the Partnership.

B. Partnership Interests

	Initial Capital Contribution	Partnership Interests
BC Rail Ltd.	\$ 900,000	90%
BCR Properties Ltd.	\$50,000	5%
British Columbia Railway Company	<u>\$50,000</u>	<u>5%</u>
	\$1,000,000	100%

C. Transfer Restrictions

Unless the prior written consent of the Directors is obtained, no Partner will sell, assign, dispose of, mortgage or otherwise encumber its share or interest in the Partnership or any part of its share or interest in the Partnership, or enter into any agreement that may result in any person, firm or corporation becoming interested with it in the Partnership or do any act detrimental to the best interests of the Partnership.

SCHEDULE F

SUBSIDIARIES TO BE TRANSFERRED

1. BCR Ventures Inc.
2. BCR Passenger Services Ltd.
3. 68147 British Columbia Ltd. (formerly Casco Forwarding Ltd.)
4. BCR Leasing (U.S.) Inc.
5. BCR Wharves Ltd.
6. British Columbia Wharves Ltd.
7. Canadian Stevedoring Company Limited

SCHEDULE G

DISCHARGED ENCUMBRANCES

1. Mortgage No. 5053E granted by British Columbia Railway Company (formerly, Pacific Great Eastern Railway Company) in favour of Her Majesty the Queen in Right of the Province of British Columbia registered against the following properties:
 - (a) Parcel Identifier: 012-906-671
Lot 3 Block 12 Townsite of Lillooet
 - (b) Parcel Identifier: 006-334-245
That Part of District Lot 3622 Shown on Plan A18695; Lillooet District
Except Plan A632
 - (c) Parcel Identifier: 013-368-541
Parcel A (DD 144184F) of District Lot 4307 Lillooet District
 - (d) Parcel Identifier: 010-426-434
That Part of District Lot 217 shown on Plan A130 Lillooet District
Said to Contain 5.7 Acres More or Less
 - (e) Parcel Identifier: 010-426-728
That Part of District Lot 230 shown on Plan A130 Lillooet District
Said to Contain 6.3 Acres More or Less
 - (f) Parcel Identifier: 010-426-736
That Part of District Lot 794 shown on Plan A130 Lillooet District
Said to Contain 3.89 Acres More or Less
 - (g) Parcel Identifier: 010-426-744
That Part of District Lot 1 Group 3 shown on Plan A130 Lillooet District
Said to Contain 2.88 Acres More or Less
 - (h) Parcel Identifier: 010-426-787
That Part of District Lot 2 Group 3 shown on Plan A120 Lillooet District
Said to Contain 5.8 Acres More or Less
 - (i) Parcel Identifier: 015-972-640
That Part of the Fractional North West $\frac{1}{4}$ of District Lot 3025 Cariboo District
as shown on Plan A1231
 - (j) Parcel Identifier: 015-233-731
District Lot 3754 Cariboo District; and

2. Mortgage No. K3751 in favour of Daniel Roy Moorhead and Ada May Shoebridge registered against Parcel Identifier: 015-336-263, That Part of District Lot 5101, Cariboo District as shown on Plan 33550.

3. **Base Registration No. 4520195** registered on March 29, 1993 as amended by registration Nos. 484429A, 494141A and 505169A, against BC Rail Partnership (Seller) in favour of BCR Marine Ltd. (Buyer)

General Collateral: All of the seller's right, title and interest in and to certain computer and related equipment, miscellaneous equipment, locomotives and engines, rail cars and motor vehicles (collectively, the "Purchased Assets") purchased by the buyer from the seller pursuant to the Asset Purchase Agreement dated March 29, 1993.

4. **Base Registration No. 4520200** registered on March 29, 1993 as amended by registration Nos. 484432A, 494139A, and 505168A, against BC Rail Partnership in favour of BCR Marine Ltd.

General Collateral: All of the debtor's right, title and interest in and to certain computer and related equipment, miscellaneous equipment, locomotives and engines, rail cars and motor vehicles (collectively, the "Assets") leased by the secured party to the debtor pursuant to the Lease Agreement dated March 29, 1993; and all proceeds, including without limitation, all money, chattel paper, intangibles, goods, documents of title, instruments, securities, substitutions, licences, trade-ins, insurance proceeds and any other form of proceeds.

5. **Base Registration No. 5402520** registered on September 8, 1994 as amended by registration Nos. 484433A, 494138A, and 505166A, against BC Rail Partnership in favour of BCR Marine Ltd.

General Collateral: All of the seller's right, title and interest in and to certain computers and related equipment, miscellaneous equipment, rail cars and motor vehicles (collectively, the "Purchased Assets") purchased by the buyer from the seller pursuant to a Purchase Agreement dated September 2, 1994.

6. **Base Registration No. 5402535** registered on September 8, 1994 as amended by registration Nos. 484436A, 494135A, and 505165A, against BC Rail Partnership in favour of BCR Marine Ltd.

General Collateral: All of the debtor's right, title and interest in and to certain computers and related equipment, miscellaneous equipment, rail cars and motor vehicles (collectively, the "Assets") leased by the secured party to the debtor pursuant to a Master Lease Agreement dated November 1, 1993; and all proceeds, including without limitation, all money, chattel paper, intangibles, goods, documents of title, instruments, securities, substitutions, licences, trade-ins, insurance proceeds and any other form of proceeds.

SCHEDULE H

EXCLUDED TRADEMARKS

[**Note:** *The Identifying Information has been provided to assist in the identification of the marks and does not limit or restrict the nature or scope of marks.*]

The Excluded Marks include the following:

Excluded Mark

Identifying Information

1.



Canadian Trade-mark
Registration No. TMA536,150

2.

PACIFIC STARLIGHT DINNER TRAIN

Canadian Trade-mark
Registration No. TMA536,075

3.

ROYAL HUDSON

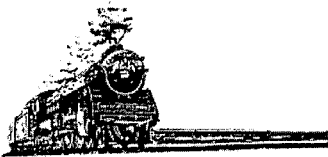
Canadian Trade-mark
Registration No. TMA488,187

4.

Royal Hudson

Canadian Trade-mark
Registration No. TMA457,071

5.



Canadian Trade-mark
Registration No. TMA456,017

6.

WHISTLER NORTHWIND

Canadian Trade-mark
Application No. 1,118,119

7.



Canadian Trade-mark
Application No. 1,118,118

8.



Canadian Trade-mark
Application No. 771,098

9.



Canadian Trade-mark
Application No. 771,097

10. **bcrail.ca**

Registration expires on
October 29, 2004

11. **bcrail.com**

Registration expires on
February 8, 2006

12. **BC Rail Film Services**

Unregistered Tradename

SCHEDULE I

CAPITAL EXPENDITURES AS OF OCTOBER 2003

		<u>Year To Date</u> <u>Actual</u> <u>Expenditure</u>	<u>2003</u> <u>Budget</u>	<u>2003</u> <u>Actual</u> <u>Anticipated</u> <u>Expenditures</u>
2003 CAPITAL PROJECTS				
<u>Operations and Maintenance Division</u>				
Operations				
CA/ENBR.0023	Br 313.1 Add Walkway	70,630	87,000	74,000
CA/ENGR.0047	Rockfall Protection Fencing	0	600,000	600,000
CA/OPEQ.0004	Locomotive Comm. - Headsets & Upgrades	1,982	200,000	200,000
CA/OPEQ.0005	Portable Radio Purchase	16,063	110,000	110,000
CA/OPEQ.0006	Purchase 80 - 66' Centrebeams	2,086,027	2,250,000	2,086,027
	Total Operations	2,174,702	3,247,000	3,070,027
Mechanical				
SP/MELO.0014	GE-9 Overhaul Components	423,347	1,528,000	423,347
	PG Sanding/Fueling Facilities	0	400,000	0
SP/MELO.0013	Cat Engines (5)	502,425	1,240,000	1,000,000
CA/MELO.0011	Fuel Saver Install(18)	48,942	180,000	65,000
CA/OPEQ.0003	Beltpack Install (3)	18,469	54,000	48,161
CA/MELO.0010	Sensory Braking Units Purchase (10)	44,754	64,000	44,754
	Total Mechanical	1,037,937	3,466,000	1,581,262
Engineering				
Ties:				
CA/ENTR.0069	Mechanized Tie Program	3,242,913	6,065,000	3,700,000
CA/ENTR.0070	System Ties	961,807	1,440,000	1,375,000
CA/ENTR.0071	Premium Plates & Fasteners	507,828	500,000	500,000
		4,712,548	8,005,000	5,575,000
Rail:				
CA/ENTR.0067	CWR Relay M117.5-123.6 Sq Sub	1,320,891	1,350,000	1,325,000
CA/ENTR.0068	CWR Curve Rail Changeout	1,577,010	2,775,000	1,600,000
CA/ENTR.0074	CWR Relay - Chetwynd Sub	201,162	205,000	200,000
CA/ENTR.0078	CWR Relay P.G. Yard	109,651	240,000	180,000
		3,208,714	4,570,000	3,305,000
Grading:				
CA/ENGR.0034	Install Gabion Mesh M594 - 596	9,906	150,000	9,906
CA/ENGR.0035	Rock Stab M78.0 - 79.5	133,162	250,000	160,000
CA/ENGR.0036	Slope Stabilization M161.5-164	119,032	175,000	170,000
CA/ENGR.0037	Erosion Protection - System	93,066	152,000	130,000

		Year To Date	2003	2003
		Actual	Budget	Actual
		<u>Expenditure</u>	<u>Budget</u>	<u>Anticipated Expenditures</u>
CA/ENGR.0038	Retaining Structures - System	279,913	305,000	305,000
CA/ENGR.0039	Gradework Provision -Ft. St. John Sub	173,386	200,000	200,000
CA/ENGR.0040	Gradework Provision - Stuart Sub	49,226	50,000	50,000
		<u>857,691</u>	<u>1,282,000</u>	<u>1,024,906</u>

Ballast:

CA/ENTR.0077	Surfacing Heavy Haul	963,784	800,000	1,200,000
CA/ENTR.0079	Surfacing Ft St John	278,584	250,000	310,000
CA/ENTR.0085	System Ballast Provision	168,077	104,000	180,000
		<u>1,410,445</u>	<u>1,154,000</u>	<u>1,690,000</u>

Bridges:

CA/ENBR.0021	Br 444.3 Repl. Yr 2 of 2	1,107,345	1,050,000	1,200,000
CA/ENBR.0024	Br 641.9 Upgrade Deck/ Walkway	145,498	338,000	157,000
CA/ENBR.0022	Br 28.2 Upgrade Furry Creek	93,540	140,000	110,000
		<u>1,346,383</u>	<u>1,528,000</u>	<u>1,467,000</u>

Other (Culverts, Structures, Equipment, etc.):

CA/ENBD.0015	Roofing - Squamish Wheel Shop	103,990	105,000	104,000
CA/ENCU.0007	Culvert Provision System	155,061	203,000	175,000
CA/ENCU.0008	Culvert Replacement M232.4	247,965	180,000	250,000
CA/ENEQ.0016	Purchase Additional Equipment	424,638	375,000	425,000
CA/ENEQ.0018	Purchase ACA Carriage For Pandrol Truck	0	110,000	10,000
CA/ENEQ.0019	Lillooet Hill Wayside Lubrication Upgrade Yr 1 of 3	72,379	115,000	100,000
CA/ENRW.0010	System Fencing for Livestock	154,614	154,000	160,000
CA/ENRW.0013	Road Crossing Compliance	228,063	150,000	250,000
CA/ENTR.0065	Switch Heaters Koster	0	91,000	0
CA/ENTR.0073	Upgrade Yard Turnouts	652,537	850,000	850,000
CA/ENTR.0083	Dragging Equipment Detectors	90,464	90,000	91,000
CA/ENTR.0084	Switch Heater South Switch Odell	2,477	51,000	35,000
		<u>2,132,188</u>	<u>2,474,000</u>	<u>2,450,000</u>

Environmental:

CA/ENBD.0016	Squamish Hydrocarbon Recovery	0	50,000	50,000
		<u>0</u>	<u>50,000</u>	<u>50,000</u>

Takla Subdivision:

CA/ENGR.0041	Gradework - Takla Sub	650,556	700,000	720,000
CA/ENTR.0080	Surfacing Takla Sub	447,733	400,000	500,000
CA/ENTR.0082	Takla Rail & Tie Program	102,275	300,000	200,000
		<u>1,200,564</u>	<u>1,400,000</u>	<u>1,420,000</u>

Communications & Signals:

AQ/CSMI.0001	Test Equipment > \$10,000	0	65,000	35,000
CA/CSRA.0006	Tape Recorder Repl @ BCRC	52,718	100,000	100,000

		Year To Date Actual Expenditure	2003 Budget	2003 Actual Anticipated Expenditures
CA/CSRA.0007	Power Reduc. @ Takla/Chet Sub Sites Yr 1 of 2	134,742	200,000	200,000
CA/CSSG.0008	Crossing Monitors	6,891	215,000	10,000
CA/CSTE.0007	PBX Replacement at Squamish	0	40,000	46,000
CA/ENSG.0001	SIS Relocation - Tumb Sub to M644 and M584	57,970	60,000	58,000
		<u>252,321</u>	<u>680,000</u>	<u>449,000</u>
	Total Engineering	15,120,854	21,143,000	17,430,906

Supply Management:

AQ/SMVE.0007	Non Revenue Vehicles	770,292	1,265,000	980,000
	Total Supply Management	770,292	1,265,000	980,000

Total Operations and Maintenance Division		19,103,785	29,121,000	23,062,195
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Information Technology

Deferred Projects:

DP/IT2003.01	REMS	1,002,140	1,650,000	1,230,000
DP/IT2003.02	Safety Statistics	0	50,000	0
DP/IT2003.03	Car Hire System	2,944	100,000	5,000
AQ/IT04.2003	SAP Operating Sys UG	36,997	80,000	130,000
	HR/Payroll SAP Extensions	0	55,000	0
	Enhancements to E-mail Security	0	65,000	0
DP/IT2003.04	Cheque Printing SW	7,714	35,000	7,714
	Total Deferred Projects	1,049,795	2,035,000	1,372,714

Hardware Capital:

AQ/IT01.2003	REMS	155,051	350,000	170,000
AQ/IT02.2003	PC Refresh	56,026	250,000	100,000
AQ/IT03.2003	Gen. Infrastructure	34,459	150,000	100,000
	Total Hardware Capital	245,536	750,000	370,000

Total Information Technology		1,295,331	2,785,000	1,742,714
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Total Rail Business Unit		20,399,116	31,906,000	24,804,909
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Capital Expense on written-off Subdivision & Services

CA/ENGR.0042	Gradework Provision - Dawson Sub	875	150,000	135,000
CA/ENGR.0046	FN Sub Gradework	358,331	725,000	600,000
CA/ENTR.0081	Surfacing Dawson Creek Sub	288,405	225,000	350,000
CA/ENTR.0087	Ft. Nelson Tie Program	45,902	1,000,000	400,000
CA/ENTR.0088	Surfacing Ft. Nelson Sub	783,956	900,000	1,000,000
CA/ENBR.0011	Fontas R.Br.916.0 Repl.w 80ft DPG	(88,410)	0	(88,410)

		Year To Date Actual Expenditure	2003 Budget	2003 Actual Anticipated Expenditures
Total Capital Expensed		1,389,059	3,000,000	2,396,590
Total New Rail Business Unit Capital Projects		21,788,175	34,906,000	27,201,499
Carry Forward Projects from 2002				
DP/IT2002.02	Office Productivity Enhancement Project	(4,748)	0	(4,748)
DP/IT2002.07	Electronic Mail (Exchange) Upgrade	34,190	0	75,000
DP/IT2002.21	Biztalk	96,096	0	97,000
DP/IT2002.23	Wabtec	162,878	0	200,000
AQ/IT04.2002	Electronic Mail (Exchange) UG Server	20,334	0	75,000
CA/ENGR.0044	Mile 436.1 Grade Stabilization	329,926	0	320,000
Total carry forward projects from 2002		638,676	0	762,252
Total Rail Business Unit Capital 2003		22,426,851	34,906,000	27,963,751
Emergent Capital Projects 2003				
CA/OPEQ.0007	Purchase 22 Boxcars	67,380	0	67,380
CA/ENGR.0048	Mile 55.5 Rock Stabilization	266,912	0	250,000
CA/ENBD.0017	PG Loco Shop Oil Water Separator	96,833	0	155,000
CA/ENTR.0106	SLOANE-Construct 1000 ft Extension	155,091	0	160,000
CA/ENTR.0112	Mile 478.1 Grade Revision	321,608	0	1,420,000
	Provision for Other Emergent Capital Projects	0	0	2,800,000
Total Emergent Capital Projects		907,824	0	4,852,380
Grand Total		23,334,675	34,906,000	32,816,131

[Note: As outlined in the "2003 Actual Anticipated Expenditures" column, BC Rail may not spend all of its 2003 budgeted capital expenditure amounts.]

SCHEDULE J

PERMITS AND LICENCES

A. Permits for Operating Generally

1. **Certificate No. 6410**, issued by the Minister of Transportation to BC Rail Partnership on June 13, 2002 pursuant to Section 3(2) of the *Railway Act*, conferring the authority and power of BC Rail Partnership to construct, operate and maintain, by itself or in association with others, its railway located in British Columbia.
2. **Certificate No. 6332**, issued by the Minister of Municipal Affairs to BC Rail Ltd. on October 24, 2002 pursuant to Section 169 and 271 of the *Railway Act*, authorizing the operation of motive power in switching service utilizing new locomotive remote control technology, subject to conditions stated therein.
3. **Certificate No. 6474**, issued by the Minister of Community, Aboriginal & Women's Services to BC Rail Partnership on July 11, 2003, pursuant to the provisions of Section 248 of the *Railway Act*, authorizing the issue of Time Table 12, governing all Subdivisions except the Port Subdivision, taking effect at 1200 Pacific Daylight Saving time on July 03, 2003, superseding Time Table 11.
4. **Certificate No. 5555**, issued by the Minister of Municipal Affairs, Recreation and Culture to BC Rail on November 20, 1990, pursuant to the provisions of Section 184 of the *Railway Act*, authorizing that 'Canadian Rail Operating Rules' (CROR) will be used by BC Rail Ltd. effective 0001 December 9, 1990.
5. **Certificate No. 5967**, issued by the Minister of Municipal Affairs to BC Rail Ltd. on March 2, 1995, pursuant to the provisions of Section 184 of the *Railway Act*, authorizing that changes to the CROR approved pursuant to the *Railway Safety Act (Canada)*, appended to this Certificate, shall apply to BC Rail Ltd. effective 0001 April 1, 1995. [Note: Replaced by Certificate No. 6382, below.]
6. **Certificate No. 6382** dated September 13, 2001 pursuant to section 271 of the *Railway Act*, RSBC 1996, c.395 approving the Canadian Rail Operating Rules for designated provincial railways.
7. **Certificate No. 5966**, issued by the Minister of Municipal Affairs to BC Rail Ltd. on March 2, 1995, pursuant to the provisions of Section 248 of the *Railway Act*, authorizing BC Rail Ltd. to issue General Operating Instructions (Revision of 1995), taking effect at 0001 April 1, 1995, and superseding General Operating Instructions (Revision of 1990).
8. **Certificate No. 6354**, issued by the Minister of Municipal Affairs to BC Rail Ltd. on January 12, 2001, pursuant to the provisions of Section 248 of the *Railway Act*, authorizing BC Rail to cancel Section 8 'Remote Control Operation' from the existing General Operating Instructions (authorized by Certificate No. 5966) and replaced by new instructions Section 8, as shown on documentation filed with the Ministry in support of the application.
9. **Certificate No. 6380**, issued by the Minister of Community, Aboriginal & Women's Services to BC Rail Ltd. on September 13, 2001, pursuant to the provisions of Section 248 of the *Railway Act*, authorizing BC Rail to replace the previous Section 16 with a new Section 16 'Rules for the

Protection of Track Units & Track Work’ and ‘Schedule of Car Safety Inspection & Brake Test Requirements’ to the existing General Operating Instructions (authorized by Certificate No. 5966), as shown on documentation filed with the Ministry in support of the application.

10. **Certificate No. 6433**, issued by the Minister of Community, Aboriginal and Women’s Services to BC Rail Ltd. on September 5, 2002, pursuant to the provisions of Section 248 of the *Railway Act*, authorizing BC Rail to cancel Section 14 ‘Dangerous Goods’ from the existing General Operating Instructions (authorized by Certificate No. 5966) and replaced by new instructions Section 14, as shown on documentation filed with the Ministry in support of the application.
11. **Certificate No. 5965**, issued by the Minister of Municipal Affairs to BC Rail Ltd. on March 2, 1995, pursuant to the provisions of Sections 184 and 185 of the *Railway Act*, authorizing BC Rail to extend the provision of Certificate No. 5800 (which authorizes the operation of caboosless unit coal trains on the Port Subdivision with only a locomotive engineer and conductor assigned) to extend to the remainder of the railway, subject to the conditions stated therein.
12. **Certificate No. 15575**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. North Vancouver Rail Yard Control Tower authorizing operation of an elevating device.
13. **Certificate No. IAC00314**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – 1321 W 1st pursuant to the provisions of the Gas Safety Act and Regulations, authorizing BC Rail to do work as described in the regulations at this location.
14. **Certificate No. IAC00316**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Industrial Site pursuant to the provisions of the Gas Safety Act and Regulations, authorizing BC Rail to do work as described in the regulations at this location.
15. **Certificate No. IAC00315**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – 39500 Government Road SQ, pursuant to the provisions of the Gas Safety Act and Regulations, authorizing BC Rail to do work as described in the regulations at this location.
16. **Certificate No. 72781**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Industrial Site authorizing BC Rail to operate Boiler and Pressure Vessel Device #112-6311.
17. **Certificate No. 72789**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Industrial Site authorizing BC Rail to operate Boiler and Pressure Vessel Device # 112-6310.
18. **Certificate No. 73486**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Industrial Site authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #87 ANK 3144.
19. **Certificate No. 76927**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #67350.
20. **Certificate No. 76928**, issued by the Ministry of Community and Women’s Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #67403.

21. **Certificate No. 82617**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Locomotive Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #090021787.
22. **Certificate No. 82618**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Locomotive Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #090021788.
23. **Certificate No. 21P446**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 1626-6-65-1.
24. **Certificate No. 21P447**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 1626-6-65-2.
25. **Certificate No. 21P7153**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – Lillooet, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 1316.
26. **Certificate No. 31P6686**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # WBT 517.
27. **Certificate No. 42P4569**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # L13232.
28. **Certificate No. 42P4570**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial #22116H.
29. **Certificate No. 42P4571**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 7465H.
30. **Certificate No. 42P4572**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 7466H.
31. **Certificate No. 42P4573**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Waste Treatment Plant, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 187368.
32. **Certificate No. 42P5446**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Compressor FRDG Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 64-3521.
33. **Certificate No. 42P5447**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Compressor FRDG Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5447618.

34. **Certificate No. 42P5448**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Work Equipment Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5331109. [**Note:** *Now cancelled.*]
35. **Certificate No. 42P5449**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Car Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # Y.
36. **Certificate No. 42P5450**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Car Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5513064.
37. **Certificate No. 42P5451**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Car Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5508334.
38. **Certificate No. 42P5452**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG B&B Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5875916.
39. **Certificate No. 42P5453**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Admin Bldg, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5538109.
40. **Certificate No. 42P5454**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Admin Bldg, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5655160.
41. **Certificate No. 42P5455**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG South Yard, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5698869.
42. **Certificate No. 42P5456**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Sand Tower, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5578455.
43. **Certificate No. 42P5457**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5665711.
44. **Certificate No. 42P5458**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # D03N00268.
45. **Certificate No. 42P5459**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # D03N00269.
46. **Certificate No. 42P5460**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 122484.

47. **Certificate No. 42P5461**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – PG Diesel Shop, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 122485.
48. **Certificate No. 42P5464**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – 905 Bagshaw Williams Lake, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 95088.
49. **Certificate No. 42P5465**, issued by the Ministry of Community of Women's Services to BC Rail Ltd. – 905 Bagshaw Williams Lake, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5288546.
50. **Certificate No. 42P5478**, issued by the Ministry of Community of Women's Services to BC Rail Ltd. – Airport RD Ft St John, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 5788276.
51. **Certificate No. 42P5479**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – Airport RD Ft St John, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 940089.
52. **Certificate No. 42P5480**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – Airport RD Ft St John, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # 940088.
53. **Certificate No. 60P0216**, issued by the Ministry of Community and Women's Services to BC Rail Ltd. – 1321 W 1st Street North Vancouver, authorizing BC Rail to operate Boiler and Pressure Vessel Device – Serial # K42315.

B. Environmental Permits & Remediation Orders

1. The Environmental Permits and Remediation Orders listed in Schedule M.

C. Authority for Railway Constables

1. The authority for BC Rail to apply for the appointment of constables, the power to appoint constables, and powers of those constables, is provided under Part 39, Sections 255 to 257 of the *Railway Act*. At present, four constables are appointed on BC Rail.
 - Appointment and Oath of Constable under Para. 273 Railway Act R.S. 1948, c.285, s.1, Revised Statutes of British Columbia, appointing Mr. Robert Phillip MacMillan as a Constable at the request and recommendation of British Columbia Railway, dated March 13, 1980.
 - Appointment and Oath of Constable under Para. 273 Railway Act R.S. 1948, c.285, s.1, Revised Statutes of British Columbia, appointing Mr. James Alfred Thorne as a Constable at the request and recommendation of BC Rail, dated March 24, 1986.
 - Appointment and Oath of Constable under Para. 273 Railway Act R.S. 1948, c.285, s.1, Revised Statutes of British Columbia, appointing Mr. Kelly Laverne Yendrys as a Constable at the request and recommendation of BC Rail, dated March 18, 1993.

- Appointment and Oath of Constable under Para. 271 Railway Act R.S. 1948, c.285, s.1, Revised Statutes of British Columbia, appointing Mr. Andrew Rae Thom as a Constable at the request and recommendation of BC Rail, dated June 4, 1997.

D. Workers' Compensation Board Classification

1. BC Rail Ltd. is designated as a Deposit Account Employer under the Workers' Compensation Board of British Columbia (WCB). Employers so designated are sometimes referred to as 'self-insured employers.'

Deposit Account Employers are required to pay to the WCB the cost of all compensation benefits to their workers plus a share of the administrative costs, rather than an assessment rated on payroll. Further information on Deposit Accounts can be obtained from the WCB Assessment Manual, Item AP1-37-5 (Rev. June 15, 2003), which can be accessed by the Internet.

E. Permits for Equivalent Level of Safety, Transportation of Dangerous Goods

1. **Transporting on Company Service Fuel Cars:** Permits BC Rail to transport dangerous goods between all points on BC Rail in cars specified in drawings A1/17-32704 and L-4318 in a manner that does not meet the requirements of Part 7.33.2(1) of the *Transportation of Dangerous Goods Regulations*, restricted to the following dangerous goods:

- Gasoline, Class 3, UN 1203, Packing Group II;
- Fuel Oil, Class 3, UN 1202, Packing Group III; and
- Waste Oil, Class 3, UN 1270, Packing Group III

The use of such cars is limited to maintenance service and not intended for interchange. Issued by Letter dated July 2, 1998.

2. **Permit for Equivalent Level of Safety No. SU 5968 (Ren.1):** Permits BC Rail Ltd. to handle, offer for transport or transport by road or by rail, dangerous goods in a manner that does not comply with the *Transportation of Dangerous Goods Regulations*, except Parts VII and IX, if the dangerous goods are contained in vehicles commonly referred to as a 'track unit', 'crane', 'hi-rail equipment' and is a service vehicle. Detailed conditions stipulated in Permit. Issue Date: Sept. 11, 2003. Expiry Date: August 31, 2004.

3. **Permit for Equivalent Level of Safety No. SR 5992:** Permits BC Rail Ltd. to handle, offer for transport or transport by railway vehicle, dangerous goods in a manner that does not comply with Sections 7.47 and 8.14 of the *Transportation of Dangerous Goods Regulations*, if the tank contains a volume of dangerous goods that is equal to or less than 5% of the tank or compartment's volumetric capacity, restricted to the following dangerous goods:

- Gasoline, UN 1203;
- Fuel Oil, UN 1202; or
- Diesel Oil, UN 1202

Detailed conditions stipulated in Permit. Issue Date: February 20, 2002. Expiry Date: January 31, 2004.

4. **Permit for Equivalent Level of Safety No. SR 5967:** Permits BC Rail Ltd. to handle or transport by railway vehicle, dangerous goods, other than waste, in a manner that does not comply with paragraphs 4.23(f) and 4.24(a), section 4.25, paragraph 4.26(a) and section 4.27 of the *Transportation of Dangerous Goods Regulations*. Detailed conditions stipulated in Permit. Issue Date: March 1, 2002. Expiry Date: October 31, 2003. This permit has expired and will not be renewed as provisions are now covered under the *Clear Language Regulations* effective August 15, 2002.
5. **Permit for Equivalent Level of Safety No. SH 6216(Ren.1):** Issued December 16, 2002, to the Forest Products Association of Canada and any other person that satisfies the conditions of the permit. Permits the owner of a large means of containment used to carry dangerous goods in class 3, packing group III, with no subsidiary class and with a flash point greater than 37.8°C and any person on behalf of the permit holder to handle, offer for transport or transport the dangerous goods in a manner that does not comply with paragraph 5.15(2) of the *Transportation of Dangerous Goods Regulations* if the large means of containment has a water capacity of 5000 litres or less and is manufactured no later than 31 December 2002. Detailed conditions stipulated in Permit. Expiry Date: December 31, 2004.

F. Radio Authorizations and Licenses

(as listed on annual Radio Authorization Renewal Invoices)

1. Radio Authorization for Area 12 (Account Number 12-080241875) issued by Industry Canada to BC Rail Ltd. Communications & Signals for 2003 to 2004. License Numbers are listed for individual frequencies used at locations listed on the forms appended to the Radio Authorization Renewal Invoice issued by Industry Canada on February 8, 2003.
2. Radio Authorization for Area 15 (Account Number 15-080241875) issued by Industry Canada to BC Rail Ltd. Communications & Signals for 2003 to 2004. License Numbers are listed for individual frequencies used at locations listed on the forms appended to the Radio Authorization Renewal Invoice issued by Industry Canada on February 8, 2003.
3. Radio Authorization for Area 16 (Account Number 16-080241875) issued by Industry Canada to BC Rail Ltd. Communications & Signals for 2003 to 2004. License Numbers are listed for individual frequencies used at locations listed on the forms appended to the Radio Authorization Renewal Invoice issued by Industry Canada on February 8, 2003.
4. Spectrum License Number 4875983 issued to the Railway Association of Canada and its members. Effective date: January 21, 2000. Expiry Date: March 31, 2004.

G. Utilities Permits

1. Annual Electrical Permit issued to BC Rail Ltd. (Account No. 19430) by the Ministry of Community, Aboriginal and Women's Services pursuant to the provisions of the *Electrical Safety Act*, authorizing BC Rail to perform the electrical work specified on the permit application for the purposes of carrying out electrical maintenance, repairs, replacement or minor alterations to the existing Electrical Installation(s). The permit applies to the following site addresses:
 - Industrial Way, Prince George, B.C. Permit No. 00000386
 - Government Road, Squamish, B.C. Permit No. 00001836

- Tumbler Ridge, Tumbler Ridge, B.C. Permit No. 00003871

Expiry date: January 31, 2004. Renewals will be processed during the week of November 24, 2003.

2. Electrical Contractor Registration Certificate #12143, issued 10/08/03 to BC Rail Ltd. by the Ministry of Community, Aboriginal and Women's Services, expiring October 31, 2004, with listing of all BC Rail personnel designated as Electrical Workers performing their work under the authority of the Accredited Representative #34012 for BC Rail Ltd. designated by the Certificate.
3. Annual Electrical Permit ELE2003-00742 issued to BC Rail Ltd. by the District of North Vancouver for electrical works performed at BC Rail's North Vancouver yard facilities, located at 1311 West 1st Street, North Vancouver. Expires December 31, 2003. Item No. G.4 represents the renewal of this permit.
4. Annual Electrical Permit ELE2003-00959 issued to BC Rail Ltd. by the District of North Vancouver for electrical works performed at BC Rail's North Vancouver yard facilities, located at 1311 West 1st Street, North Vancouver. Expires December 31, 2004.
5. Annual Gas Permit No. IAC00315 Industrial & Commercial (Document #123734), issued to BC Rail Ltd. by the Ministry of Community, Aboriginal and Women's Services for BC Rail Ltd., 39500 Government Road, Squamish. Expired October 31, 2003. Renewal to October 31, 2004 has been processed.
6. Annual Gas Permit No. IAC00316 Industrial & Commercial (Document #123733), issued to BC Rail Ltd. by the Minister of Community, Aboriginal and Women's Services for Prince George Industrial Site, Industrial Way, Prince George. Expired October 31, 2003. Renewal to October 31, 2004 has been processed.

H. Orders in Council

[Note: *There are numerous Orders in Council ("OIC") relating to British Columbia Railway Company, BC Rail Ltd. and BC Rail Partnership. A binder outlining them has been provided to the Purchaser, or they are contained in the Corporate Records of BCRC. Some of the OIC's are included in this Schedule J.]*

1. Order in Council 136, approved and ordered January 29, 1919, approving the Director shall exercise such powers and perform such functions as the Lieutenant Governor in Council may direct, and that the Lieutenant Governor in Council may exercise all the powers and perform all the functions of the shareholders of the Company.
2. Order in Council 2053, approved and ordered July 16, 1918, bringing section 2 of the *Pacific Great Eastern Settlement Act* into operation.
3. Order in Council 545, dated May 11, 1915, approving an Agreement dated 8th May, 1914, providing for the use by the British Columbia Telephone Company, Limited, of the poles erected between North Vancouver and Horseshoe Bay by the Pacific Great Eastern Railway Company.
4. Agreement approved by Order in Council made the 1st day of February, 1917, between Pacific Great Eastern Development Company, Limited and Pacific Great Eastern Railway Company, for sale of lands required for right of way, station grounds, yards and other purposes connected with the operation of the purchasers railway.

5. Order in Council 1023, approved and ordered October 24, 1916, approving the agreement between the Pacific Great Eastern Railway Company and the Howe Sound and Northern Railway Company dated 7th November, 1912, for amalgamation to form one company under the name of the Pacific Great Eastern Railway Company.
6. Order in Council 2160, approved and ordered August 13, 1918, recommended that the Province elect to retain all shares in the Capital Stock of the Pacific Great Eastern Development Company, Limited, and all its lands and assets absolutely.
7. Order in Council 1592, approved and ordered September 18, 1945, on recommendation that the Minister of Finance execute and agreement for a release and reconveyance from the Northern Trusts Company in favour of the Government and of the Railway Company and containing a guarantee by the Province to indemnify the trustee.
8. Agreement approved by Order in Council dated the 5th day of January, a.d. 1922 between Pacific Great Eastern Railway Company and the Corporation of the District of West Vancouver for a lease.
9. Order in Council 3327, approved and ordered October 24, 1968, recommending the approval of a Certificate approving the contracts of the Pacific Great Eastern Railway respecting railway company respecting the leasing of programme and voice channels to British Columbia Telephone Company.
10. Order in Council 1418, approved and ordered July 28, 1982, to continue the construction and operation of the line of railway of British Columbia Railway Company by extending its railway from Anzac to Tumbler Ridge.
11. Order in Council 2300, approved and ordered December 17, 1982, empowering the directors of the company to issue 450,000 shares of the company at \$100 per share to Her Majesty in Right of the Province in consideration of the payment of the sum of \$45 million to the company.
12. Order in Council 2083, approved and ordered December 30, 1983, granting an unconditional guarantee of the government of the province of British Columbia of the due and punctual payment by British Columbia Railway Company to Royal Trust Corporation of Canada.
13. Order in Council 962, approved and ordered May 24, 1984, on the recommendation of the Minister of Finance, authorizing a subsidiary (within the meaning of the *British Columbia Railway Act*) of the British Columbia Railway Company to operate a railway as a common carrier.
14. Order in Council 1025, approved and ordered June 13, 1984. Section 1 of the OIC approves British Columbia Railway Company to sell to BC Rail Ltd. all of its lines and property other than the property referred to in Section 2. Section 2 approves British Columbia Railway Company to sell to BCR Properties Ltd. the properties set out in Schedule A attached to the OIC.
15. Order in Council 1095, approved and ordered June 13, 1984, on recommendation of the Minister of Transportation and Highways, approving, ratifying and confirming Certificate No. 4744 which, pursuant to Section 287(1) of the Railway Act orders that BC Rail Ltd. shall stand possessed of, and be the holder of, all current outstanding certificates issued to British Columbia Railway Company. Certificate No. 4744 issued by the Minister of Transportation and Highways, to take effect at 7:30 a.m. on June 19, 1984.

16. Order in Council 1096, approved and ordered June 13, 1984. Business Purchase Agreement between British Columbia Railway Company, BC Rail Ltd. and BCR Properties Ltd. and the Land Purchase Agreement between British Columbia Railway Company and BCR Properties Ltd. are approved.
17. Order in Council 1478, approved and ordered July 19, 1985. Approval of Certificate No. 4851, making certain provisions of the *Railway Act*, R.S.B.C. 1979, c. 354 applicable to BC Rail Ltd.
18. Order in Council 658, approved and ordered July 13, 2001. John McLernon is appointed a director and the chair of the Board of the British Columbia Railway Corporation.
19. Order in Council 819, approved and ordered September 11, 2001. Appointment of the following persons as directors of the British Columbia Railway Company to serve at pleasure: Bev Briscoe, Brian Kenning, Len Marchand, Patrick Rorison, Jim Shepard, Jim Yeates.
20. Order in Council 199, approved and ordered February 27, 2003. Appointment of Gerry Offet as a director of the British Columbia Railway Company to serve at pleasure.
21. Order in Council 446, approved and ordered April 24, 2003. Appointment of Anne Marie Stewart, Q.C. as a director of the British Columbia Railway Company to serve at pleasure.

I. Other

1. Revenue Canada Advance Tax Ruling for British Columbia Railway Company, BC Rail Ltd and BCR Properties Ltd. dated March 30, 1994, as awarded by letter dated April 7, 1994.
2. Magazine License No. U5219/Z issued to BC Rail Ltd. by Natural Resources Canada on May 2, 2003 pursuant to the *Explosives Act*, licensing BC Rail for the storage of explosives. The License consists of Form 11 which includes the Terms of the License, and is appended by Form 10, being the Magazine License Application which specifies and lists all of BC Rail's explosives magazines by Magazine Type, Product Type & Quantity to be stored, and location of the magazines on the railway. Detailed conditions stipulated in License.
3. Transfer Notice (Reference No. 59390) issued to BC Rail Police on November 8, 1999 by the Chief Firearms Officer of the Ministry of Attorney General (B.C.), confirming authorization for the transfer of five (5) prohibited firearms to BC Rail Police. The notice identifies the individual firearms by make, model, serial number and class, and a confirmation authorization number for each. One firearm is issued to each of the four BC Rail Constables and one firearm is presently spare in secure storage.
4. Certificate of Registration R348998 dated February 24, 2003, issued to BC Rail Partnership pursuant to the *Social Service Tax Act*.
5. Power Car Operating Authority for the D'Arcy – Lillooet passenger service, issued as a letter dated October 30, 2002 from the Boiler, Gas & Railway Safety Branch of the Ministry of Community Aboriginal and Women's Services to BC Rail.
6. Any Minister's Certificates with respect to highway, road, access, pedestrian and farm crossings issued in respect of the Business as of the Closing Date, including without limitation those listed in Part Q of Schedule B of the Revitalization Agreement.

7. Licence to Occupy portion of McKeen Avenue, accepted and approved by the Corporation of the District of North Vancouver, on March 11, 1999.
8. Sand and Gravel Permit G-11-56 Approving Work System and Reclamation Program, pursuant to Section 10 of the *Mines Act* issued on the 21st day of November, 1996 to BCR Properties Ltd. by the Ministry of Employment & Investment, Energy and Minerals Division. **[Note: This permit also covers some gravel pits which are not included in the transaction.]**

[Note: From time to time BC Rail obtains certain building permits for temporary construction activities. These permits have not been included in this Schedule.]

[Note: BC Rail does not regularly obtain business licences in the communities it is operating in; however, it does have a business licence for the City of Quesnel.]

SCHEDULE K

Pages K1-K3 redacted.

SCHEDULE L

Pages L1-L11 redacted.

SCHEDULE M

ENVIRONMENTAL CONDITIONS

Part I

A. Compliance with Environmental Laws

1. Remediation Order No. OE-17312 [*Quesnel*] – BC Rail Ltd. (and four other responsible persons named to the Order) has not proceeded with implementation of the remediation plan approved by the Ministry of Water, Land and Air Protection on April 25, 2003. Alternatives to the approved remediation plan are being evaluated.
2. Remediation Order No. OS-16149 [*Squamish*] – BC Rail Ltd. and BCR Partnership (and one other responsible person named to the Order) have not carried out any remediation and have not contributed to any remediation costs. Remediation has been carried out by Nexen Inc.
3. Legal Order to Advise Customers of Boil Water Advisory and Make Improvements Which Include Chlorine Treatment System, issued by the Northern Health Authority, dated November 3, 2003, for the Fort Nelson Water system. The Order is being complied with.

B. Environmental Permits and Licences

(excluding short-term permits for seasonal work within 2003)

1. **Permit No. AA-17164** issued under the *Waste Management Act* to BC Rail Ltd. for the burning of scrap ties on the Takla Subdivision, for the period Dec. 12, 2002 to March 12, 2004, issued December 12, 2002, with Letter dated April 9, 2003 from Ministry of Water, Land and Air Protection to BC Rail Ltd.
2. **Permit No. PA-16151** issued under the *Waste Management Act* to BC Rail Ltd. for the burning of scrap ties on the Fort Nelson Subdivision, issued January 18, 2000, as amended by Letter dated February 2, 2000 from the Ministry of Environment, Lands and Parks to BC Rail Ltd.
3. **Permit No. PE-15145** issued under the *Waste Management Act* to BC Rail Ltd. for the Chetwynd hydrocarbon recovery system discharge, issued Feb. 4, 1999, with Letter dated Feb. 4, 1999 from the Ministry of Environment, Lands and Parks to BC Rail Ltd.
4. **Permit No. PS-12817** issued under the *Waste Management Act* to BC Rail Ltd. to operate a land treatment facility for hydrocarbon contaminated materials at Fort St. John, issued Oct. 21, 1994, with a Letter dated Oct. 21, 1994 from the Ministry of Environment, Lands and Parks to BC Rail Ltd., with attached Site Plan A.
5. **Permit No. PS-10773** issued under the *Waste Management Act* to BC Rail Ltd. to store special waste in a short-term facility in Williams Lake, issued Dec. 7, 1994, with Letter dated Dec. 7, 1994 from Ministry of Environment, Lands and Parks to BC Rail Ltd., with attached Site Plan A. The facility, currently not in use, has been relocated to Prince George, and a permit amendment is in preparation to reflect this change.

SCHEDULE M

Pages M3-M10 redacted.

SCHEDULE N

TAX MATTERS

A. BC Rail Partnership GST Registration Number

87232 5766 RT0001

B. BC Rail Ltd. GST Registration Number

100432939 RT0001

SCHEDULE O

Pages 01-052 redacted.

SCHEDULE P

Pages P1-P10 (P53-P62 consecutive numbering) redacted.

SCHEDULE Q

COLLECTIVE AGREEMENTS

On December 17, 2003, the CTU announced the results of the ratification vote on a new collective agreement. Ballots were returned by 60% of the membership and 75% of those were in favour of ratification. The negotiated changes to the collective agreement took effect on December 17, 2003, and the terms are retroactive from January 1, 2003 and effective to December 31, 2005.

Schedule Q [Note: cross-references to Schedule R, Section C] is updated by adding the following amendments to the collective agreements signed October 22, 2003 and ratified December 17, 2003:

- (a) Amendments to Article 107(E) of the BC Rail/UTU Collective Agreement (Home Study Rules Refresher) dated February 5, 2003.
- (b) Amendments to Article 120 and 135 of the BC Rail/UTU Collective Agreement (New Employee Training) dated February 5, 2003.
- (c) Council of Trade Unions on BC Rail – Running Trades Sector Bargaining Proposals – 2002 (Amendment to Article 141A) dated December 6, 2002.
- (d) Amendment to the Memorandum of Agreement Concerning the Operation of Beltpack Technology dated June 21, 1999 between BC Rail and the United Transportation Union dated February 5, 2003.
- (e) Letter of Understanding re: Yard to Yard Agreement dated February 5, 2003 between BC Rail Ltd. and UTU Locals 1923 and 1778.
- (f) TCU Sector Bargaining Proposal #4 signed December 16, 2002 between BC Rail and USWA.
- (g) BC Rail Proposal #1 signed December 16, 2002 between BC Rail and USWA.
- (h) TCU Sector Bargaining Proposal #1 signed December 16, 2002 between BC Rail and USWA.
- (i) TCU Sector Bargaining Proposal #2 signed December 16, 2002 between BC Rail and USWA.
- (j) BC Rail Proposal #2 signed January 16, 2003 between BC Rail and USWA.
- (k) TCU Sector Bargaining Proposal #3 signed December 16, 2002 between BC Rail and USWA.
- (l) New Rule 5.3 – UA 170 and CAW and Revised Rule 5.4 – UA 170 and CAW dated December 13, 2002 between BC Rail and Shop Craft Sector.
- (m) New Rule 55 (Contracting Out) and Appendix 2 dated October 22, 2003 between BC Rail and Teamsters Sector.
- (n) New Rule 43.1(b) dated December 9, 2002 between BC Rail and Teamsters Sector.
- (o) New UA Local 170 Rule 68 dated December 12, 2002 between BC Rail and Shop Craft Sector.

- (p) New Rule (UA 170 & CAW) dated December 12, 2002 between BC Rail and Shop Craft Sector.
- (q) New Rule – UA 170 and CAW dated December 13, 2002 between BC Rail and Shop Craft Sector.
- (r) BC Rail and the Counsel of Trade Unions Job Security Fund Agreement - Union Proposals 3, 4, 5 and 7 re: Article 9 dated March 6, 2003.
- (s) Letter dated September 5, 2002 from IWA Canada Local 1-424 to BC Rail re: Letter of Understanding between BC Rail and CUTE Local No. 6 dated December 12, 2000 for Machine Operators – Track and Heavy Duty.
- (t) Letter dated September 5, 2001 from IWA Canada Local 1-424 to BC Rail re: Modified Shifts – New Article.
- (u) BC Rail and the Counsel of Trade Unions Job Security Fund Agreement – Union Proposal 2 dated March 6, 2003.
- (v) BC Rail and the Counsel of Trade Unions Job Security Fund Agreement – Company Proposal 1 dated March 6, 2003.
- (w) BC Rail and the Counsel of Trade Unions Job Security Fund Agreement – Union Proposal 1 – EI Clawback dated March 6, 2003.
- (x) BC Rail and the Counsel of Trade Unions Job Security Fund Agreement Union Proposal 6 re: Temporary Positions – Job Security Fund Agreement dated March 6, 2003.
- (y) BC Rail and the Counsel of Trade Unions Collective Agreement Negotiations 2002/2003 Memorandum of Settlement dated October 22, 2003.
- (z) BC Rail and the Counsel of Trade Unions – Shop Craft Sector Revised Rule 20.20 – CAW dated December 13, 2002.

A. Shop Craft Sector

1. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of the National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (CAW – Canada) Rail Division, Local 102.
2. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 170, Metal Trades Division.

B. TCU Sector – Dispatcher

1. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of The Transportation Communications Union, now represented by the United Steelworkers of America (USWA) District 3.

C. Teamsters Sector – Warehousing and Materials Handling

1. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of Teamsters Local Union No. 31.

D. Running Trades Sector

1. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on behalf of the Canadian Union of Transportation Employees, Local 1, now represented by the National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW – Canada) Local 110.
2. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of the United Transportation Union Locals Nos. 1778 & 1923 (Road Conductors, Trainmen and Brakemen).

E. Maintenance of Way Sector

1. Collective Agreement dated January 1, 1996 between BC Rail Ltd. and The Council of Trade Unions on BC Rail on behalf of the Canadian Union of Transportation Employees, Local No. 6, now represented by the Industrial Wood and Allied Workers of Canada (IWA Canada) CLC Local Union number 1-424.

F. Collective Agreement Renewal

1. Memorandum of Agreement between BC Rail Ltd. and The Council of Trade Unions on BC Rail dated December 15, 2000, regarding renewal of Collective Agreement for a two year term.
2. Memorandum of Settlement for the renewal of the current collective agreements was signed by BC Rail and the Council of Trade Unions on October 22, 2003, the terms of which are set out on Schedule JJ. This agreement is subject to ratification by the Union membership in mid-December, 2003.

G. Job Security Fund

1. Job Security Fund Supplemental Agreement between BC Rail Ltd. and The Council of Trade Unions on BC Rail (on behalf of various unions), made effective December 31, 2000.

H. Bargaining Agent

1. Council of Trade Unions on BC Rail, as bargaining agent for all unionized employees of BC Rail Ltd. except those excluded by the Labour Relations Code, certified by the British Columbia Labour Relations Board on January 20, 1978, and as amended and varied March 19, 2003.

I. Material Labour Problems

1. Collective agreements expired on December 31, 2002. Negotiations ongoing with Council of Trade Unions. Strike vote results announced on August 19, 2003 but set aside by Council with the effect that no legal strike vote is considered to have taken place.

A Memorandum of Settlement was reached with the Council of Trade Union on October 22, 2003 subject to ratification by union members. Ratification vote is in progress with result expected in mid-December, 2003.

J. Letters of Understanding and Side Letters – Volume 15B Tab 6

J1. Shop Craft Sector

1. Memorandum of Agreement between the Brotherhood of Railway Carmen of America, the Internation (*sic*) Association of Machinists and British Columbia Railway Company, undated, with related correspondence dated February 14th, 1974.
2. Letter of Understanding between U.A. and C.A.W., with related correspondence dated February 10, 1992 and February 6, 1992.
3. Letter of Understanding re: Relief Jobs NV Locomotive Shops to Lance Yearsly, UA 170 Representative, from Gary Woodsworth, Locomotive Foreman, dated 14 April 1992, with attached correspondence.
4. Letter of Understanding between BC Rail Ltd. and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Metal Trades Division, Local 170, dated March 27/92, with related correspondence.
5. Letter to David Cox, Manager, Labour Relations and Corporate Safety from R. J. Callard, Business Manger and Financial Secretary re: Split/Swing Shift, dated January 19, 1993.
6. Letter of Understanding between BC Rail and U.A. Local 170, re: As and When Required Positions, dated May 25th, 1994.
7. Letter of Understanding between BC Rail, Prince George, B.C. and U.A. Local 170, re: Mutual Agreement Rules, signed June 9th, 1994.
8. Letter of Understanding between BC Rail and U.A. Local 170 signed the 8th day of July, 1994, with related correspondence.
9. Letter from R.J. Callard to Mr. Wayne Carkner re: Part-time Employees, signed the 19th day of January, 1995 (second copy signed the 26th day of January, 1995).
10. Letter of Understanding between BC Rail Ltd. and U.A. Local 170, re: Lead Hand Duties, original signed on the 12th day of October, 1994, with related correspondence.
11. Work Experience School District No. 48, signed by Gary Woodsworth, Supervisor Locomotive Rebuild and Senaka Malleappah, U.A. 170 Representative, with related documentation.
12. Memo to Wayne Carkner from F. Christiansen re: Agreement, dated 11 December 1995.
13. Letter of Agreement between BC Rail Ltd. and U.A. Local 170 re: Scheduling Relief of the Full-time Local 170 Car Shop Switching Labourer Position, signed April 15th, 2003.
14. Memo to A. Stefanick from S.P. Marino dated April 4, 1991.

15. Letter of Understanding between BC Rail Ltd. and the Brotherhood Railway Carmen, Respecting Prince George Mainline Car Repairs, dated April 28, 1988.
16. Memo to R. Kell from S.P. Marino re: Grievance # 91-15, dated June 28, 1991.
17. Letter of Understanding Between BC Rail Ltd. and National Automobile, Aerospace and Agricultural Implement Workers Union of Canada (C.A.W.) re: Bidding of Temporary Vacancies to the System, dated 90/07/17.
18. Re: Road Repair Grievances Squamish 90-16, 90-17, 90-18, dated July 3, 1991, with related correspondence.
19. Letter of Understanding between U.A. and C.A.W. undated, with related correspondence dated February 6, 1992 and February 10, 1992.
20. Grievance No. 93:20 and 93:18 – Prince George, signed December 3/93.
21. Letter of Understanding between BC Rail Ltd. and CAW Local 102 re: Lead Hand Positions signed the 9th of December 1993.
22. Letter of Understanding between BC Rail and C.A.W. Local 102 signed the 10 day of January, 1995.
23. Local Letter of Understanding between BC Rail Ltd., Prince George, B.C., and C.A.W. Local 102, District 30, re: Mutual Agreement Rules, signed the 17 day of February, 1995.
24. Letter of Understanding between BC Rail Ltd. and C.A.W. Local 102 District 1419 (Squamish) re: Material Coordinators, undated.
25. Letter of Understanding between CAW Local 102 and BC Rail Respecting Training Courses, signed the 30 day of January, 1997.
26. Letter to W. Carkner, Manager, Labour Relations from Robin Hurren, President, Local 102 CAW, dated May 15, 1998 re: Article 8 Notice – Squamish.
27. Letter of Understanding between BC Rail Ltd. and CAW Local 102 dated November 26, 1998.
28. Letter of Understanding between BC Rail Ltd. and CAW Local 102 dated November 26, 1998, with related correspondence dated April 22, 1999, re: Exercising of Seniority for Laid Off Members.
29. Local Letter of Understanding between BC Rail Ltd., Squamish, B.C. and CAW Local 102, District 1419 re: Mutual Agreement Rules, signed the 3rd day of September, 1999.
30. Letter of Understanding between BC Rail and C.A.W. Local 102 signed the 7th day of January, 2000.
31. Letter of Understanding between BC Rail and C.A.W. Local 102 signed the 4th day of September, 2002.

32. Letter of Understanding between BC Rail and CAW Local 102 signed the 4th day of September, 2002.
33. Letter to Mr. S.A. Horodyski General Chairman, Mountain Region, Brotherhood Railway Carmen from S.J. Pudney, Personnel Resources Officer, Mechanical Division – System, dated 1980/04/11, with reply from S.A. Horodyski to Mr. S.J. Pudney dated April 16, 1980 re: the Calling Procedure of Carmen Apprentices for Squamish Auxillary Service.
34. Letter to Mr. S.A. Horodyski, General Chairman, Brotherhood of the United States and Canada, Mount Garibaldi Lodge No. 1419 and Cariboo Peace River Lodge No. 30 and Capilano Lodge No. 99 from P.A. MacDonald, Vice President, Industrial Relations, dated December 16, 1981.
35. Letter to Mr. S.A. Horodyski, General Chairman, Mountain Region, Brotherhood Railway Carmen from T. Teichman, Manager, Labour Relations dated 1982/02/19, also signed by S.A. Horodyski.
36. Letter to S.A. Horodyski, General Chairman, Brotherhood Railway Carmen, Mountain Region from T. Teichman, Manager, Industrial Relations dated June 22, 1982, signed by S.A. Horodyski date June 28, 1982.
37. Letter of Understanding between BC Rail Ltd. and Brotherhood Railway Carmen respecting temporary employees, dated May 6, 1987.
38. Letter of Understanding between BC Rail Ltd. and the Brotherhood Railway Carmen respecting the Protection and Provision of Auxillary or other Services dated June 17th, 1987, signed the 19th day of June 1987.
39. Letter of Understanding between BC Rail Ltd. and CAW Local 102 and Joseph Smuin dated October 15, 2003.
40. Letter from Donna Crossan, Labour Relations Advisor to Lance Yearley, Business Manager UA Local 170 regarding the refurbishment of wheel bearings in the Squamish Wheel Shop dated November 13, 2003.
41. Letter of Understanding between BC Rail Ltd. and UA 170 regarding Labourer Coverage Squamish dated April 20, 2001.
42. Letter from Donna Crossan, Labour Relations Advisor to Robin Hurren, President CAW Local 102 regarding Cancellation of Letters of Understanding dated September 6, 2002.
- J2. TCU Sector - Dispatcher
 1. Letter of Understanding between BC Rail Ltd. and Transportation Communications Union, System Board 496, Lodge 1828, signed the 5th day of January 1988, re: Article 14.10.
 2. Memorandum of Agreement between BC Rail Ltd. and Transportation Communications Union System Board 496, Lodge 1828, dated April 18th, 1991, re: Operators Under the Union's Jurisdiction.
 3. Transportation Communications International Union, Lists of employees, dated October 11/91.

4. Letter of Understanding between BC Rail Ltd. and Transportation Communications Union, signed the 30th day of March, 1992, re: Crew Dispatch Office – 10 hour shifts.
5. Letter of Understanding between TCU and BC Rail Ltd., agreed to the 28th day of March, 1995.
6. Letter of Understanding between BC Rail Ltd. and Transportation Communications Union, signed the 24th day of June, 1998, re: Rail Traffic Control Dispatch Office – 10 hour shifts.
7. Letter of Understanding between BC Rail Ltd. and The United Steel Workers of America, signed the 6 day of May, 1999.
8. Letter of Intent between BC Rail Ltd. and United Steel Workers of America dated October 23, 2002.
9. Memorandum of Agreement between the British Columbia Railway Company and the Council of Trade Unions on the British Columbia Railway on behalf of the Brotherhood of Railway, Airline, and Steamship Clerks, Freight Handlers, Express and Station employees, System Division No. 135, signed the 16th day of April 1981.
10. Letter to Mr. G.D. Lee, General Chairman, B.R.A.C. Division 135 from B.G. Metz, Labour Relations Officer, dated December 17, 1981, signed G.D. Lee.
11. Memorandum between BC Rail Ltd. and BRAC, dated February 19th, 1987 with related memo to file.
- J3. Teamsters Sector – Warehousing and Materials Handling
 1. Memo to K.E. Young, B. Des Harnais, J. Shannon, from W.R. Carkner, Regional Coordinator, Labour Relations; re: Calculation of Vacation Entitlement for Line-Haul (Mileage Payment) Drivers in Payroll 50 (Teamsters) (Rule 45.10) dated October 24, 1988, and Letter of Clarification dated February 9, 1994 to Mr. W.R. Carkner, Regional Coordinator, Labour Relations from Ross Peterson, Business Representative, Teamsters Local Union No. 31.
 2. Letter of Understanding between BC Rail Ltd. and the General Truck Drivers and Helpers Union Local No. 31 re: Filling Temporary Positions of a Known Duration of Seven (7) days or more, signed the 28th day of February, 1994.
 3. Letter of Understanding between BC Rail and Teamsters Local No. 31, signed the 24th day of May, 1994.
 4. Letter of Understanding between BC Rail Ltd. and Teamsters Local Union No. 31 re: filling temporary positions of a Known Duration of seven (7) days or more signed the 7th day of March, 1995.
 5. Memorandum of Agreement between BC Rail Ltd. and Teamsters Local Union No. 31, dated April 20, 1999.
 6. Email to Donna Crossan from Rick Leche re: Change to Teamsters Collective Agreement – EFFECTIVE IMMEDIATELY, undated.
 7. Letter of Understanding between Teamsters Local 31 and BC Rail Ltd., dated December 15, 2000.

8. Letter of Understanding between BC Rail and Teamsters Local No. 31 signed the 9th day of August, 2001, re: Passenger Excursion trips on BC Rail in Prince George.
 9. Memorandum of Agreement between BC Rail Ltd. and Teamsters Local Union No. 31, signed the 7th day of November, 2001 re: Revision to Line Haul Agreement dated April 20th, 1999, with related email correspondence.
 10. Memorandum of Agreement dated the 4th day of January, 2002, between BC Rail Ltd. and Teamsters Local Union 31.
 11. Memorandum of Agreement between BC Rail Ltd. and Teamsters Local Union No. 31, signed the 26th day of July, 2002.
 12. Memorandum of Agreement between BC Rail Ltd., Teamsters Local No. 31 and Ulrich Rudolph, agreed this 6th day of August, 2002, re: Reinstatement of Ulrich Rudolph (38173).
- J4. Running Trades Sector
1. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees, Local No. 1, signed the 28th day of December, 1987, re: Coal Freight Service (Quintette and Teck Mines).
 2. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local No. 1, signed the 11th day of July 1988, re: Article 4 – Yard Service – Rule 12.
 3. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees, Local No. 1, signed the 30th day of April, 1991, Respecting the Banking Overtime paid to Engineers who are Required to Work on a General Holiday.
 4. Letter to Mr. F.H. Christensen, P.Eng., Chief Inspecting Engineer, Ministry of Municipal Affairs from David Cox, Director, Labour Relations and Corporate Safety, dated 4/5/95.
 5. Letter to Mr. J.G. Ruddell, General Chairman, Canadian Union of Transportation Employees Local No. 1 from J.C. Trainor, Vice President, Operations, dated April 6th, 1995, signed by J. Ruddell.
 6. Letter to Mr. R.W. Sharpe, General Chairperson, UTU Locals 1778 and 1923 and Mr. J. Ruddell, General Chairman, CUTE Local 1 from L. Behnish, Regional Manager, Service Delivery re: Article 401 Rule 21 Switching Limits (UTU), Article 4, Rule 25(CUTE 1), dated December 5th, 1997.
 7. Memorandum of Agreement between BC Rail Ltd. and CUTE Local No. 1, dated the 16th day of June, 1998, re: Engineer Trainee Agreement, with related correspondence.
 8. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local No. 1, Concerning Relief of Locomotive Engineers on the Tumbler Subdivision Employed in Pusher Service, dated March 2, 1999.

9. Letter to Mr. R.W. Sharpe, General Chairperson, United Transportation Union and Mr. S.J. Szeplaky, General Chairman, Canadian Union of Transportation Employees Local No. 1 from R.A. Colquhoun, Manager, Human Resources and Strategic Operations re: operations at Dawson Creek, dated June 29th, 1999, signed by R.W. Sharpe and Mr. S.J. Szeplaky.
10. Letter confirming Memorandum of Agreement between BC Railway and the CUTE 1, Wednesday September 22, 1999, undated.
11. Letter of Understanding between BC Railway and CUTE Local No. 1 pertaining to Article 5.7, 'Enginemen called Remain until Relieved to fill a vacancy at outlying points who subsequently become successful by bid to another position', dated September 28, 2000.
12. Letter of Understanding between BC Rail Ltd. and the Canadian Union of Transportation Employees Local 1 and the United Transportation Union Locals 1778 and 1923, signed the 22nd day of June, 2001 with related correspondence.
13. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-01 re: Engineers working on loan away from Home Zone (parachuting in), signed the 17 day of August 2001.
14. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-03, Steps for calling engineers for extra work in seniority order, signed the 17 day of August, 2001.
15. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-04, re: Change of Card, signed the 17th day of August, 2001.
16. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-05 re: Called on Road dated the 17th day of August, 2001.
17. Letter of Understanding between BC Rail Ltd. and the Canadian Union of Transportation Employees Local 1, Agreement No. 2001-06, re: Work Service Tying Up, signed the 17 day of August, 2001.
18. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-07, re: Work Train Starting Times, signed the 17 day of August, 2001.
19. Letter of Understanding between BC Rail Ltd. and Canadian Union of Transportation Employees Local 1, Agreement No. 2001-08, re: Calling Protocol for Passenger and/or Steam Service, signed the 17 day of August, 2001.
20. Letter of Understanding between BC Rail Ltd. and the Canadian Union of Transportation Employees Local No. 1 and the United Transportation Union concerning the operation of scheduled CCO trains between North Vancouver and Chetwynd, BC, signed the 3rd day of October, 2001.
21. Letter to Mr. R.W. Sharpe, General Chairperson, United Transportation Union Locals 1178 and 1923 and Mr. R. Samson, General Chairman, Canadian Union of Transportation Employees Local No. 1, dated February 15, 2001.

22. Letter of Understanding – Whistler Northwind Tour Train, with related correspondence and Information Bulletin.
23. Letter of Understanding between BC Rail Ltd., The United Transportation Union (Locals 1178 & 1923) and The Canadian Union of Transportation Employees (Local No. 1) Respecting ‘yard-to-yard’ operations between BC Rail’s North Vancouver Yard and CN’s Lynn Creek Yard, undated, unsigned.
24. Vancouver – Peace Freight Pooling Agreement, dated December 4, 1981.
25. Letter to Mr. C.S. Mulhall, General Chairman, United Transportation Union, Local 1778 & 1923 from T. Teichman, Manager, Industrial Relations, dated March 8, 1982, signed by C.S. Mulhall on March 22, 1982.
26. Letter to Mr. C.S. Mulhall, General Chairman, United Transportation Union, Local 1778 & 1923 from T. Teichman, Manager, Industrial Relations, dated March 26, 1982 re: Yard Seniority, signed by C.S. Mulhall on March 26, 1982.
27. Memorandum of Agreement between the British Columbia Railway and the Council of Trade Unions on the British Columbia Railway on behalf of the United Transportation Union, Locals 1778 and 1923, agreed to the 7th day of June, 1984 (unsigned), including handwritten signed version and appendices.
28. Letter to Mr. C.S. Mulhall, General Chairman, United Transportation Union, Locals 1773 & 1923 from T. Teichman, Manager, Labour Relations re: Operational Changes from Chetwynd North, dated April 24th, 1984.
29. Letter to Mr. T. Teichman, Manager, Labour Relations and Mr. C.S. Mulhall, General Chairman, United Transportation Union Locals 1778 and 1923 re: Article 132 – Material Changes in Working Conditions dated March 19, 1984.
30. Letter to Mr. C.S. Mulhall, General Chairman, United Transportation Union, Local 1778 & 1923 from Brian Foley, Vice President, Industrial Relations dated August 15, 1984, signed by C.S. Mulhall on August 15, 1984.
31. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals No. 1778 and 1923, signed the 17th day of February, 1988, re: Article 401 – Rule 25(iv).
32. Letter of Understanding between BC Rail Ltd. and United Transportation Union, Locals # 1778 and # 1923, re: Article 401 – Yard Assignments 0002 to 0629, signed the 3rd day of May, 1988.
33. Letter of Understanding between BC Rail Ltd. and United Transportation Union signed the 13th day of October, 1988, re: Railgrinder.
34. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals 1778 and 1923 signed February 24, 1989.
35. Letter of Understanding between BC Rail Ltd. and United Transportation Union, Locals 1778 & 1923 re: designated motive powershop area and movement of locomotives, dated July 6, 1989.

36. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923 re: Movie Train, signed the 22nd day of January, 1990.
37. Memo to Mr. C. Mulhall, Mr. B. Gleason, re: Article 308 (d), from David Cox, agreed March 14, 1990.
38. Letter of Understanding between United Transportation Union and BC Rail Ltd. signed the 27 day of April, 1990, re: Switching Limits – Dawson Creek Subdivision.
39. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923 respecting hours of work to be worked in passenger excursion assignments, signed the 13th day of June, 1991.
40. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923 re: Passenger Excursion, signed the 8th day of July, 1992.
41. Letter of Understanding between BC Rail Ltd. and the United Transportation Union, signed the ___ day of April, 1993, re: Yard Service Rules, Rule # 3.
42. Letter of Intent between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923, Passenger Pool Assignment – Squamish Division, dated the 2nd day of December, 1993, with related correspondence.
43. Letter of Intent between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923, Work Service, dated the 2nd day of December, 1993, with related correspondence.
44. Letter of Intent between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923, Meals in Work Service, dated the 4th day of March, 1994.
45. Letter of Understanding between BC Rail Ltd. and United Transportation Union Locals 1778 & 1923, dated the 4th day of March, 1994.
46. Letter to Mr. R.W. Sharpe, General Chairperson, UTU Locals 1778 & 1923 from J.C. Trainor, Vice President, Operations, dated March 30, 1995, signed by R.W. Sharpe, with related correspondence.
47. Letter of Understanding between BC Rail Ltd. and United Transportation Union dated the 31 day of March, 1995, with related correspondence.
48. Letter to Mr. R.W. Sharpe, General Chairperson, UTU Locals 1778 & 1923 and Mr. J. Ruddell, General Chairman, CUTE Local 1 from L. Behnish, Regional Manager, Service Delivery, dated December 5th, 1997, re: Article 401 Rule 21 Switching Limits (UTU) Article 4 Rule 25 (CUTE 1), signed by R.W. Sharpe.
49. Memorandum of Agreement between BC Rail Ltd. and United Transportation Union Concerning the Operation of Beltpack Technology, signed June 21, 1999.
50. Letter to Mr. R.W. Sharpe, General Chairperson, United Transportation Union and Mr. S.J. Szeplaky, General Chairman, Canadian Union of Transportation Employees, Local No. 1 from R.A. Colquhoun, Manager, Human Resources and Strategic Operations, dated June 29, 1999, re: Operations at Dawson Creek, signed by R.W. Sharpe and Mr. S.J. Szeplaky.

51. Memorandum of Agreement concerning maintenance of Basic Rate, and principles of application effective July 19, 1999, dated the 25th day of June, 1999.
52. Letter of Understanding between BC Rail Ltd. and the Canadian Union of Transportation Employees Local 1 and the United Transportation Union Locals 1778 & 1923, signed the 22nd day of June, 2001 (two copies), with related correspondence.
53. Letter of Understanding between BC Rail Ltd. and The Canadian Union of Transportation Employees Local No. 1 and The United Transportation Union concerning the operation of scheduled CCO Trains between North Vancouver and Chetwynd, BC, dated the 3rd day of October, 2001.
54. Letter of Understanding between the United Transportation Union – Locals 1778 and 1923 and BC Rail Ltd. re: Manning of Extra Takla Log Trains, signed the 21st day of December, 2001.
55. Agreement between Mr. R.S. Liden, the UTU and BC Rail Ltd., dated April 18, 2002, re: Restoration of Seniority Rights – R.S. Liden.
56. Behavioural Agreement between Mr. Willie Mazur, the UTU and BC Rail, dated April 26, 2002, re: Mr. Willie Mazur.
57. Letter to Mr. R.W. Sharpe, General Chairperson, United Transportation Union Locals 1178 and 1923 and Mr. R. Samson, General Chairman, Canadian Union of Transportation Employees Local No. 1, dated February 15, 2001. Letter of Understanding – Whistler Northwind Tour Train, with related correspondence and Information Bulletin.
58. Letter of Understanding between BC Rail Ltd., the United Transportation Union (Locals 1778 & 1923 and the Canadian Union of Transportation Employees (Local No. 1) respecting ‘Yard-to-Yard’ operations between BC Rail’s North Vancouver Yard and CN’s Lynn Creek Yard, undated, unsigned, with related email correspondence and information bulletin.
59. Letter to Mr. R.W. Sharpe from Mr. D.A. Lypka, Vice President, Operations, dated March 20, 2003, signed by R.W. Sharpe.
60. Letter of Understanding between BC Rail and CAW 110 re: Beltpack Material Change dated March 12, 2003
61. Letter to Robert Samson, General Chairperson CAW Local 110 from M. E. Keiran, Labour Relations Advisor dated September 9, 2003, amending the application of the LOU on Beltpack Material Change dated March 12, 2003.
62. Letter of Understanding between BC Rail and CAW 110 re: New Employee Training dated March 12, 2003
63. Letter of Understanding between BC Rail and CAW 110 re: Home Study Rules Refresher dated March 12, 2003
64. Letter of Understanding between BC Rail and CAW 110 re: Auxiliary Board Guarantees dated March 12, 2003

65. Letter of Understanding between BC Rail and CAW 110 re: Remove Named Arbitrator dated March 12, 2003
66. Letter of Understanding between BC Rail and CAW 110 re: Yard to Yard Assignments dated March 12, 2003
67. Letter of Understanding between BC Rail and CAW 110 re: Amendment to Scheduled Trains Agreement of October 3, 2001 dated March 12, 2003
68. Letter of Understanding between BC Rail and CAW 110 re: Agreement no. 2003-01 re: Amendment of the MacKenzie letter of understanding to include the Ft. St. John terminal dated November 3, 2003
69. Letter of Understanding between BC Rail and CAW 110 re: Addendum to Letter of Understanding between BC Rail and CAL Local 110 (CUTE Local 1) regarding the Takla Log Haul signed June 22, 2001, dated November 3, 2003
70. Letter of Understanding between BC Rail and CAW 110 re: Agreement no. 2003 - 02 dated November 3, 2003 re: application of Article 33.10.
71. Agreement between BC Rail Ltd., CAW Local 110 and UTU, Locals 1778 and 1923 regarding Meals in Freight Service Protocol Applicable to Train and Engine Crews dated March 30, 2004.
- J5. Maintenance of Way Sector
 1. Letter to Mr. R. Dhensaw, President, CUTE #6 from T. Teichman, Manager, Industrial Relations, re: Heavy Duty Mechanics Accorded Seniority in the Welder Classifications dated June 10, 1983, signed by R. Dhensaw.
 2. Letter to Mr. Robert Dhensaw, President, Canadian Union of Transportation Employees, Local No. 6 from W.R. Carkner, Labour Relations Officer, dated October 25, 1985 re: Article 10.3 (ii) of the Collective Agreement; Implemented October 15, 1985, signed by Robert Dhensaw the 30th day of October, 1985.
 3. Letter to Mr. Robert Dhensaw, President, Canadian Union of Transportation Employees, Local No. 6 from W.R. Carkner, Labour Relations Officer, re: Article 10.3(i) of the Collective Agreement Implemented October 15, 1985, dated October 25, 1985, signed by Robert Dhensaw the 30th day of October, 1985.
 4. Letter to Mr. R. Dhensaw, President, Canadian Union of Transportation Employees, Local No. 6 from W.R. Carkner, Labour Relations Officer, re: Article 8.7 and Article 8.10 of the Collective Agreement; Implemented October 15, 1985, signed by Robert Dhensaw the 30th day of October, 1985.
 5. Letter to Mr. R. Dhensaw, President, Canadian Union of Transportation Employees, Local No. 6 from W.R. Carkner, Regional Coordinator, Labour Relations re: Bulletin 448/Policy Grievance dated February 24, 1987 signed by Robert Dhensaw February 24, 1987.

6. Letter of Intention of BC Rail and CUTE Local No. 6 with regard to the application of Arbitrator Hope's awards titled 'Compulsory Work Assignment' Arbitration and the 'Temporary Vacancy' Arbitration, signed the 5th day of April, 1990.
7. Letter of Understanding between BC Rail and CUTE Local 6 signed the 24th day of March, 1993.
8. Letter of Understanding between BC Rail and the Canadian Union of Transportation Employees, Local No. 6, signed the 8th day of May, 1993 re: Article 18.6, Work Equipment Repair Department.
9. Letter of Understanding between BC Rail and CUTE Local No. 6, re: Mutual Agreement Rules.
10. Memorandum of Understanding between CUTE Local No. 6 and BC Rail regarding 'protocol' for clean-up work, following derailments, dated April 13, 1995, with related correspondence.
11. Letter of Understanding between BC Rail and CUTE Local No. 6, signed the 29th day of June, 1995.
12. Memorandum of Agreement between BC Rail and CUTE Local 6, signed the 11th day of August, 1995.
13. Used Tie and Timber Chipping Agreement between BC Rail Ltd. and Canadian Union of Transportation Employees Local 6, undated.
14. Letter of Understanding between BC Rail and CUTE Local No. 6, signed the 15th day of April, 1996.
15. Letter of Understanding between BCR Properties and CUTE Local No. 6 and BC Rail, signed the 2nd day of December, 1996.
16. Letter of Understanding between BC Rail and CUTE Local 6, signed August 20, 1997.
17. Letter to Mr. V.B. Greco, President, CUTE Local No. 6 from W.R. Carkner, Manager – Labour Relations, re: Optional Layoff – Article 10.3, dated February 13, 1998, signed by V.B. Greco the 18th day of February, 1998.
18. Letter of Understanding between BC Rail Ltd. and the Canadian Union of Transportation Employees Local 6, undated.
19. Memorandum of Agreement between BC Rail and CUTE Local 6 re: Article 3.10, undated.
20. Letter to Mr. Tim McMillan from CUTE Local 6 re: Appendix 5 of Current Collective Agreement, dated February 11, 2000.
21. Letter to Mr. Tim McMillan from Vic Greco, President, CUTE Local 6 re: Referendum, dated August 31, 2000.
22. Letter to Mr. Vic Greco, President, CUTE Local 6 from Rick Leche re: New Clause Article 4.3 – CUTE Local 6 Collective Agreement, dated March 26, 2001, signed by Vic Greco.
23. Letter to Ms. June Irvine, Supervisor Payroll from Vic Greco, President, CUTE Local 6 re: Deduction of Monthly Dues for CUTE 6 Members, dated July 25, 2001.

24. Letter of Understanding between BC Rail Ltd. and IWA Local 1-424 signed the 17th day of September, 2002 re: Role of Parts Coordination at the Work Equipment Shop, Prince George (unsigned).
25. Settlement Agreement between IWA-Canada, Local 1-424 and BC Rail re: Grievance of Bruce Morris – File No. 103-09/270902 signed the 1st day of May, 2003 (unsigned).
26. Correspondence relating to Letters of Understanding between BC Rail and CUTE Local No. 6, dated December 12, 2000:
 - Letter dated November 14, 2002 from BC Rail Director Labour Relations to IWA Canada Local 1-424 re: Cancellation of CUTE 6 Letters of Understanding
 - Letter dated November 7, 2002 from IWA Canada Local 1-424 to BC Rail Director Labour Relations re: Cancellation of the Modified Shifts Letter of Understanding and the Machine Operators-Track and Heavy Duty Letter of Understanding
 - Letter dated September 5, 2002 from IWA Canada Local 1-424 to BC Rail Director Labour Relations re: Cancellation on December 31, 2002 of Letter of Understanding between BC Rail and CUTE Local #6 dated December 12, 2000 for Modified Shifts – New Article
 - Letter dated September 5, 2002 from IWA Canada Local 1-424 to BC Rail Director Labour Relations re: Cancellation on December 31 of Letter of Understanding between BC Rail and CUTE Local #6 dated December 12, 2000 for Machine Operators – Track and Heavy Duty

J6. Agreements with Council of Trade Unions

1. Memorandum of Agreement between BC Rail Ltd. and Council of Trade Unions on BC Rail dated the 15th day of December, 2000, including two Letters of Understanding between BC Rail and CUTE Local No. 6, dated December 12, 2000, and related correspondence from Paul Straszak, Director of Labour Relations to Neil Meagher, 2nd Vice President, I.W.A. Local 1-424 dated November 14, 2002.
2. Modified Return to Work Program Policies and Procedures dated September 18, 2001, between BC Rail Ltd. and The Council of Trade Unions.
3. Memorandum of Agreement between BC Rail Ltd. and The Council of Trade Unions signed the 9th day of May, 1996, and related correspondence.
4. Memorandum of Agreement between BC Rail Ltd. and Council of Trade Unions on BC Rail Ltd. signed and agreed the 5th day of January, 2000, and related correspondence.
5. Letter of Understanding between BC Rail Ltd. and Council of Trade Unions on BC Rail Ltd. re: Jurisdictional Umpire Procedure, dated January 12, 1999.
6. Letter of Intent between BC Rail Ltd. and the Council of Trade Unions signed on December 12, 1994, re: Breckenridge Recommendations, with related correspondence.
7. Letter of Understanding between BC Rail Ltd. and the Council of Trade Unions on BC Rail and UA 170, Teamsters, TCU, UTU, CAW Local 102, CUTE Local 1, CUTE Local 6 and Vancouver Wharves Ltd. dated June 11, 1993.

J7. Settlement Documents for Benefits

1. MOA dated September 6, 1975 with Shopcraft Sector re: Employment Benefit Plan.
2. Agreement dated October 8, 1975 re: Life Insurance.
3. Agreement dated October 8, 1975 re: Extended Health Care Plan.
4. Agreement dated October 8, 1975 re: Medical Services Plan.
5. Agreement dated October 8, 1975 re: Weekly Indemnity.
6. Agreement dated October 8, 1975 re: Long Term Disability Plan.
7. Agreement dated October 8, 1975 re: Dental Plan
8. Agreement dated October 8, 1975 re: Costs of Employee Benefits Plan.
9. Agreement dated September 27, 1978 re: Medical Services Plan.
10. Agreement dated September 27, 1978 re: Weekly Indemnity.
11. Agreement dated September 27, 1978 re: Life Insurance Retiree Life Insurance.
12. Agreement dated September 27, 1978 re: Benefit Plan Booklet.
13. Agreement dated October 16, 1981 re: Weekly Indemnity.
14. Agreement dated October 16, 1981 re: Long Term Disability.
15. Agreement dated October 16, 1981 re: Basic Health Benefits.
16. Agreement dated October 16, 1981 re: Accidental Death and Dismemberment.
17. Agreement dated October 16, 1981 re: Life Insurance.
18. Agreement dated December 7, 1984 re: Welfare Package.
19. Agreement dated February 11, 1986 re: Group Life and Accidental Death and Dismemberment.
20. Agreement dated February 11, 1986 re: Health and Welfare Plans.
21. Agreement dated July 22, 1987 re: Weekly Indemnity.
22. Agreement dated July 22, 1987 re: Long Term Disability.
23. Agreement dated July 22, 1987 re: Joint Advisory Committee.
24. Agreement dated July 22, 1987 re: Dental Benefits.
25. Agreement dated July 22, 1987 re: Retirees – Medical Coverage.

26. Agreement dated July 22, 1987 re: Medical Examination Costs.
27. Agreement dated July 22, 1987 re: Hearing Tests.
28. Agreement dated September 24, 1990 re: Retiree Benefits.
29. Agreement dated September 24, 1990 re: Dental Plan.
30. Agreement dated September 24, 1990 re: Basic Medical, Extended Health and Dental Plan Coverage.
31. Agreement dated September 24, 1990 re: Extended Health.
32. Agreement dated January 19, 1994 re: Weekly Indemnity Plan.
33. Agreement dated January 19, 1994 re: Vision Care.
34. Agreement dated January 19, 1994 re: Life Insurance.
35. Agreement dated January 19, 1994 re: Household Insurance.
36. Agreement dated January 19, 1994 re: Retiree Benefits.
37. Agreement dated December 15, 2000 re: Weekly Indemnity Plan.
38. Agreement dated December 15, 2000 re: Prescription Card.
39. Agreement effective May, 2002 re: Employee & Family Assistance Program – Policy.

K. Other

1. The labour disputes listed on Schedule R.
2. All correspondence relating to letters of understanding, memoranda of understanding and side letters above.

SCHEDULE R

Pages R1-R9 redacted.

SCHEDULE S

VANCOUVER WHARVES RAIL SERVICE AND TRACK USE

A. Rail Service to Vancouver Wharves Site

1. The Purchaser or BCR Partnership, as the case may be, will require up to two (2) years (the "Interim Period") from the Closing Date to rationalize the North Vancouver rail yard.
2. The PEC Sublease Tracks shall, on Closing, belong to BCRC or if it so directs, Vancouver Wharves Limited Partnership ("Vancouver Wharves"). The Purchaser, or BCR Partnership, as the case may be, shall be entitled to use the PEC Sublease Tracks to provide rail service to Vancouver Wharves. The reference to this area shall be deleted from the tenure breaks list in Schedule A upon expiry of the Interim Period.
3. The three tracks (the "Three Tracks") located immediately north of the Vancouver Wharves site (the "VW Site") and shown in Schedule R of the Revitalization Agreement shall, on Closing, be retained by BCRC but shall remain part of the Interim Lands during the Interim Period. It shall be the responsibility of BCRC to negotiate with and grant to Vancouver Wharves a real estate tenure over that area with effect from partial surrender of the Interim Lands by the Purchaser under the Revitalization Agreement at the end of the Interim Period.
4. The Purchaser shall, on expiry of the Interim Period, cause BCR Partnership to service the VW Site on a drop-off basis on the Three Tracks and the PEC Sublease Tracks, it being understood that Vancouver Wharves shall be responsible to provide switching and to move the trains from the Three Tracks and the PEC Sublease Tracks on to the VW Site or those Vancouver Wharves' tracks that may be mutually agreed to.

B. PEC Sublease Track Relocation

If the PEC Sublease is terminated or not renewed in April 2004:

- (a) The Purchaser shall, and shall cause BCR Partnership to, transfer to Vancouver Wharves tracks A-9 and A-10 as shown in the PEC Sublease Track Relocation Plan together with a licence or other agreement to use that location so as to permit Vancouver Wharves to switch trains to the VW site following the Interim Period. During the Interim Period, the Purchaser shall, and shall cause BCR Partnership to, make those tracks available for switching trains to the VW Site.
- (b) Vancouver Wharves shall, at its own cost, perform or cause to be performed, all work required on the VW Site and the Railbed Real Property to relocate the track as shown in the PEC Sublease Track Relocation Plan. BCRC acknowledges that the cost for Vancouver Wharves to perform the work is estimated to be \$666,000 plus GST as set out in the PEC Sublease Track Relocation Plan. For greater clarity and notwithstanding any agreement to the contrary, neither the Purchaser nor BCR Partnership shall have any obligation to perform any of the aforesaid work, nor to pay the cost thereof.

- (c) Vancouver Wharves shall reimburse the Purchaser (or BCR Partnership as the case may be) for all costs incurred by the Purchaser or BCR Partnership, at the Purchaser's standard rates if Vancouver Wharves requests the Purchaser (or BCR Partnership as the case may be) to perform any of the work. BCRC shall indemnify and hold the Purchaser (or BCR Partnership, as the case may be) harmless from and against any cost incurred by the Purchaser or BCR Partnership, as the case may be in performing any of the aforesaid work at the request of Vancouver Wharves.

C. Track Use – Water and Methanol Lead Tracks

- 1. Subject to and conditional upon Vancouver Wharves' payment of the repair and maintenance costs as hereinafter provided, the Purchaser or BCR Partnership, as the case may be, shall permit Vancouver Wharves to continue to use BCR Partnership's rail tracks known as the water lead and methanol lead tracks as shown in the attached plan on a non-exclusive basis, and further undertake and agree not remove such tracks.
- 2. Vancouver Wharves shall assume all repair and maintenance costs of those rail tracks.

D. Encroachments

- 1. Subject to and conditional upon payment of the price as provided hereafter, BCRC shall cause BCR Partnership to grant to Vancouver Wharves for the term of its lease, including any renewal thereof, two easements as follows:
 - (a) for the purposes of three AEI car readers, over that portion of Lot 1, Except Part in Plan 13846, Plan 12357; and That Part of Lot 5 as shown on SRW Plan LMP48354, Plan 13846, both of Block "C", District Lot 264 and of the Bed and Foreshore of Burrard Inlet, Group One, New Westminster District ("Lot 1") as shown on Drawing No. M50-3007 dated November 18, 1999 and Drawing No. M50-3009 dated December 8, 1999 both prepared by CNC Engineering and Management Limited; and
 - (b) for the purposes of a 75mm sewer force main within a 300mm steel casing, fencing, paved parking area and car wash, over that portion of Lot 1, as shown on Plan M2646-3A prepared by C. MacDonald, B.C. L.S. of Hobbs, Winter & MacDonald.
- 2. BCR Partnership shall have the right to relocate those easement areas at its own cost on six months' prior written notice to Vancouver Wharves and so long as the new location is reasonably comparable.
- 3. The price payable for the easements shall be as determined by BCR Partnership and agreed to by Vancouver Wharves.
- 4. BCRC shall cause BCR Partnership to prepare and register the agreements and Vancouver Wharves shall be responsible for the survey plans that are required for Land Title Office purposes.

E. McKeen License

BCRC shall cause BCR Partnership to enter into an agreement with Vancouver Wharves whereby Vancouver Wharves will agree to pay the fee payable under the license agreement with the District of North Vancouver for so long as those tracks are used for Vancouver Wharves' rail service.

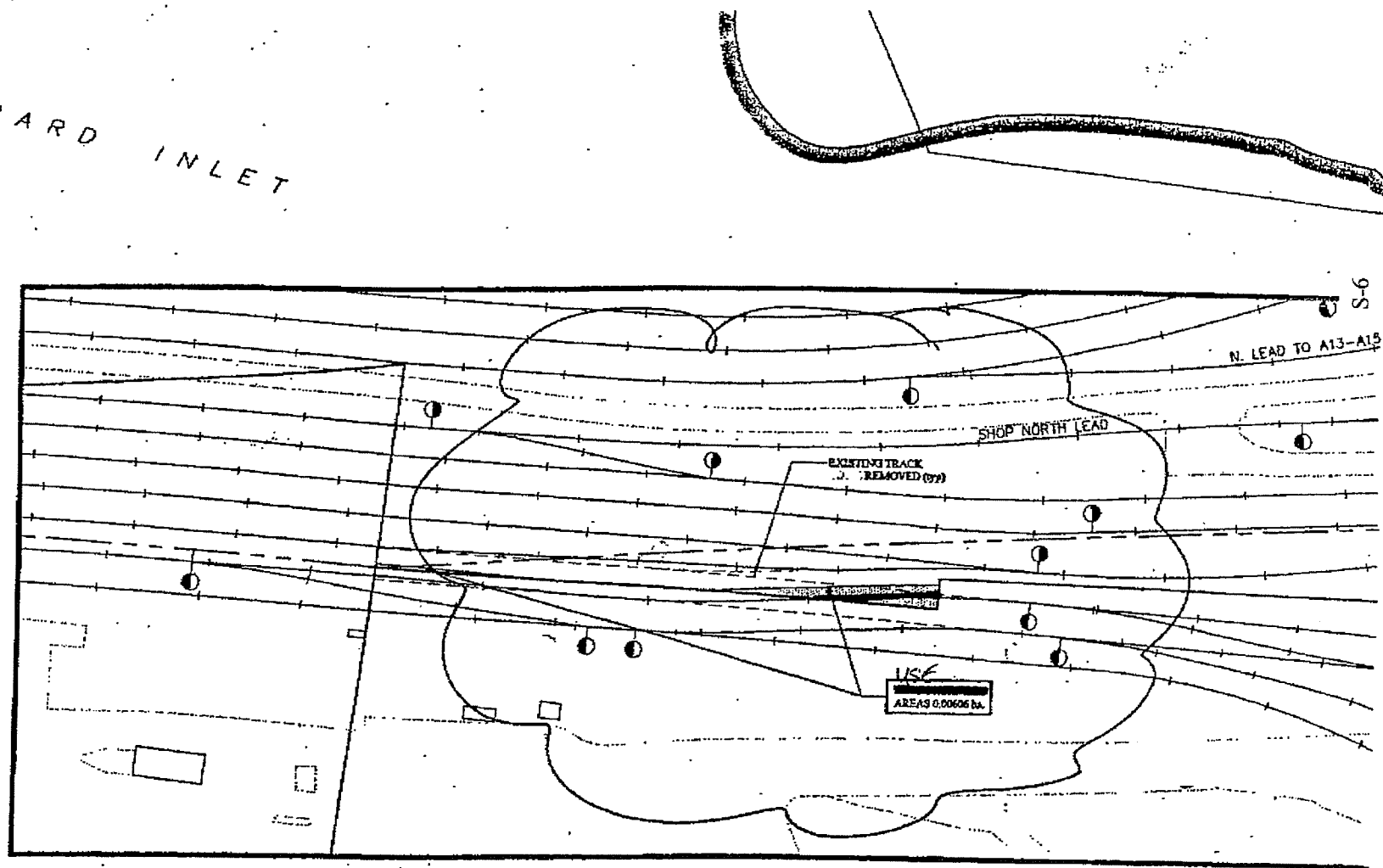
F. Arbitration

Any dispute in respect of these matters shall be arbitrated under the BC *Commercial Arbitration Act*.

G. 2002 Rail Services Agreement

Nothing contained herein shall derogate from the provisions of the existing 2002 Rail Services Agreement with Vancouver Wharves which shall continue in full force and effect in accordance with its terms, unless and until amended.

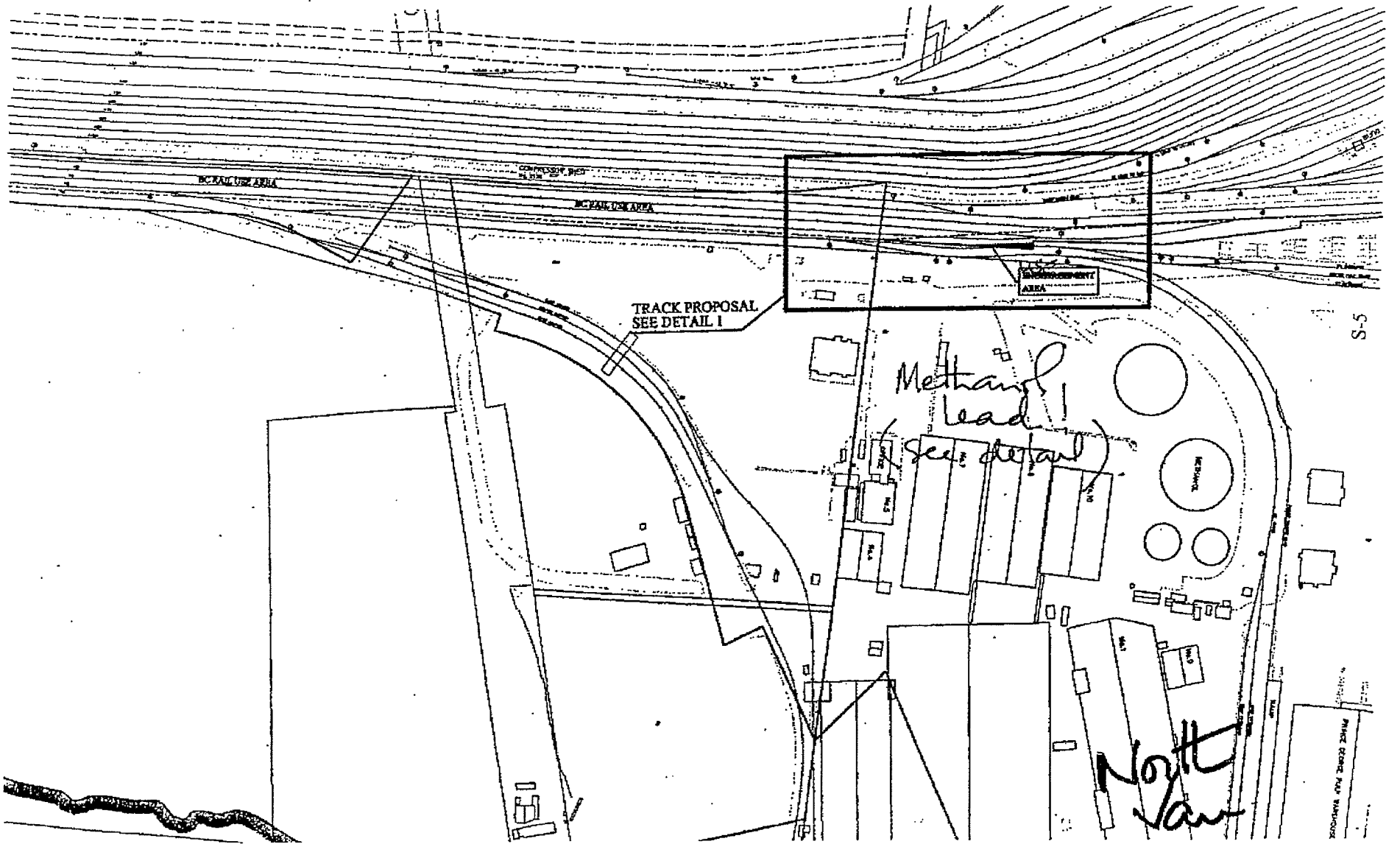
BURRARD INLET

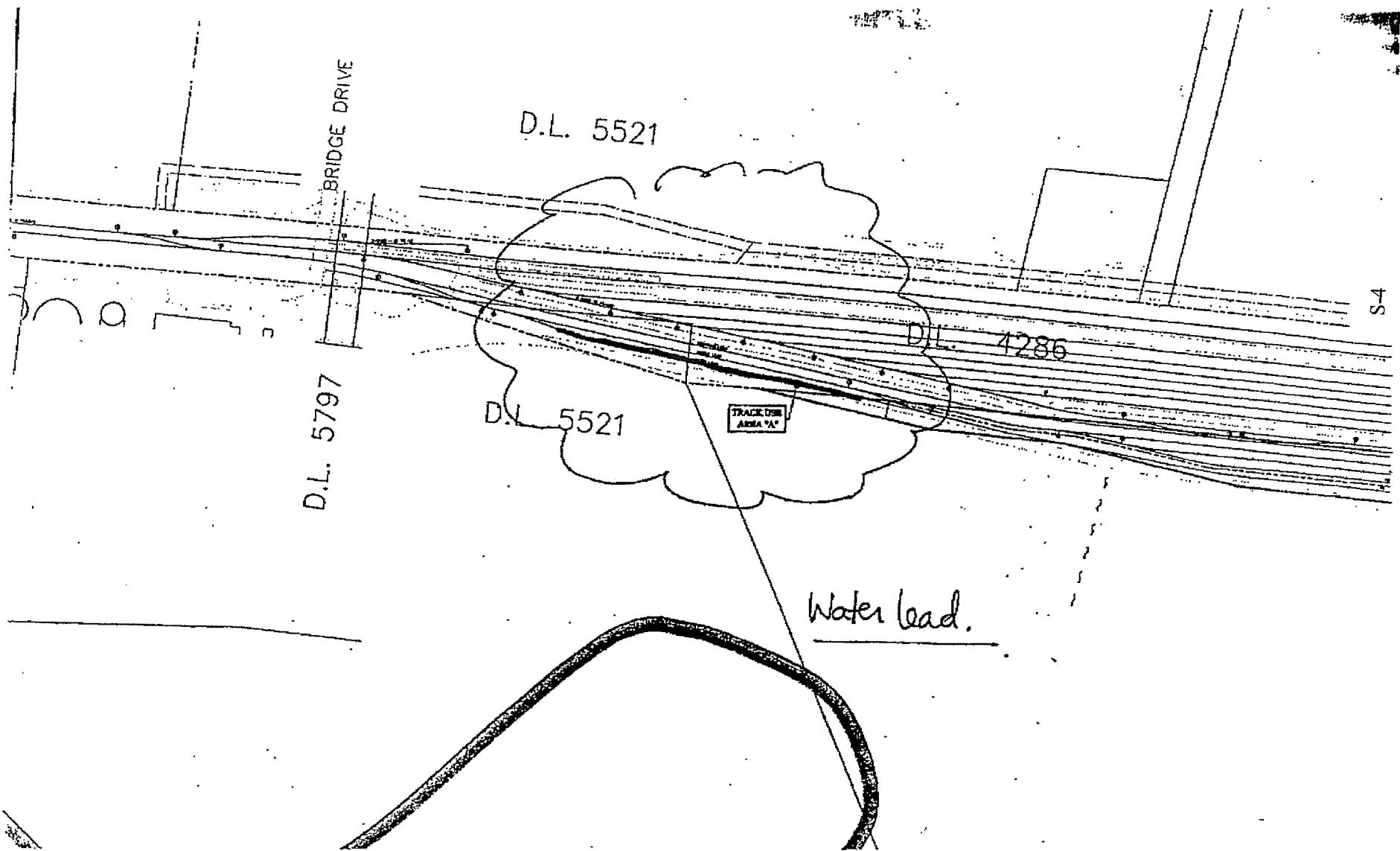


TRACK PROPOSAL - DETAIL 1

N.T.S.

*Methanol lead
North Van*





BRIDGE DRIVE

D.L. 5521

D.L. 5797

D.L. 5521

D.L. 4286

TRACK USE
AREA 'A'

Water lead.

S-4

SCHEDULE T

Pages T1-T5 redacted.

SCHEDULE U

Pages U1-U14 redacted.

SCHEDULE V

Pages V1-V42 redacted.

SCHEDULE W

REAL PROPERTY INTERESTS

A. Non-Fee Simple Interests Registered in the Land Title Office

	Subdivision	Rail Mile South	Rail Mile North	LTO	PID(s)	Legal Description	Geog. Loc.
1A	Squamish		0.200	Vancouver	007-136-943	STATUTORY RIGHT OF WAY BW202498 AND STATUTORY RIGHT OF WAY BW202500 OVER LOT 3 OF THE BED OF BURRARD INLET LYING IN FRONT OF DISTRICT LOT 271, PLAN 18595	NORTH VAN
1B	Squamish			Vancouver	007-124-589	STATUTORY RIGHT OF WAY BW202498 OVER LOT 4, DISTRICT LOT 271 AND THE BED AND FORESHORE OF BURRARD INLET, PLAN 18650	NORTH VAN
5	INTENTIONALLY DELETED						
6	INTENTIONALLY DELETED						
96	Squamish	10.500	10.500	Vancouver	019-199-520	STATUTORY RIGHT OF WAY BJ125990 OVER LOT A DISTRICT LOT 430 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP22017	HORSESHOE BAY
97	Squamish	10.500	10.500	Vancouver	019-199-538	STATUTORY RIGHT OF WAY BJ125990 OVER LOT B DISTRICT LOT 430 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP22017	HORSESHOE BAY
98	Squamish	10.500	10.500	Vancouver	019-176-082	STATUTORY RIGHT OF WAY BJ125990 OVER LOT 5 DISTRICT LOT 771 PLAN LMP22006	HORSESHOE BAY
102	Squamish	10.600	10.600	Vancouver	015-848-353	STATUTORY RIGHT OF WAY G33067 OVER LOT F (EXPLANATORY PLAN 9412) DISTRICT LOT 1494 GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT: FIRSTLY; PART IN HIGHWAY PLAN 52 SECONDLY; PART IN PLAN LMP25925 THIRDLY; PART IN HIGHWAY PLAN 118 FOURTHLY; PART IN HIGHWAY PLAN 126 FIFTHLY; PART IN HIGHWAY PLAN 12 SIXTHLY; PART PLAN LMP49608	HORSESHOE BAY
103	Squamish	10.600	10.600	Vancouver	015-946-916	STATUTORY RIGHT OF WAY GC58932 OVER BLOCK B (REFERENCE PLAN 2164) GROUP 1 NEW WESTMINSTER DISTRICT EXCEPT PORTIONS IN REFERENCE PLAN 4162 AND HIGHWAY PLAN 52 DISTRICT LOT 1493	HORSESHOE BAY
134A	Squamish	13.300	13.300	Vancouver	010-748-253	RESTRICTIVE COVENANT BL67439 OVER LOT A (STATUTORY RIGHT OF WAY PLAN 16958) BLOCK D DISTRICT LOT 2361 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 6991	HORSESHOE BAY
181	Squamish	15.800	16.600	Vancouver	N/A	COVENANT BF298824, STATUTORY RIGHT OF WAY BF298825 AND EASEMENT BF298826 OVER THE COMMON PROPERTY OF STRATA PLAN LMS483, GROUP 1 NEW WESTMINSTER DISTRICT	COFFEE
390A	Squamish	39.200		Vancouver	013-358-316	STATUTORY RIGHT OF WAY BW205694 OVER THAT PART OF LOT 1 (EXPLANATORY PLAN 750) IN STATUTORY RIGHT OF WAY PLAN 18924 DISTRICT LOT 486 GROUP 1 NEW WESTMINSTER DISTRICT	SQUAMISH

	Subdivision	Rail Mile South	Rail Mile North	LTO	PID(s)	Legal Description	Geog. Loc.
408	Squamish	39.500	39.500	Vancouver	006-405-720	RIGHT OF WAY 99354H OVER THE WEST 1/2 OF THE WEST 1/2 OF BLOCK 7 DISTRICT LOT 4261 PLAN 6451	SQUAMISH
443	Squamish	46.600		Vancouver	025-003-119	STATUTORY RIGHT OF WAY BR330045 OVER DISTRICT LOT 7947 (SRW PLAN LMP49614) GROUP 1 NEW WESTMINSTER DISTRICT	SQ(CHEAKAMUS)
492	Squamish	60.100	60.100	Vancouver	017-777-321	STATUTORY RIGHT OF WAY BF355733 OVER PARCEL 6-T-1574 (STATUTORY RIGHT OF WAY PLAN LMP4554)	GARIBALDI
493	Squamish	60.100	60.100	Vancouver	010-701-818	STATUTORY RIGHT OF WAY BF355733 OVER BLOCK 1 DISTRICT LOT 3115 PLAN 7176	GARIBALDI
502	Squamish	73.000	75.000	Vancouver	014-769-077	STATUTORY RIGHT OF WAY R129743 OVER STRATA LOT 2 DISTRICT LOT 2246 STRATA PLAN VR. 2481 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1	ALTA LAKE
503	Squamish	73.000	75.000	Vancouver	014-769-131	STATUTORY RIGHT OF WAY R129743 OVER STRATA LOT 5 DISTRICT LOT 2246 STRATA PLAN VR. 2481 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1	ALTA LAKE
504	Squamish	73.000	75.000	Vancouver	014-769-069	STATUTORY RIGHT OF WAY R129743 OVER STRATA LOT 1 DISTRICT LOT 2246 STRATA PLAN VR. 2481 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1	ALTA LAKE
506	Squamish	73.000	75.000	Vancouver	014-769-107	STATUTORY RIGHT OF WAY R129743 OVER STRATA LOT 4 DISTRICT LOT 2246 STRATA PLAN VR. 2481 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1	ALTA LAKE
507	Squamish	73.000	75.000	Vancouver	014-769-093	STATUTORY RIGHT OF WAY R129743 OVER STRATA LOT 3 DISTRICT LOT 2246 STRATA PLAN VR. 2481 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1.	ALTA LAKE
508	Squamish	73.000	75.000	Vancouver	N/A	STATUTORY RIGHT OF WAY R129743 OVER THE COMMON PROPERTY OF STRATA PLAN VAS 2481 DISTRICT LOT 2246	ALTA LAKE
620	Squamish	142.000	142.000	Kamloops	013-636-448	STATUTORY RIGHT OF WAY KF80641 OVER THAT PART OF THE SLOSH INDIAN RESERVE NO. 1 LILLOET DISTRICT SHOWN AS PARCEL H ON PLAN M443 EXCEPT PLAN A1841	SETON
621	Squamish	142.000	142.000	Kamloops	013-636-464	STATUTORY RIGHT OF WAY KF80641 OVER THAT PART OF THE SLOSH INDIAN RESERVE NO. 1 LILLOET DISTRICT SHOWN AS PARCEL J ON PLAN M441 EXCEPT PLAN A1841	SETON
685	Lillooet	160.300	160.300	Kamloops	015-013-481	STATUTORY RIGHT OF WAY KE51943A OVER THAT PART OF THE BED OF THE FRASER RIVER IN DL 8663 LILLOOET DISTRICT LYING BETWEEN DISTRICT LOTS 5452 AND 5453 LILLOOET DISTRICT SHOWN ON PLAN 41946	POLLEY
699	Lillooet	169.000		Kamloops	010-424-661	STATUTORY RIGHT OF WAY KV76392 (AS TRANSFERRED FROM 2591E) OVER DISTRICT LOT 1, GROUP 2, LILLOOET DISTRICT	GIBBS

	Subdivision	Rail Mile South	Rail Mile North	LTO	PID(s)	Legal Description	Geog. Loc.
744	Lillooet	192.000	192.000	Kamloops	002-492-423	STATUTORY RIGHT OF WAY KD69899 OVER DISTRICT LOT 9 LILLOOET DISTRICT EXCEPT: (1) PART COLORED RED ON PLAN A179, (2) PLANS 6462 AND 24611, (3) PLAN 38496 (EXCEPT PLAN 41011), (4) PLANS 41011 AND KAP71186	KELLY LAKE
745	Lillooet	192.000	192.000	Kamloops	025-427-466	STATUTORY RIGHT OF WAY KD69899 OVER LOT 1 DISTRICT LOT 9 LILLOOET DISTRICT PLAN KAP71186	KELLY LAKE
797	Lillooet	242.000	242.000	Kamloops	023-178-205	STATUTORY RIGHT OF WAY KK12169 OVER LOT 1 DISTRICT LOT 3797 LILLOOET DISTRICT PLAN KAP55331	POTTER
842	Lillooet	273.000	273.000	Kamloops	003-845-001	STATUTORY RIGHT OF WAY KC36185 OVER DISTRICT LOT 5 LILLOOET DISTRICT EXCEPT PLANS A1660, 2883, 10207, 20934 AND KAP56825	LAC LA HACHE
843	Lillooet	273.400	273.400	Kamloops	024-651-893	STATUTORY RIGHT OF WAY KC91948 OVER PART OF THAT PART OF LOT 1 SHOWN AS A 20.32 ACRE PARCEL ON PLAN A1660, DISTRICT LOT 5, LILLOOET DISTRICT PLAN 2883 EXCEPT PLANS B7621 AND 19672 SHOWN AS PARCEL "A" ON PLAN KAP65861	LAC LA HACHE
844	Lillooet	273.400	273.400	Kamloops	009-176-110	STATUTORY RIGHT OF WAY KC91948 OVER THAT PART OF DISTRICT LOT 5 SHOWN AS A 6.81 ACRE PARCEL ON PLAN A1660; LILLOOET DISTRICT	LAC LA HACHE
845	Lillooet	273.400	273.400	Kamloops	010-936-530	STATUTORY RIGHT OF WAY KC91948 OVER THAT PART LOT 1 SHOWN AS A 20.32 ACRE PARCEL ON PLAN A1660, DISTRICT LOT 5, LILLOOET DISTRICT PLAN 2883 EXCEPT PLANS B7621, 19672 AND KAP65861	LAC LA HACHE
847	Lillooet	273.500	273.500	Kamloops	017-221-200	STATUTORY RIGHT OF WAY KE100571A OVER THAT PART OF BLOCK A OF DISTRICT LOT 2772, SHOWN ON PLAN KAP44814; LILLOOET DISTRICT	LAC LA HACHE
914	Pr. George	312.900	315.000	Pr George	024-937-533	STATUTORY RIGHT OF WAY PL69136 OVER PARCEL 1, DISTRICT LOT 71, CARIBOO DISTRICT, PLAN PGP46425	WL
915	Pr. George	312.900	315.000	Pr. George	004-152-158	STATUTORY RIGHT OF WAY PL69136 OVER PARCEL A (C4643) OF DISTRICT LOT 71 CARIBOO DISTRICT, EXCEPT PLANS H331 B7651 B7674 17893 17894 18517 18527 19309 20286 20297 20804 21396 21514 21836 23606 24947 25483 25558 25706 26349 26673 26680 27800 28155 28256 28412 28413 28479 28759 28917 29225 30893 31172 31526 31588 32202 34004 PGP35691 PGP38208 PGP38896 PGP39526 PGP42331 PGP42730 PGP43638 PGP45932 PGP46322 PGP46332 PGP46425 BCP7498 AND BCP8150	WL
928	Pr. George	316.000		Pr George	024-431-907	STATUTORY RIGHT OF WAY PK32092 OVER LOT 1, DISTRICT LOT 8844, CARIBOO DISTRICT, PLAN PGP43640	WL
1117	Pr. George	384.700	384.700	Pr George	013-439-910	RIGHT OF WAY 24245K OVER LOT 12 DISTRICT LOT 385 CARIBOO DISTRICT PLAN 8537	QUESNEL
1118	Pr. George	384.700	384.700	Pr George	011-279-095	RIGHT OF WAY 24245K OVER LOT 11 DISTRICT LOT 385 CARIBOO DISTRICT PLAN 6912	QUESNEL
1257	Pr. George	409.600		Pr George	014-023-105	STATUTORY RIGHT OF WAY PC18527 OVER DISTRICT LOT 8912 CARIBOO DISTRICT EXCEPT PARCEL A (49202M)	AHBAU
1438	Pr. George	462.000	462.000	Pr George	010-027-513	STATUTORY RIGHT OF WAY PC54541 OVER LOT 2 DISTRICT LOTS 777 AND 1430 CARIBOO DISTRICT PLAN 10024	PG

	Subdivision	Rail Mile South	Rail Mile North	LTO	PID(s)	Legal Description	Geog. Loc.
1655	Chetwynd	613.000	616.000	Pr George	018-405-851	STATUTORY RIGHT OF WAY PG43769 OVER BLOCK A OF DISTRICT LOTS 4010 AND 4028 PEACE RIVER DISTRICT	LEMORAY
1759	Ft. St. John	692.000	692.000	Pr George	011-979-771	STATUTORY RIGHT OF WAY PC56140 OVER DISTRICT LOT 182 PEACE RIVER DISTRICT	AUSTRALIAN
1761	Ft. St. John	693.800	693.800	Pr George	016-054-741	STATUTORY RIGHT OF WAY PD43866 OVER THAT PART OF UNSURVEYED CROWN LAND WITHIN PEACE RIVER DISTRICT AS SHOWN ON PLAN 34596	WORTH
1792	Ft. St. John	716.000	716.000	Pr George	008-083-274	STATUTORY RIGHT OF WAY PC17659 OVER THE FRACTIONAL EAST 1/2 OF SECTION 34 TOWNSHIP 82 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT FIRST: PLANS A1640 AND 28203 AND PGP37487 SECONDLY: PARCEL B (94744M) AND PARCEL A (115889M)	TAYLOR
1794	Ft. St. John	716.000	716.000	Pr George	012-378-445	STATUTORY RIGHT OF WAY PC17660 OVER SOUTH EAST 1/4 OF SECTION 2 TOWNSHIP 83 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS A1605 23257 AND 33217	TAYLOR
1858	Ft. Nelson	728.700		Pr George	024-289-507	STATUTORY RIGHT OF WAY PM44057 OVER LOT 1 SECTION 32 TOWNSHIP 83 RANGE 18 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT PLAN PGP43045	FORT ST JOHN
1858A	Ft. Nelson	728.700		Pr. George	012-955-213	STATUTORY RIGHT OF WAY BW210432 OVER THE SOUTH 1/2 OF SECTION 33 TOWNSHIP 83 RANGE 18 WEST OF THE 6 TH MERIDIAN PEACE RIVER DISTRICT EXCEPT PLANS 33226 AND H660	FORT ST JOHN
1909	Ft. Nelson	743.100	743.100	Pr George	011-243-449	STATUTORY RIGHT OF WAY PC14193 OVER THE SOUTH EAST 1/4 OF SECTION 29 TOWNSHIP 86 RANGE 19 WEST OF THE 6TH MERIDIAN PEACE RIVER DISTRICT	MURDALE
2184	Takla	74.5	74.5	Pr Rupert	024-547-450	STATUTORY RIGHT OF WAY PN23705 OVER LOT 1 DISTRICT LOTS 4755 AND 4759 RANGE 5 COAST DISTRICT PLAN PRP44380	FORT ST JAME
2312	Takla			Pr Rupert	018-638-252	STATUTORY RIGHT OF WAY TH2729 OVER THAT PART OF DISTRICT LOT 1048 CASSIAR DISTRICT ON PLAN PRP13700	NATAZULTO CK
2350	Dawson Creek	15.000	15.000	Pr George	015-046-711	STATUTORY RIGHT OF WAY PC50769 OVER THAT PART OF DISTRICT LOT 1472, PEACE RIVER DISTRICT, AS SHOWN ON PLAN 33598	SUNDANCE

B. Licences, Permits and Other Real Property Interests Not Registered in the Land Title Office

1. **Licence Agreement** between The District of North Vancouver (the "District"), as licensor, and BC Rail Ltd., as licensee, accepted and approved by the District on March 11, 1999 for the purpose of trackage encroachment over a portion of McKeen Avenue as shown on the sketch plan attached to the Licence Agreement as Schedule A.
2. **Statutory Right of Way by Letters Patent** dated December 12, 1990 granted by Her Majesty the Queen in right of Canada in favour of BC Rail Ltd. over a portion of the Slosh Indian Reserve No. 1, Lillooet District, British Columbia, shown as Right of Way on CLSR Plan 72625 registered in the Indian Land Registry under No. 132422, together with the **Agreement for the Grant of a Statutory Right of Way** dated November 26, 1990 registered in the Indian Land Registry under No. 132423.

3. **Agreement** dated June 24, 1913 between British Columbia Railway Company (formerly Pacific Great Eastern Railway Company) and The Corporation of the District of West Vancouver and the enacting by-law, The Bellevue Avenue Railway By-Law, 1913 (By-Law No. 30); **Agreement** dated October 14, 1913 between British Columbia Railway Company (formerly Pacific Great Eastern Railway Company) and The Corporation of the District of West Vancouver and the enacting by-law, the Pacific Great Eastern Deviation By-law (By-law No. 38); and **Agreement** dated January 29, 1929 between British Columbia Railway Company (formerly Pacific Great Eastern Railway Company) and The Corporation of the District of West Vancouver and the enacting by-law, the West Vancouver Pacific Great Eastern Railway Company By-law No. 402, 1929.
4. **Permit** pursuant to Section 28(2) of the *Indian Act* (Canada) dated September 19, 2003 granted by Her Majesty in Right of Canada to BC Rail Ltd. being registered on January 16, 2004 in the Indian Land Registry under No. 314736 against Fountain Indian Reserves Nos. 1A and 1D located at mile no. 167.5.

C. Crown Tenures held by Rail

No.	Benefiting Party	Granting Party	Subd.	South	North	Tenure	Description	Agreement Date
1.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Squamish	18.900	20.200	Licence of Occupation No. 238310	TO NATURAL BOUNDARY COVERING FILL AT BRUNSWICK BEACH	September 16, 2002
2.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Squamish	18.900	20.200	Licence of Occupation No. 238414	3 METERS BEYOND R/W AT BRUNSWICK BEACH	February 10, 2003
3.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Squamish	86.000		Map Reserve No. 042016	TRACK REALIGNMENT NORTH OF WHISTLER AT SOO RIVER	May 17, 2004
4.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Squamish	99.400		Licence of Occupation No. 237246	MT. CURRIE MOBILE RADIO SITE	March 22, 2000
5.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	188.500		Licence of Occupation No. 338715	KELLY LAKE MOBILE RADIO SITE	April 7, 2002
6.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	190.200		Licence of Occupation No. 337088	ARDEN PARK PIT – QUARRYING BALLAST MATERIAL FOR PRIMARY RAILWAY PURPOSES	February 15, 1997
7.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	202.800	207.000	Communication Site Licence No. 337813	CLINTON MICROWAVE REPEATER SITE	July 4, 1998
8.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	222.000		Communication Site Licence No. 515004	MT. BEGBIE MOBILE RADIO SITE	March 7, 1999
9.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	252.700		Communication Site Licence No. 515028	CANIM MOBILE RADIO SITE	March 7, 1999

No.	Benefiting Party	Granting Party	Subd.	South	North	Tenure	Description	Agreement Date
10.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	271.58		Licence of Occupation No. 740630	IN THE VICINITY OF LAC LA HACHE – ADDITIONAL AREA REQUIRED FOR SIGHT LINES	May 17, 2004
11.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	273.400		Communication Site Licence No. 515054	LAC LA HACHE MOBILE RADIO SITE	September 15, 1999
12.	Ministry of Sustainable Resource Management (for the benefit of British Columbia Railway Company purposes)	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	307.000		Map Reserve No. 895028	RAILWAY RIGHT OF WAY PURPOSES WITHIN WILLIAMS LAKE INDIAN RESERVE #1	Established July 31, 1989, as continued July 31, 1994 and as amended May 17, 2004
13.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Lillooet	307.000		Licence of Occupation No. 740656	EXTRA WIDTH FOR RIGHT OF WAY REQUIRED TO SUPPORT GRADE	April 1, 2004
14.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	322.300, 323.600		Licence of Occupation No. 740632	NORTH OF WILLIAMS LAKE – REQUIRED FOR MAINLINE RIGHT OF WAY	May 17, 2004
15.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	335.500		Communication Site Licence No. 515001	SODA CREEK MOBILE RADIO SITE	January 24, 1999
16.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	320.400, 320.700, 321.600, 323.200, 352.400		Licence of Occupation No. 740634	NORTH OF WILLIAMS LAKE – REQUIRED FOR MAINLINE RIGHT OF WAY	May 17, 2004
17.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	384.900		Licence of Occupation No. 704454	QUESNEL VHF RADIO SITE	August 18, 2003
18.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	404.600		Communication Site Licence No. 703666	GREENING MOBILE RADIO SITE	May 12, 1998
19.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	425.000		Licence of Occupation No. 704121	HIXON (WALKER) MICROWAVE REPEATER SITE	November 1, 2000
20.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Pr. George	478.00		Licence of Occupation No. 740655	QWAW	April 1, 2004
21.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	501.000		Licence of Occupation No. 740636	SUMMIT LAKE - QUARRYING, DIGGING OR REMOVAL OF ROCK AND USES ANCILLARY, AND OPERATION OF A TEMPORARY PORTABLE ASPHALT PLANT	February 27, 2004

No.	Benefiting Party	Granting Party	Subd.	South	North	Tenure	Description	Agreement Date
22.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	511.000		Licence of Occupation No. 703695	HART PIT - GRAVEL QUARRY FOR PRIMARY RAILWAY PURPOSES, RAILCAR DISMANTLING AND LOG STORAGE AND CHIPPING PURPOSES	April 9, 1999
23.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	525.100		Communication Site Licence No. 703668	MCINTYRE MOBILE RADIO SITE	March 6, 1999
24.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	535.700		Communication Site Licence No. 703702	TACHEEDA MICROWAVE AND MOBILE RADIO SITE	September 1, 1995
25.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	554.30		Licence of Occupation No. 740631	LYING ON THE WEST SIDE OF BC RAIL RIGHT OF WAY DL 12843, CARIBOO DISTRICT - REQUIRED FOR GRADE STABILIZATION	May 17, 2004
26.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	575.000	579.880	Map Reserve No. 017150	PINE PASS	May 17, 2004
27.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	622.000		Map Reserve No. 048054	QUARRYING NEAR BICKFORD STATION	May 17, 2004
28.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. St. John	670.500		Map Reserve No. 048053	FUTURE STATION GROUND AT BOND SIDING	May 17, 2004
29.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. St. John	668.000		Map Reserve No. 048052	STATION GROUND SOUTH OF BOND	May 17, 2004
30.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. St. John	668.200		Licence of Occupation No. 813803	REMOVAL OF SAND AND GRAVEL FOR PRIMARY RAILWAY PURPOSES NEAR BOND	July 25, 2003
31.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. St. John	706.800	708.200	Licence of Occupation No. 813800	ADJACENT TO BC RAIL RIGHT OF WAY DL 2446, PEACE RIVER DISTRICT	April 1, 2004
32.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. St. John	713.800		Licence of Occupation No. 813799	TEKO PIT - QUARRYING, DIGGING OR REMOVAL OF SAND AND GRAVEL AND USES ANCILLARY	November 13, 2003
33.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. Nelson	942.130	950.830	Map Reserve No. 048056	ELLEH CREEK GRAVEL REMOVAL	May 17, 2004
34.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. Nelson	979.400		Map Reserve No. 048051	FORT NELSON GRAVEL REMOVAL	May 17, 2004
35.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Ft. Nelson	970.000	971.000	Map Reserve No. 048055	FUTURE TRACK REVISION AND RAILWAY GRADE PROTECTION SOUTH OF FORT NELSON	May 17, 2004

No.	Benefiting Party	Granting Party	Subd.	South	North	Tenure	Description	Agreement Date
36.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Takla	253.000	270.000	Licence of Occupation No. 635426	BEAR LAKE MICROWAVE REPEATER SITE	July 15, 2001
37.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Takla	270.000		Licence of Occupation No. 634506	SLOANE MOBILE RADIO SITE	March 29, 1996
38.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Stuart	19.900		Licence of Occupation No. 703669	MERTON MOBILE RADIO SITE	March 6, 1999
39.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Takla	275.290		Licence of Occupation No. 634857	MOSQUE (ACTIVE) MICROWAVE SITE	April 1, 1998
40.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Takla	289.700		Licence of Occupation No. 634854	MOSQUE (PASSIVE) MICROWAVE SITE	April 1, 1998
41.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Stuart			Licence of Occupation No. 634853	KLUANTANTAN MICROWAVE SITE	May 2, 1998
42.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Stuart			Licence of Occupation No. 634855	FOSTER CREEK MICROWAVE REPEATER SITE	April 1, 1998
43.	BC Rail Ltd.	Her Majesty the Queen in Right of the Province of British Columbia	Stuart			Licence of Occupation No. 634856	SUSTUT MICROWAVE SITE	April 1, 1998
44.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Dawson Creek	20.100	20.500	Licence of Occupation No. 813802	IN THE VICINITY OF PINE RIVER, PEACE RIVER DISTRICT	April 1, 2004
45.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Dawson Creek	20.500	21.500	Licence of Occupation No. 813801	IN THE VICINITY OF PINE RIVER, PEACE RIVER DISTRICT	April 1, 2004
46.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	32.00		Licence of Occupation No. 740633	IN THE VICINITY OF TABLE RIVER, CARIBOO DISTRICT – CENTINAL CAMP AND SEPTIC FIELD	May 17, 2004
47.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	217.000		Licence of Occupation No. 703889	DRIFTWOOD - COMMUNICATIONS USE	May 1, 2001
48.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	182.000		Licence of Occupation No. 703900	TAKLA LANDING - COMMUNICATIONS USE	May 1, 2001
49.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	160.000		Licence of Occupation No. 703887	TAKLA NARROWS - COMMUNICATIONS USE	May 1, 2001
50.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	139.000		Licence of Occupation No. 703888	MIDDLE RIVER - COMMUNICATIONS USE	May 1, 2001

No.	Benefiting Party	Granting Party	Subd.	South	North	Tenure	Description	Agreement Date
51.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	75.000		Licence of Occupation No. 704096	MURRAY RIDGE POWERLINE - COMMUNICATIONS USE	February 4, 2002
52.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Takla	75.000		Communication Site Licence No. 703610	MURRAY RIDGE REPEATER - COMMUNICATIONS USE	July 31, 1995
53.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	10.100		Communication Site Licence No. 703611	PARSNIP - COMMUNICATION USES	July 22, 1998
54.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	15.300		Communication Site Licence No. 703627	TABLE RIVER - COMMUNICATION USES	January 19, 1999
55.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	32.000		Communication Site Licence No. 703639	WHITFORD - COMMUNICATION USES	January 16, 1999
56.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	55.000		Licence of Occupation No. 807615	PERRY CREEK (TUMBLER RIDGE) - COMMUNICATION USES	May 6, 1994
57.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Stuart	32.000		Communication Site Licence No. 703626	HOMINKA - COMMUNICATION USES	January 16, 1999
58.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	42.000		Communication Site Licence No. 810441	PEAK "K" PASSIVE - COMMUNICATION USES	August 21, 1996
59.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Tumbler	48.400		Licence of Occupation No. 807614	PEAK "S" PASSIVE - COMMUNICATION USES	May 6, 2004
60.	British Columbia Railway Company	Her Majesty the Queen in Right of the Province of British Columbia	Chetwynd	504.000		Communication Site Licence No. 703436	MCLEOD (WHISKERS CREEK) - COMMUNICATION USES	August 10, 1995

SCHEDULE X

INTERIM OPERATIONS

1. The capital expenditures listed on Schedule I.
2. The actions listed in Recital E of the Transaction Agreement.
3. Perform salary reviews and determine ordinary course of salary increases and bonuses.
4. Pursue the “Improvement Opportunities” identified in the management presentations made to Bidders in July, 2003.
5. Execute the tentative agreement with BC Rail Ltd.’s unions on the renewal of collective agreements the term sheet of which is set out in Schedule JJ. The unions will be voting on the tentative deal with results expected to be known by mid December 2003.
6. Carry out actions required to achieve the 2004 Business Plan and Budget approved by the Board of Directors on October 30, 2003.
7. There will be cash distributions from BC Rail Ltd. and/or BC Rail Partnership to its shareholders prior to closing in order to produce the Working Capital Amount.
8. BC Rail Ltd. and BCR Marine Ltd. are in the process of concluding certain real estate and other agreements to formalize arrangements existing between BC Rail and Vancouver Wharves in preparation for completion of the BC Rail transaction.
9. If necessary, carry on operations in accordance with the Winter Plan 2003-2004.
10. Ordinary course renewal and negotiation of Material Contracts that have expired or will expire between the date of this Agreement and Closing.
11. Continue to negotiate and execute an agreement with Slocan in respect of the joint venture OSB mill near Fort St. John.
12. Installation of automatic protection at the 463.1 Prince George Subdivision crossing, to occur in the spring of 2004. The automatic protection became fully operational on May 20, 2004.

SCHEDULE Y

HEADQUARTERS LEASE

LEASE

BC RAIL CENTRE

NORTH VANCOUVER, B.C.

LANDLORD: 221 WEST ESPLANADE CO. LTD.

TENANT: CANADIAN NATIONAL RAILWAY COMPANY

**PREMISES: Suite 600
221 West Esplanade
North Vancouver, B.C.
V7M 3J3**

LEASE

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LEASE SUMMARY

This two page Lease Summary is attached to and forms part of the Indenture of Lease dated for reference and made as of the 14th day of July, 2004, between 221 WEST ESPLANADE CO. LTD., as Landlord, CANADIAN NATIONAL RAILWAY COMPANY, as Tenant and BCR PROPERTIES LTD., as Beneficial Owner.

1. LANDLORD

- (a) Name: 221 West Esplanade Co. Ltd.
- (b) Address: 221 West Esplanade Co. Ltd.
#506 - 221 West Esplanade
North Vancouver, B.C.
V7M 3J3
- (c) Contact Numbers: Telephone: (604) 678-4701
Facsimile: (604) 678-4702
- (d) Contact Person: Arnie van Hattem Emergency No.: (604) 788-2515

2. TENANT

- (a) Legal Name: Canadian National Railway Company
- (b) Address: Suite 2200
10004 – 104 Avenue
Edmonton, AB
T5J 0K2
- (c) Contact Numbers: Telephone: (780) 421-6369
Facsimile: (780) 421-6431
- (d) Contact Person: Patricia Mowbrey, Emergency No.: (780) 918-2870
Senior Facilities Manager

2A. BENEFICIAL OWNER

- (a) Legal Name: BCR Properties Ltd.
- (b) Address: BCR Properties Ltd.
#506 - 221 West Esplanade
North Vancouver, B.C.
V7M 3J3
- (c) Contact Numbers: Telephone: (604) 678-4701
Facsimile: (604) 678-4702
- (d) Contact Person: President

3. PREMISES

- (a) Description: Those premises shown hatched on the plan attached hereto as Schedule "A" forming part of the Building.
- (b) Municipal Address: Suite 600
221 West Esplanade
North Vancouver, B.C.
V7M 3J3
- (c) Rentable Area of the Premises: 54,154 square feet

4. TERM

- (a) Term: **Five (5) years subject to early termination as provided in Section 31 and subject to one (1) five-year renewal as set out in Section 30**
- (b) First Day of Term: July 14, 2004
- (c) Last Day of Term: July 13, 2009

5. BASIC RENT

	PERIOD	RENT PER SQ.FT PER ANNUM	ANNUAL PAYMENT	MONTHLY PAYMENT
(a)	From July 14, 2004 to and including July 13, 2009	██████████	██████████	██████████
(b)	If renewed pursuant to Section 30 is exercised	Fair market rental per square foot for the portion of the premises for which the renewal is exercised	Area for which renewal is exercised multiplied by fair market rental	Annual payment for portion of Premises for which renewal is exercised divided by 12

6. DEPOSIT

N/A

7. USE OF PREMISES

Use: Office and rail operations centre.

LEASE

THIS LEASE made as of the 14th day of July, 2004,

BETWEEN:

221 WEST ESPLANADE CO. LTD., of #506 – 221 West Esplanade,
North Vancouver, BC, V7M 3J3

(the "**Landlord**")

AND:

CANADIAN NATIONAL RAILWAY COMPANY, of Suite 2200,
10004 – 104 Avenue, Edmonton, AB, T5J 0K2

(the "**Tenant**")

AND:

BCR PROPERTIES LTD., of #506 – 221 West Esplanade, North
Vancouver, BC, V7M 3J3

(the "**Beneficial Owner**")

WITNESSES THAT WHEREAS:

- A. The Landlord is the registered owner of the Premises (as hereinafter defined); and
- B. The Beneficial Owner is the beneficial owner of the Premises and has directed and authorized the Landlord to enter into this Lease;

This Lease witnesses that in consideration of the rents and covenants herein contained, the parties covenant and agree as follows:

1. LEASE

(a) Lease and Term

The Landlord does hereby demise and lease to the Tenant the premises (herein called the "**Premises**") consisting of a portion of the building (herein called the "**Building**") civically described as 221 West Esplanade, in the City of North Vancouver, forming part of the complex known as BC Rail Centre (such complex, together with the land owned by the Landlord legally described in Schedule "B" attached hereto, being herein collectively called the "**Lands**"), the portion leased to the Tenant consisting of approximately **54,154** square feet of Rentable Area determined in accordance with paragraph 7(b) hereof and comprising a part of multiple floors of the Building, which Premises are shown by heavy black outline on the plans attached hereto as Schedule "A" and civically described as 600 - 221 West Esplanade, North Vancouver, B.C. V7M 3J3, TO HAVE AND TO HOLD subject to the terms hereof, for a term (herein called the

"Term") of five (5) years commencing on the 14th day of July, 2004 and to be fully complete and ended on the 13th day of July, 2009.

In addition to the foregoing, during the Term and any renewal thereof the Landlord shall grant to the Tenant a licence over those portions of the common areas of the Building (including ducts and conduits) required by the Tenant to access, maintain, repair, replace and install the Tenant's communications and other fibre-optic cables (the "**Licensed Area**") that connect the Premises to the Tenant's rail line located on those lands adjacent to the Lands (the "**Adjacent Lands**") owned by the Landlord and legally described in Schedule "B" attached hereto. In connection with the foregoing grant of licence, the Tenant shall not exercise its right to use the Licensed Area in such a manner that interferes with the rights of any other tenants, occupants, guests or invitees of or to the Building. All of the Tenant's covenants in this Lease applicable to the Premises shall apply equally to the Licensed Area.

(b) Net Lease

This Lease is a completely net lease to the Landlord. Except as stated in this Lease, the Landlord is not responsible for costs, charges or expenses relating to the Premises, their use and occupancy, their contents or the business carried on in them, and the Tenant shall pay the charges, impositions, costs and expenses relating to the Premises except as stated in the Lease. The Landlord shall have the right to collect such charges, impositions, costs and expenses as additional rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

(c) Sales Taxes

Notwithstanding any other paragraph of this Lease, the Tenant shall pay to the Landlord an amount equal to any and all goods and service taxes, sales taxes, value added taxes, business transfer taxes or any other taxes (imposed on the Landlord with respect to rent payable by the Tenant to the Landlord under this Lease, or in respect of the rental of space under this Lease whether characterized as a goods and services tax, sales tax, value added tax, business transfer tax or otherwise (herein called the "**Sales Taxes**")), it being the intention of the parties that the Landlord shall be fully reimbursed by the Tenant with respect to any and all Sales Taxes payable by the Landlord. The amount of the Sales Taxes so payable by the Tenant shall be calculated by the Landlord in accordance with the applicable legislation and shall be paid to the Landlord at the same time as the amounts to which such Sales Taxes apply are payable to the Landlord under the terms of this Lease or upon demand at such other time or times as the Landlord from time to time determines. Notwithstanding any other paragraph in this Lease, the amount payable by the Tenant under this paragraph shall be deemed not to be rent, but the Landlord shall have all of the same remedies for and rights of recovery of such amount as it has for recovery of rent under this Lease.

(d) Overholding – No Tacit Renewal

If the Tenant shall hold over after the expiration of the Term or any renewal of the Term and the Landlord shall accept rent or any portion thereof, the new tenancy thereby created shall be deemed a monthly tenancy and not a yearly tenancy and shall be subject to the covenants and conditions contained in this Lease insofar as they are applicable to a tenancy from month to month, except that:

- (i) if the Tenant remains in possession with the Landlord's written consent, the monthly installments of Basic Rent, unless there is an agreement in writing to the contrary, shall be one and one half (1 1/2) times the monthly installments of Basic Rent payable for the last month of the Term or any renewal of the Term, pro rated on a daily basis for each day that the Tenant remain in possession; or
- (ii) if the Tenant remains in possession without the Landlord's written consent, the monthly installments of Basic Rent shall be two (2) times the monthly installments of Basic Rent payable for the last month of the Term or any renewal of the Term, pro rated on a daily basis for each day that the Tenant remains in possession, and in addition the Tenant shall be liable for all costs, expenses, losses and damages resulting or arising from the failure of the Tenant to deliver up possession of the Premises to the Landlord.

(e) Deposit

Immediately upon delivery of a duly executed copy of this Lease to the Tenant, the Tenant shall deliver to the Landlord the Deposit (as set forth in the attached Lease Summary). The Landlord shall apply the Deposit firstly towards the first month's Basic Rent and the balance, if any, shall be held by the Landlord, without liability for the payment of interest thereon, as security for:

- (i) the payment by the Tenant of rent; and
- (ii) the observance or performance by the Tenant of all terms and conditions in this Lease to be observed and performed by the Tenant.

If at any time rent is overdue and unpaid or the Tenant fails to observe and perform any of the terms or conditions contained in this Lease to be observed or performed by the Tenant, the Landlord may, either before or after terminating this Lease, appropriate and apply the whole or any part of the Deposit to the payment of such rent or to compensate the Landlord for any loss, cost, damage or expense sustained or suffered by the Landlord by reason of the failure of the Tenant to observe or perform any of the terms or conditions of this Lease to be observed or performed by the Tenant, and such appropriation and application will be without prejudice to the Landlord's right to pursue any other remedy set forth in this Lease.

If the Tenant promptly pays all rent as it falls due and observes and performs all the terms and conditions in this Lease to be observed and performed by the Tenant, the Landlord will return the balance of the Deposit, if any, to the Tenant within thirty (30) days after the expiration of this Lease.

2. BASIC RENT

The Tenant covenants and agrees to pay in lawful money of Canada, to the Landlord as rent during the Term of the Lease the following sums without any rights of deduction or set-off whatsoever:



3. **GENERAL COVENANTS**

- (a) The Landlord covenants with the Tenant:
 - (i) for quiet enjoyment; and
 - (ii) to observe and perform all covenants and obligations of the Landlord herein.
- (b) The Tenant covenants with the Landlord:
 - (i) to pay rent; and
 - (ii) to observe and perform all covenants and obligations of the Tenant herein.

4. **BUILDING SERVICES**

The Landlord covenants with the Tenant:

- (a) Interior Climate Control: to maintain in the Premises conditions of reasonable temperature and comfort in accordance with good standards of interior climate control generally pertaining at the date of this Lease applicable to normal occupancy of premises for office purposes, during hours to be determined by the Landlord (but to be at least the hours from 7:30 a.m. to 5:30 p.m. from Monday to Friday inclusive, with the exception of holidays), such conditions to be maintained by means of a system for heating and cooling, filtering and circulating the processed air. The Landlord shall have no responsibility for any inadequacy of performance of the said system if the occupancy of the Premises exceeds one person for every 140 square feet of floor area or the electrical power consumed on the Premises for all purposes exceeds 4.0 watts per square foot of floor area or the Tenant installs partitions or other installations in locations which interfere with the proper operation of the system of interior climate control or if the window covering on exterior windows is not kept fully closed while the windows are exposed to direct sunlight. If the use of the Premises does not accord with the aforementioned requirements and changes in the system are (in the opinion of the Landlord) feasible and desirable to accommodate such use the Landlord may, and at the written request of the Tenant shall, make such changes and the entire expense of such changes will be reimbursed by the Tenant to the Landlord. If in the opinion of the Landlord such changes result in maintenance costs or operating costs in excess of those which would have occurred had such changes not been made, the Landlord may estimate the amount of such excess on a reasonable basis and such amount shall be an Additional Service (as hereinafter defined in paragraph 8(d) hereof);
- (b) Janitor Service: to provide, at the written request of the Tenant, janitor and cleaning services to the Premises and to common areas of the Lands consisting of the services more particularly described in Parts 1 and 2 of Schedule "C" attached hereto, such services to be rendered substantially in accordance with the standards of modern office buildings of a similar type in the Greater Vancouver area at the date of this Lease. It is agreed by the Tenant that any janitor or cleaning services which the Landlord shall agree to provide to the Premises in excess of those described in Part 1 of Schedule "C" hereto

(including those additional services referred to in Part 3 of Schedule "C") shall be Additional Services;

- (c) Telephone and Water: to furnish ducts in the locations contemplated by the Building plans for bringing telephone service to the Premises and to provide hot and cold water to washrooms in the Building available for the Tenant's use;
- (d) Electricity: to furnish electricity to the Premises for lighting and for office equipment capable of operating from the circuits available and standard to the Building and the Landlord shall replace from time to time in accordance with some reasonable procedure to be determined by the Landlord the electrical light bulbs, tubes and ballasts installed in lighting fixtures standard to the Building. If the lighting fixtures installed in the Premises are not standard to the Building, the Landlord may charge the Tenant, as an Additional Service, for an amount estimated by the Landlord on a reasonable basis to be the excess of the cost of replacing non-standard bulbs, tubes and ballasts over what the cost would have been if the lighting fixtures in the Premises had been standard to the Building. The Landlord may from time to time establish a reasonable procedure to determine whether the use by the Tenant of electricity is in excess (on a per square foot basis) consumption in the Building and, if so, may charge the Tenant for the cost of the excess as an Additional Service on a reasonable basis;
- (e) Elevators, Common Areas, Washrooms: to keep available the following facilities for use by the Tenant and its employees and invitees in common with other persons entitled thereto:
 - (i) passenger and freight elevator service to each floor upon which the premises are located, but the Landlord may prescribe the hours during which and the procedures under which freight elevator service shall be available and may limit the availability for passenger elevator service outside normal business hours, but except in the circumstances contemplated by the concluding two sentences of this paragraph 4, at least one elevator shall be kept available at all times, subject to use by other tenants, which services each floor upon which the Premises are located;
 - (ii) common entrances, lobbies, walkways, stairways and corridors giving access to the Building and the Premises, including plazas, landscaped areas from time to time provided by the Landlord for common use and enjoyment within the Building;
 - (iii) the washrooms on the Tenant's floor which are standard to the Building;

- (f) Additional Services: if, and to the extent that, the Landlord shall from time to time elect to provide exclusively (either directly or through agents or contractors designated by it) any janitor, cleaning or other services in addition to those contemplated by paragraph 4 or to supervise the moving of furniture or equipment of the Tenant or to make deliveries or supervise the making of deliveries to the Premises, all of the foregoing matters referred to in this paragraph 4(f) (including any for the Additional Services referred to in Schedule "C") to be treated as Additional Services provided always that the Tenant shall not be obligated to engage the Landlord, its agents or contractors with respect to the provision as such additional services and shall be free to engage its own agents and contractors for this purpose;

The Landlord shall maintain and keep in repair the facilities required for the provision of the interior climate control, elevator and other services referred to in this paragraph 4 in accordance with the standards of modern office buildings in the Greater Vancouver area at the date of this Lease, but reserves the right to stop the use of any of these facilities and the supply of the corresponding services when necessary by reason of accident or during the making of repairs, alterations or improvements, in the judgment of the Landlord necessary or desirable to be made, until the repairs, alterations or improvements shall have been completed to the satisfaction of the Landlord. The Landlord shall have no responsibility or liability for failure to operate any of the said facilities or supply any of the said services when the use of the facility is stopped as aforesaid or when the Landlord is prevented from using the facility or supplying the service by strike, or by orders or regulations of any governmental authority or agency or by failure of the electric current, natural gas or water supply necessary to the operation of any facility or by the failure to obtain such a supply with the exercise of reasonable diligence, or by any other cause beyond the Landlord's reasonable control.

5. USE AND OCCUPANCY OF PREMISES

The Tenant covenants with the Landlord:

- (a) Permitted Use: to use the Premises only as specified in the Lease Summary attached hereto, and not to use or permit to be used the Premises or any part thereof for any other purpose or business without the prior written consent of the Landlord, such consent not to be unreasonably withheld or delayed;
- (b) Waste and Nuisance: not to commit, or permit, any waste or injury to the Premises including the Leasehold Improvements (as hereinafter defined in paragraph 11(a) hereof) and any trade fixtures therein, normal wear and tear excluded, any loading of the floors thereof in excess of the maximum degree of loading contemplated by the Design Criteria (as hereinafter defined and referred to in paragraph 5(g) hereof), any nuisance therein or any use or manner of use causing annoyance to other tenants and occupants of the Building;
- (c) Insurance Risks: not to do, omit to do or permit to be done or omitted to be done upon the Premises anything which would cause to be increased the Landlord's cost of insurance (which, if the Landlord has elected to self-insure with respect to any risks, shall include any costs which would have been incurred had the Landlord not so elected) against any perils as to which the Landlord is obligated by this Lease to insure (or self-insure) the Lands (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of

insurance on the Lands to be subject to cancellation provided always that the use of the Premises as permitted under Section 5(a) shall not offend this provision;

- (d) Condition: not to permit the Premises to become untidy, unsightly or hazardous or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a condition such as to reasonably facilitate the performance of the Landlord's janitor and cleaning services referred to in paragraph 4(b) hereof;
- (e) By-laws: to comply at its own expense with all municipal, federal and provincial, sanitary, fire and safety laws, regulations and requirements pertaining to the occupation and use of the Premises, the condition of the Leasehold Improvements, trade fixtures, furniture and equipment installed by or on behalf of the Tenant therein and the making by the Tenant of any repairs, changes or improvements therein;
- (f) Rules and Regulations: to observe and perform and to cause its employees, invitees and others over whom the Tenant can reasonably be expected to exercise control to observe and perform the Rules and Regulations attached as Schedule "D" hereto, and such further and other reasonable rules and regulations and amendments and changes therein as may hereafter be made by the Landlord and notified to the Tenant, except that no change may be made which is inconsistent with this Lease unless the Tenant consents thereto in writing; the Rules and Regulations, as from time to time amended, are not necessarily of uniform application, but may be waived in whole or in part in respect of other tenants without affecting their enforceability with respect to the Tenant and the Premises, and may be waived in whole or in part with respect to the Premises without waiving them as to future application to the Premises; and the imposition of such Rules and Regulations shall not create or imply any obligation of the Landlord to enforce them or create any liability on the Landlord for their non-enforcement;
- (g) Design Criteria: in its use of the Premises including without limitation the making of renovations thereto and the construction of Leasehold Improvements thereon, to comply with the reasonable requirements of Design Criteria from time to time prepared by or on behalf of the Landlord and distributed to the Tenant in common with other tenants, except that such Design Criteria may not contain any restriction which is inconsistent with this Lease unless the Tenant consents thereto;
- (h) Pollutants: not to discharge nor permit the discharge of any oil or grease or any deleterious, objectionable, dangerous, radioactive, poisonous or explosive matter or substance (the "**Pollutants**") into any waters, ditches, culverts, drains or sewers on or adjacent to the Lands, and the Tenant shall take all reasonable measures for ensuring that any effluent discharged shall not be corrosive, poisonous or otherwise harmful to any sewage disposal works or to the bacteriological process of sewage purification. The Landlord shall be permitted access to the Premises from time to time to test and monitor the effluent from the Tenant's operations. In addition, the Tenant shall not dispose of, discharge or accumulate or permit to be disposed or, discharged or accumulated on, in or under the Lands any Pollutants;
- (i) Parking: to observe all regulations made by the Landlord from time to time with respect to the parking of vehicles in or around the Building or on the Lands. The Tenant shall, upon request, supply the Landlord with the automobile licence numbers for the vehicles owned by its employees. In addition, the Landlord reserves the right to remove with

respect to the parking of vehicles from time to time, such removal to be at the risk and expense of the Tenant. Further, the Landlord reserves the right to designate from time to time certain parking spaces for the exclusive use of other tenants of the Building; and

- (j) Hazardous Substances: to:
- (i) at its own cost and expense, comply with all laws and regulations from time to time in force regulating the manufacture, use, storage transportation, removal or disposal of waste, Hazardous Substances and the protection of the environment generally; and
 - (ii) not bring onto the Premises or the Lands or permit the presence thereon of any Hazardous Substances, without the prior written consent of the Landlord.

The Tenant shall, at its own expense, promptly and diligently remove any unauthorized Hazardous Substances from the Premises of the Lands. The Tenant shall, at its own expense, remedy any damage to the Premises or the Lands caused by such event or breach.

For the purposes of this Lease, the term "**Hazardous Substances**" shall mean any substance which is hazardous to persons or property and includes, without limiting the generality of the foregoing, any contaminant, pollutant, dangerous substance, noxious substance, hazardous waste, flammable, explosive, radioactive material, urea formaldehyde foam insulation, asbestos, PCB's and any other substance or materials declared or defined to be hazardous or toxic contaminants, in or pursuant to any applicable federal, provincial or municipal statute or bylaw.

6. REPAIR AND DAMAGE

(a) Landlord's Repairs to the Lands and the Building

The Landlord covenants with the Tenant to keep in a good and reasonable state of repair, with the exception of reasonable wear and tear and damage caused by the act or omission of the Tenant:

- (i) those portions of the Lands consisting of the courts, concourses, lobbies, landscaped areas, entrances and other facilities from time to time provided for common use and enjoyment, and the exterior portions (including exterior walls, foundations and roofs) of all buildings and structures from time to time forming part of the Lands and affecting its general appearance;
- (ii) the Building (other than the Premises and premises of other tenants) including the systems for interior climate control, the elevators, entrances, stairways, corridors and lobbies and washrooms from time to time provided for use in common by the Tenant and other tenants of the Building and the systems provided for bringing utilities to the Premises.

(b) Landlord's Repairs to the Premises

The Landlord covenants with the Tenant to repair, so far as reasonably feasible, and as expeditiously as reasonably feasible, defects in construction performed or installations made by the Landlord in the Premises (if and to the extent that such defects are sufficient to impair the Tenant's ability to comply with the Design Criteria referred to in paragraph 5(g) hereof). The Landlord shall in no event be required to make repairs to Leasehold Improvements.

(c) Tenant's Repairs

The Tenant covenants with the Landlord to repair at the Tenant's own cost, except insofar as the obligation to repair rests upon the Landlord pursuant to paragraph 6(b), the Premises, including Leasehold Improvements, reasonable wear and tear excepted, but this obligation shall not extend to structural members or to exterior glass or to repairs which the Landlord would be required to make under paragraph 6(b) but for the exclusion therefrom of defects not sufficient to impair the Tenant's enjoyment of the Premises while using them in a manner consistent with this Lease. With twenty-four (24) hours prior notice to the Tenant except in cases of emergency where such notice is not required, the Landlord may enter and view the state of repairs and the Tenant will repair according to notice in writing, reasonable wear and tear excepted. If the Tenant shall fail to repair after notice to do so, the Landlord may effect the repairs and collect the cost thereof from the Tenant as additional rent pursuant to paragraph 16(a)(i) hereof.

(d) Indemnification

The Tenant agrees that if any part of the Lands or Building including exterior glass and the systems for interior climate control and for the provision of utilities becomes out of repair, damaged or destroyed through the negligence of or misuse by the Tenant or its employees, agents, invitees or others under its control, the expense of repairs or replacements thereto necessitated thereby shall be reimbursed to the Landlord by the Tenant promptly upon demand.

(e) Abatement and Termination

It is agreed between the Landlord and the Tenant that:

- (i) in the event of damage to the Premises or to other portions of the Lands which affect access or services essential to the Premises, and if the damage is such that the Premises or any substantial part thereof is rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of ten (10) days, then:
 - (A) from and after the expiration of ten (10) days after the occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid, the rental payable pursuant to paragraph 2 and the Tenant's Proportionate Share as defined in paragraph 7 together with any other payments required to be made by the Tenant hereunder shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of such use and occupancy; and
 - (B) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in paragraphs 6(a), (b) and (c)) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of rent to which the Tenant would otherwise be entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and

- (ii) if either;
 - (A) the Premises; or
 - (B) premises whether of the Tenant or other tenants of the Building comprising in the aggregate half or more of the total number of square feet (or square metres) of Rentable Area in the Building (in each case determined in accordance with paragraph 7(b) hereof), or portions of the Lands which affect access or services essential thereto are substantially damaged or destroyed by any cause other than by reason of the act or omission of the Tenant,

and if, in the reasonable opinion of an independent architect, retained by the Landlord within fourteen (14) days of such damage or destruction, the damage cannot reasonably be repaired within One Hundred and Eighty (180) days after the occurrence of such damage or destruction, then the Landlord or the Tenant may, at their option, exercisable by delivery of written notice from the party exercising the option to the other within thirty (30) days after the independent architect has delivered his or her opinion as hereinbefore required, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in paragraphs 6(a), (b) and (c), and the Tenant shall instead deliver up possession of the Premises to the Landlord with reasonable expedition but in any event within sixty (60) days after delivery of such notice of termination, and rent shall be apportioned and paid to the date upon which the damage or destruction occurred, but otherwise the Landlord or the Tenant, as the case may be and according to the nature of the damage and their respective obligations to repair as provided in paragraphs 6(a), (b) and (c), shall repair such damage with all reasonable diligence.

7. ALLOCATION OF TAXES AND OPERATING EXPENSES

(a) Definitions

For purposes of those provisions of this Lease relating to the allocation of taxes and operating expenses, the following terms shall have the following meanings:

- (i) "**Office/Retail Premises**" means the whole of the Building above grade designated to be leased or rented to tenants, other than the portion thereof used for the operation of a restaurant or a banking establishment;
- (ii) "**Architects**" means a recognized firm of architects from time to time designated by the Landlord as architects hereunder;
- (iii) "**Tenant's Contributing Area**" means the number which is the numerator to be used in arriving at the proportion of Allocable Taxes or Allocable Operating Expenses to be paid by the Tenant with respect to the Premises, which number shall be the Rentable Area in square feet or square metres of the Premises calculated in accordance with paragraph 7(b) hereof;
- (iv) "**Administrative Service Areas**" means space in the Building which would otherwise be leaseable to tenants but which the Landlord utilizes in connection

with the operation or maintenance of the Lands other than any such space which, in the reasonable opinion of the Landlord, would be required for the operation or maintenance of the Lands even if such operation and maintenance was performed entirely by independent contractors operating primarily from premises located outside the Lands and not by the Landlord. Subject to the foregoing, Administrative Service Areas include office space occupied by personnel engaged in such operation and maintenance and in management of the Lands (other than leasing staff), locker, lunch and washrooms for operating and maintenance staff, storage rooms for building supplies, machine and maintenance shops, and parcel delivery rooms and other like facilities for common use by or service to tenants of the Building and the Lands;

- (v) "**Gross Contributing Area for Operating Expense Allocation**" means the number which is the denominator to be used in arriving at the proportion of Allocable Operating Expenses to be paid by the Tenant with respect to the Premises, which number is the total Rentable Area, measured in square feet or square metres, on a full floor basis in accordance with paragraph 7(b) hereof, of all Office/Retail Premises, restaurant or banking establishment leaseable or available for occupancy, whether or not rented or occupied, after deduction of the area, measured in square feet or square metres, of space occupied by the Landlord, its agents, contractors or sub-contractors exclusively in respect of the management, maintenance or operation of the Building and the Lands.

For purposes of this definition, premises are considered to be leaseable or available for occupancy if they are capable of occupancy or would be made capable by the addition of tenants' improvements;

- (vi) "**Gross Contributing Area for Tax Allocation**" means the number which is the denominator to be used in arriving at the proportion of Allocable Taxes to be paid by the Tenant with respect to the Premises, which number shall be determined as described in the definition of Gross Contributing Area for Operating Expense Allocation;

- (vii) "**Allocable Taxes**" means all taxes, rates, duties, levies and assessments whatsoever, whether municipal, parliamentary or otherwise, levied, imposed or assessed against the Lands or any portion thereof or upon the Landlord in respect thereof or from time to time levied, imposed or assessed in the future in lieu thereof, or for which the Landlord is liable with respect to the Building and the Lands, including those levied, imposed or assessed for education, schools and local improvements, and including all costs and expenses (including legal and other professional fees and interest and penalties on deferred payments) incurred by the Landlord in good faith in contesting, resisting or appealing any taxes, rates, duties, levies or assessments, but excluding:

- (A) taxes and license fees in respect of any business carried on by tenants and occupants of the Lands (including the Landlord in respect of its business), which taxes are herein collectively called "**Business Taxes**";
- (B) income or profits taxes upon the income of the Landlord to the extent such taxes are not levied in lieu of taxes, rates, duties, levies and assessments against the Lands or upon the Landlord in respect thereof,

which taxes are herein collectively called the "**Landlord's Income Taxes**"; and

(C) all taxes, rates, duties, levies and assessments (including Business Taxes) which the Landlord recovers from tenants under paragraph 8(b) hereof and comparable paragraphs of other leases, which taxes are herein collectively called "**Tenants' Taxes**";

(viii) I. "**Allocable Operating Expenses**" for any period means all expenses, costs and disbursements of every kind and nature (determined for each year on an accrual basis) incurred in connection with the management and operation of the Lands for such period, except the following:

(A) costs of alterations of the Premises or of the premises of other tenants and corresponding costs as to premises occupied or to be occupied by the Landlord, except as they relate to premises to be occupied by the Landlord in the performance of its function as Landlord of the Building and the Lands;

(B) costs of capital improvements and other costs properly chargeable to capital account;

(C) depreciation, interest and principal payments on mortgages and other debt costs except that Allocable Operating Expenses may, at the discretion of the Landlord, be calculated to include depreciation and interest costs with respect to machinery, equipment, systems, property or facilities installed in or used in connection with the Lands if one of the principal purposes of such installation or use was to reduce other items of Allocable Operating Expenses, and also to include reasonable depreciation and interest charges with respect to equipment, such as janitorial equipment, provided or used by the Landlord in the normal maintenance of the Lands;

(D) real estate brokers' leasing commissions; and

(E) repairs or replacement of structural elements of the Building including, but not limited to load bearing walls, floorslabs and masonry walls; replacement of the roof, roof membrane or roof covering;

(F) any cost that should have been paid by another Tenant had it not been excused from doing so by the Landlord or had it not defaulted under its Lease;

(G) any legal fees and other costs in respect of financing or refinancing of the Building or Lands.

II. All such expenses shall be included whether incurred by or on behalf of the Landlord or incurred by or on behalf of any owner or owners of parts of or interests in the Lands with whom the Landlord may from time to time have agreements for the pooling or sharing of costs or by or on behalf of tenants of space in the Building (including operators of parking garages) with whom the

Landlord may from time to time have agreements whereby in respect of their premises such tenants perform any cleaning, maintenance or other work or services usually performed by the Landlord, and which expenses if directly incurred by the Landlord would have been included in Allocable Operating Expenses and shall include the value of services not reflecting a direct cost or detriment, such as the rental value of Administrative Service Areas. Allocable Operating Expenses shall also include insurance premiums payable under policies held by the Landlord pursuant to paragraph 12(a) hereof with respect to risks affecting the Lands, together with related payments and costs including an amount equal to any sum deducted if the Landlord shall elect to insure with respect to any such risks under a policy or policies containing provisions which require a specified sum to be deducted from each claim made thereunder.

III. In computing Allocable Operating Expenses there shall be credited as a deduction:

- (H) the amounts of proceeds of insurance and other amounts actually recovered by the Landlord applicable to damage the cost of repair of which was included in Allocable Operating Expenses;
 - (I) amounts recovered as a result of direct charges to the Tenant and other tenants in respect of Additional Services under paragraph 8(d) hereof and comparable paragraphs of other leases to the extent that the amounts so recovered relate to costs thereof included in Allocable Operating Expenses and the additional charge of 10% of the aggregate of the cost of labour, materials and other direct expenses chargeable under paragraph 8(d) shall be considered to be so related;
 - (J) all other recoveries from the Tenant and other tenants applicable to expenses included in Allocable Operating Expenses, other than contributions to Allocable Operating Expenses by the Tenant pursuant to the provisions of this Lease and contributions by other tenants pursuant to comparable provisions of other leases;
- (ix) **"Tenant's Proportionate Share"** for any period means the aggregate of:
- (A) an amount determined by multiplying Allocable Operating Expenses for the period by a fraction calculated at or as of the end of such period, the numerator of which is the Tenant's Contributing Area and the denominator of which is the Gross Contributing Area for Operating Expense Allocation; and
 - (B) an amount determined by multiplying Allocable Taxes for the period by a fraction calculated at or as of the end of such period, the numerator of which is the Tenant's Contributing Area and the denominator of which is the Gross Contributing Area for Tax Allocation;
- (x) **"Year"** means a period of 12 months commencing on January 1 and ending on the next ensuing December 31 until changed pursuant to paragraph 7(f).

(b) Area Measurements

All measurements of Rentable Area required to implement this paragraph 7, or under other provisions of this Lease, shall be made in accordance with the procedure outlined in Schedule "E" hereto. Such measurements shall be made by the Landlord and included in the material made available to the Tenant in connection with the determination of the Tenant's Proportionate Share pursuant to paragraph 7(c). In the event of any dispute as to the measurement made by the Landlord (which dispute may not be advanced more than one year after the information as to the measurement becomes available to the Tenant) the decision of the Architects shall be final.

(c) Determination of Tenant's Proportionate Share

Insofar as the determination of the Tenant's Proportionate Share is dependent upon calculations other than area measurements governed by paragraph 7(b), the same shall be binding upon the Tenant if reasonably performed by the Landlord, who shall within a reasonable time after receipt of notice from the Tenant, such notice to be given within 120 days after the end of the Year to which it relates, provide the Tenant with a statement disclosing in reasonable detail the costs and taxes being allocated and the calculation of the Tenant's Proportionate Share and shall further provide the Tenant with reasonable access to the books and records of the Landlord pertaining thereto. Any expenses not directly incurred by the Landlord but which are included in Allocable Operating Expenses may be estimated by the Landlord on whatever reasonable basis the Landlord may select.

(d) Payment of Tenant's Proportionate Share

Prior to the commencement of the Term and prior to May 1 in each Year thereafter which commences during the Term the Landlord shall estimate the Tenant's Proportionate Share for the ensuing Year or (if applicable) broken portion thereof, as the case may be, and shall notify the Tenant in writing of the estimate. The amount so estimated shall be payable in equal monthly installments in advance over the Year or broken portion of the Year in question, each installment being payable on each monthly rental payment date provided in paragraph 2 hereof. From time to time during a Year the Landlord may re-estimate the amount of the Tenant's Proportionate Share for the Year or broken portion thereof, in which event the Landlord shall notify the Tenant in writing of the new estimate and shall fix monthly installments for the then remaining balance of such Year or broken portion thereof in order that, after giving credit for the installments paid by the Tenant on the basis of the previous estimate or estimates, the Tenant's Proportionate Share will have been fully paid during such Year or broken portion thereof.

(e) Re-adjustment of Tenant's Proportionate Share

When the necessary information becomes available, the Landlord shall re-calculate the Tenant's Proportionate Share for such Year or broken portion thereof referred to in paragraph 7(d), after the expiry of the Year or portion thereof. The Landlord and the Tenant shall expeditiously make between them any re-adjustment which such re-calculation may show to be necessary, so that the Tenant shall be credited for any overpayment or debited for any deficiency. Neither party may claim a re-adjustment in respect of the Tenant's Proportionate Share based upon any error of estimation, determination or calculation thereof unless claimed in writing prior to the expiration of one year after the end of the Year to which the payment relates, provided always that the provisions of this paragraph 7(e) shall not affect any claim for re-adjustment based upon other

matters, including without limitation the outcome of litigation affecting expenses which constitute component parts of the Allocable Taxes or Allocable Operating Expenses.

(f) Change from Year Ending December 31

In the event that the Landlord shall change its accounting system or procedures so that it shall become more convenient for the provisions of paragraphs 7(d) and 7(e) to be administered on the basis of some 12-month period other than Years ending December 31, then the Landlord may determine upon delivery of not less than six months' written notice to the Tenant and other tenants that such provisions of this Lease and comparable provisions of other leases of premises upon the Lands shall be so administered, and after the expiry of such notice period, the provisions of paragraphs 7(d) and 7(e) shall be and be deemed and construed to be appropriately amended to that end.

8. **TAXES**

(a) Payment by Landlord

The Landlord covenants with the Tenant to pay promptly when due to the taxing authority or authorities having jurisdiction all taxes, which shall mean for purposes of this paragraph 8, "Allocable Taxes", "Business Taxes" (insofar as such Business Taxes are exigible against the Landlord with respect to the business of the Landlord), the "Landlord's Income Taxes" and any "Tenants' Taxes" as such terms are defined in paragraph 7(a)(vii).

(b) Payment by Tenant

The Tenant covenants with the Landlord to pay promptly when due to the taxing authority or authorities having jurisdiction all taxes, rates, duties, levies and assessments whatsoever, whether municipal, parliamentary or otherwise, levied, imposed or assessed in respect of any and every business carried on in the Premises by the Tenant, subtenants, licensees or other occupants of the Premises or in respect of the use or occupancy thereof (including license fees), which shall include all "Business Taxes" as defined in paragraph 7(a)(vii) hereof (insofar as such Business Taxes are exigible with respect to any business carried on in the Premises). The Tenant further covenants to pay to the Landlord, promptly on demand therefor by the Landlord, an amount equal to all taxes charged in respect of all Leasehold Improvements and trade fixtures and all furniture and equipment made, owned or installed by or on behalf of the Tenant in the Premises, as the Landlord, acting reasonably and to the extent such items are subject to tax, may determine to recover from the Tenant; and any amounts so paid by the Tenant to the Landlord (and by other tenants under corresponding paragraphs of other leases) shall be excluded in the determination of Allocable Taxes under paragraph 7 hereof.

(c) Postponement, Determination, Appeal, etc., of Taxes

- (i) The Landlord may postpone payment of any taxes payable by it pursuant to paragraph 8(a) and the Tenant may postpone payment of any taxes, rates, duties, levies and assessment payable by it under the first sentence of paragraph 8(b) in each case to the extent permitted by law and if prosecuting in good faith an appeal against the imposition thereof, and provided in the case of a postponement by the Tenant that if the Lands or any part thereof of the Landlord shall have become liable to assessment, prosecution, fine or other liability, the Tenant shall have given security in a form and in an amount satisfactory to the Landlord in

respect of such liability and such undertakings as the Landlord may reasonably require to ensure payment thereof.

- (ii) For all purposes of this paragraph 8 and of paragraph 7, where the determination of any taxes depends upon an assessment or an apportionment of an assessment which has not been made by the taxing authority or authorities having jurisdiction, the Landlord may determine the same acting reasonably. Any determinations so made by the Landlord shall be binding upon the Tenant unless shown to be unreasonable or erroneous in some substantial respect or inconsistent with principles that would govern such assessment if such assessment were made by a taxing authority. Notwithstanding the foregoing, in the absence of any separate assessment of Leasehold Improvements or trade fixtures or (if assessable) furniture or equipment of the Tenant referred to in paragraph 8(b), or of other tenants, the Landlord may elect not to make a determination thereof and may from time to time waive payment of amounts which would otherwise be payable by the Tenant under that item (and by other tenants under comparable provisions of other leases of premises in the Building), in which event such amounts shall form part of Allocable Taxes, without prejudice to the right of the Landlord to make any such determination in the future, either generally or in the case of the Tenant or any other tenant where the value of such Leasehold Improvements, trade fixtures, furniture or equipment is unusually large, with the intent that the enforcement or non-enforcement of the said item (and any like provisions in other leases) shall not be such as to impose any substantial inequity amongst tenants including the Tenant.
- (iii) Whenever requested by the Landlord, the Tenant will deliver to the Landlord receipts for payment of all taxes, rates, duties, levies and assessments payable by the Tenant pursuant to the first sentence of paragraph 8(b) hereof and furnish such other information in connection therewith as the Landlord may reasonably require.
- (iv) The Tenant agrees that it will not conduct any appeal from any governmental assessment or determination of the value of the Lands whether or not the assessment or determination affects the amount of tax to be paid by the Tenant. The Tenant shall instead rely upon the Landlord to conduct any such appeal in the interest of all occupants of the Lands and the Landlord agrees that it will do so, provided always that the Landlord shall in no event be responsible or liable to the Tenant for any action or failure to act was not made in good faith. At all times while conducting such appeal, the Landlord shall co-operate with the Tenant to minimize the amount of tax payable by the Tenant and keep the Tenant informed of the status of the appeal as it relates to the Premises.

(d) Payment for Additional Services

The cost of Additional Services provided to the Tenant, whether or not the Landlord is obligated to provide them, shall be paid to the Landlord by the Tenant from time to time promptly upon receipt of invoices therefor from the Landlord. For purposes of this Lease, the term "Additional Services" includes all services supplied pursuant to paragraph 4(f) hereof, all other services designated as Additional Services by that paragraph, and all other services of whatsoever nature or kind supplied by the Landlord to the Tenant in addition to those required by this Lease (other than any such services which the Landlord may elect to supply as included within the standard

level of services furnished to tenants generally, the costs of which shall be included in Allocable Operating Expenses). The invoices above referred to shall reflect the Landlord's total cost of provision of the Additional Services being charged for, including all costs of materials and labour and other direct costs, costs of supervision and other indirect expenses, capable of being allocated on a reasonable basis, plus an amount equal to ten percent (10%) of the aggregate of the cost of labour, materials and other direct expenses, to cover indirect expenses incapable of reasonable allocation. The Landlord's reasonable determination of the costs of Additional Services shall be conclusive.

9. ASSIGNMENT AND SUBLETTING

(a) No Assignment Without Leave

The Tenant shall be entitled, subject to the terms hereof, to assign this Lease or sublet or otherwise grant occupation to all or a portion of the Premises provided that:

- (i) the Tenant remains liable under the terms of this Lease;
- (ii) the assignee, sublessee or licensee agrees in writing for the benefit of the Landlord to assume and be bound by the terms of this Lease as it relates to the Premises or a portion thereof which is subject to the assignment, sublease or license;
- (iii) the Landlord is satisfied, acting reasonably, with the financial covenant of the proposed assignee, subtenant or licensee. The Tenant shall furnish to the Landlord all information available to the Tenant and requested by the Landlord as to the financial covenant of the proposed assignee, subtenant or licensee. Within fifteen (15) days after the receipt by the Landlord of such request for consent and of all information which the Landlord shall have requested hereunder (and if no such information has been requested, within fifteen (15) days after receipt of such request for consent) the Landlord shall advise the Tenant in writing whether it is satisfied with the financial covenant of the proposed assignee, subtenant or licensee;
- (iv) the Tenant provides no less than 60 days' prior written notice of such assignment, sublease or license to the Landlord;
- (v) any and all such assignees, subtenants or licensees shall only use the Premises for the purpose set out in the Lease Summary; and
- (vi) the Tenant pays the Landlord's administrative and legal costs in connection with the proposed assignment, subletting or licensing.

(b) Assumption of Obligations

No assignment of this Lease shall be effective unless the assignee executes an appropriate instrument assuming, as to the assigned, sublet or licenced premises, all the obligations of the Tenant hereunder.

10. SIGNS AND DIRECTORY

The Tenant shall not paint, display, inscribe, place or affix any sign, symbol, notice or lettering of any kind anywhere in or on the Lands outside the Premises (whether on the outside or inside of the Building) or within the Premises so as to be visible from the outside of the Premises, with the exception only of an identification sign at or near the entrance to the Premises and a directory listing in the main lobby of the Building, both to be subject to the approval of the Landlord as to design, size and location. Unless the Landlord consents to the inclusion of any other or additional name, the Tenant shall be entitled to have included on such directory only the name of the Tenant. The Landlord may at its discretion determine that either or both of the identification sign and directory listing shall be installed at the expense of the Tenant, and the Landlord reserves the right to install them as an Additional Service.

11. LEASEHOLD IMPROVEMENTS AND TRADE FIXTURES

(a) Definition of Leasehold Improvements

For purposes of this Lease, the term "Leasehold Improvements" includes all items generally considered as leasehold improvements, including without limitation all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant, or any previous occupant of the Premises, in the Premises and by or on behalf of other tenants in other premises in the Lands (including the Landlord as occupant of its premises), including all partitions however affixed, and whether or not movable, and all wall-to-wall carpeting other than carpeting laid over finished floors and affixed so as to be readily removable without damage with the exception of trade fixtures and furniture and equipment not of the nature of fixtures.

(b) Installation of Improvements and Fixtures

The Tenant will not make, erect, install or alter any Leasehold Improvements or trade fixtures in the Premises without having requested and obtained the Landlord's prior written approval. The Landlord shall not unreasonably withhold its approval to any such request, but failure to comply with Design Criteria established by the Landlord from time to time for the Building shall be considered sufficient reasons for refusal. In making, erecting, installing or altering any Leasehold Improvements or trade fixtures the Tenant will not, without the prior written approval of the Landlord, alter or interfere with any installations which have been made by the Landlord and in no event shall alter or interfere with window coverings or other light control devices installed by the Landlord on exterior windows or with the perimeter lighting adjacent to exterior walls of the Building. The Tenant's request for any approval hereunder shall be in writing and accompanied by an adequate description of the contemplated work and, where appropriate, working drawings and specifications thereof. Any out-of-pocket expense incurred by the Landlord in connection with any such request for approval shall be deemed incurred by way of an Additional Service. All work to be performed in the Premises shall be performed by competent contractors and subcontractors of whom the Landlord shall have approved, such approval not to be unreasonably withheld (except that the Landlord may require that the Landlord's consultants be engaged for any mechanical or electrical work) and by workers who have labour union affiliations that are compatible with those of workers employed upon the Lands by the Landlord and its contractors and subcontractors. All such work shall be subject to inspection by and the reasonable supervision of the Landlord, as an Additional Service, and shall be performed in accordance with any reasonable conditions or regulations imposed by the Landlord and completed in good and workmanlike manner in accordance with the description of the work approved by the Landlord.

(c) Liens and Encumbrances on Improvements and Fixtures

In connection with the making, erection, installation or alteration of Leasehold Improvements and trade fixtures and all other work or installations made by or for the Tenant in the Premises the Tenant shall comply with all the provisions of the Builders' Lien Act and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention by way of hold-back of portions of any sums payable) and except as to any such hold-back shall promptly pay all accounts relating thereto. The Tenant will not create any mortgage, conditional sale agreement or other encumbrance in respect of its Leasehold Improvements or, without the consent of the Landlord, with respect to its trade fixtures nor shall the Tenant take any action as a consequence of any such mortgage, conditional sale agreement, or other encumbrance would attach to the Premises, or to the Lands or any part thereof. If and whenever any builders' or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefor shall arise or be filed or any such mortgage, conditional sale agreement or other encumbrance shall attach, the Tenant shall within twenty (20) days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under paragraph 16(a)(i) hereof and may make any payments required to procure the discharge of any such liens or encumbrances and shall be entitled to be reimbursed by the Tenant as provided and in paragraph 16(a)(i), and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off or defense. The Landlord shall not be authorized to pay directly to the lien claimant on behalf of the Tenant any amount which is rightfully contested by the Tenant in a court of law. Said amount shall only be paid in trust to the appropriate tribunal. This paragraph 11(c) shall not prevent the Tenant from mortgaging or encumbering its chattels, furniture or equipment not of the nature of fixtures.

(d) Removal of Improvements and Fixtures

All Leasehold Improvements in or upon the Premises shall immediately upon their placement be and become the Landlord's property without compensation therefor to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements, trade fixtures, furniture or equipment shall be removed by the Tenant from the Premises either during or at the expiration or sooner termination of the Term except that:

- (i) the Tenant may at the end of the Term remove its trade fixtures;
- (ii) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures in the Premises as the Landlord shall require to be removed, other than any Leasehold Improvements or trade fixtures installed in or upon or brought onto the Premises by a previous occupant of the Premises; and
- (iii) the Tenant may remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefor new furniture and equipment.

The Tenant shall, in the case of every removal either during or at the end of the Term, make good at the expense of the Tenant any damage caused to the Premises and the Building by the installation and removal.

12. INSURANCE AND LIABILITY

(a) Landlord's Insurance

The Landlord shall maintain the insurance described below throughout the Term on and with respect to the Lands, which insurance shall include the following:

- (i) all risk property insurance for the full replacement cost of the buildings on the Lands;
- (ii) public liability and property damage insurance for protection of the Landlord against all claims for bodily injury, including death, and for property damage occurring in, on or about the Lands for which the Landlord is legally liable, in respect of injury to or death of one or more persons, in respect of one or more occurrences, and in respect of damage to property and including all contractual obligations coverage and including actions of the employees, contractors, subcontractors and agents working on behalf of the Landlord;
- (iii) broad boiler and machinery insurance covering property damage; and
- (iv) such other insurance as it is or may become customary for prudent owners of lands and improvements in the Greater Vancouver area similar to the Lands to carry for loss of or damage to their lands and improvements or liability arising therefrom.

The Landlord may elect, at any time and from time to time during the Term, to self-insure any of the loss or damage described in paragraph 12(a). If the Landlord so elects to self-insure, the Landlord shall be deemed to have placed the insurance required by paragraph 12(a) for the purpose of this Lease and shall be treated as a co-insurer to the extent that it shall not have insured with insurance companies.

(b) Tenant's Insurance

The Tenant shall maintain the insurance described below throughout the Term and any period when it is in possession of the Premises, and each policy of that insurance shall name, as insureds, the Tenant and the Landlord as their respective interests may appear. The insurance which the Tenant is required to maintain is as follows:

- (i) all risk (including flood and earthquake) property insurance in an amount not less than 80% of the full replacement cost with a replacement cost endorsement, insuring:
 - (A) all property owned by the Tenant, or for which the Tenant is legally liable, or installed by or on behalf of the Tenant, and located on the Lands including, but not limited to, fittings, installations, alterations, additions, partitions and all other leasehold improvements and any proceeds recoverable in the event of loss to Leasehold Improvements,

shall be payable to the Landlord (but the Landlord agrees to make available such proceeds towards the repair or replacement of the insured property if the Lease is not terminated pursuant to any other provision hereof); and

- (B) the Tenant's inventory, furniture and movable equipment;
- (ii) public liability and property damage insurance, including personal injury liability, contractual liability, non-owned automobile liability, employers' liability, with respect to the use and occupancy of the Premises and of any other part of the Lands with coverage, including the activities and operations conducted by the Tenant and any other person on the Premises and by the Tenant and any other person performing work on behalf of the Tenant and those for whom the Tenant is in law responsible, in any other part of the Lands. Those policies shall:
 - (A) be written on a comprehensive basis with inclusive limits of at least Five Million Dollars (\$5,000,000) for bodily injury for any one or more persons, or property damage (but the Landlord, acting reasonably, may reasonably require higher limits from time to time upon not less than six (6) months notice); and
 - (B) contain a severability of interest clause and cross-liability clauses;
- (iii) Tenant's legal liability insurance with inclusive limits of at least the replacement value of the portion of the Building covered by this Lease (but the Landlord, acting reasonably, may require higher limits from time to time upon not less than six (6) months notice); and
- (iv) upon not less than ninety (90) days written notice, any other form of insurance and with whatever higher limits the Landlord, acting reasonably, requires from time to time, in form, in amounts and for risks against which a prudent tenant would insure.

The policies specified under Sections 12(b)(i), (ii), (iii) and (iv) shall contain a waiver of any subrogation rights which the Tenant's insurers may have against all and any of the Landlord and those for whom all and any of them are or is in law responsible, whether the damage is caused by their act, omission or negligence.

All policies shall:

- (i) be taken out with insurers reasonably acceptable to the Landlord;
- (v) be in a form reasonably satisfactory to the Landlord;
- (vi) be non-contributing with and shall apply only as primary and not excess to any other insurance available to the Landlord;
- (vii) not be invalidated as respects the interest of the Landlord by reason of any breach or violation of warranties, representations, declarations or conditions contained in the policies; and

- (viii) contain an undertaking by the insurers to notify the Landlord in writing not less than thirty (30) days before any material change, cancellation or termination.

The Tenant shall deliver certificates of insurance duly executed by the Tenant's insurers evidencing that the required insurance is in force and, if required by the Landlord, the Tenant shall deliver certified copies of each insurance policy as soon as reasonably possible after the placing of the insurance. No review or approval of any insurance certificate or insurance policy by the Landlord derogates from or diminishes the Landlord's rights under this Lease.

Provided the Tenant is not in default hereunder, the Tenant may at its option self-insure for the items set out in paragraph 12(b), provided in any event that the Landlord shall be protected to the same extent as the Landlord would have been protected had the Tenant taken out the policies of insurance hereinbefore provided. If the Tenant so elects to self-insure, then the Tenant shall be deemed to have in place insurance required by paragraph 12(b) for the purpose of this Lease and shall be treated as a co-insurer to the extent it shall not have insured with insurance companies. This right to self-insure shall only apply so long as the Tenant in occupancy of the Premises is Canadian National Railway Company and such right shall not survive any assignment, subletting or licensing of this Lease by the Tenant unless the Landlord specifically consents in writing at the time of such assignment, subletting or licensing. The Tenant hereby releases the Landlord from any liability in respect of damage caused by the Landlord and for those whom it is in law responsible in respect of which the Tenant has elected to self-insure.

(c) Insurance Validation

The Tenant agrees not to do or permit to be done any act or thing which may render void or voidable or conflict with the requirements of any policy or policies of insurance, whereby the Premises, the Building or the Lands are insured or which may cause any increase in premium to be paid in respect of any such policy. In the event that any such policy or policies is or are canceled by reason of any act or omission of the Tenant, the Landlord shall have the right, at its option, to terminate this Lease forthwith by delivery of notice of termination to the Tenant, and in the event that any premium to be paid in respect of any such policy or policies is or are increased by reason of any act or omission of the Tenant, the Tenant shall forthwith pay to the Landlord, as additional rent, the amount by which such premium shall be so increased. Notwithstanding the foregoing, the Landlord acknowledges and agrees that the use by the Tenant of the Premises as permitted under this Lease shall not offend this provision.

(d) Limitation of Landlord's Liability

The Tenant agrees that the Landlord shall not be liable for any bodily injury or death of, or loss or damage to any property belonging to, the Tenant or its employees, invitees or licensees or any other person in, on or about the Lands unless resulting from the actual fault, privity or negligence of the Landlord. In no event shall the Landlord be liable:

- (i) for any damage which is caused by steam, water, rain or snow which may leak into, issue or flow from any part of the Lands or from the pipes or plumbing works, including the sprinkler system, therein or from any other place or quarter or for any damage caused by or attributable to the condition or arrangement of any electric or other wiring or of sprinkler heads or for any damage caused by anything done or omitted by any other tenant;

- (ii) for any act or omission (including theft, malfeasance or negligence) on the part of any agent, contractor or person from time to time employed by it to perform janitor services, security services, supervision or any other work in or about the Premises or the Lands;
- (iii) for loss or damage, however caused, to money, securities, negotiable instruments, papers or other valuables of the Tenant; or
- (iv) for the collection or non-collection of any insurance proceeds. However, the Landlord agrees to use reasonable efforts to collect all applicable insurance proceeds.

(e) Indemnity of Landlord

The Tenant agrees to indemnify and save harmless the Landlord in respect of:

- (i) all claims for bodily injury or death, property damage or other loss or damage arising from the conduct of any work by or any act or omission of the Tenant or any assignee, subtenant, agent, employee, contractor, invitee or licensee of the Tenant, and in respect of all costs, expenses and liabilities incurred by the Landlord in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining thereto except to the extent such claims and expenses are:
 - (A) caused or contributed to by the actual negligence of the Landlord, its agents, employees, contractors, invitees or licensees; or
 - (B) to be insured against by the Landlord pursuant to the terms of this Lease;
- (ii) any loss, cost, expense or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this Lease; and
- (iii) all costs, expenses and reasonable legal fees that may be incurred or paid by the Landlord in enforcing against the Tenant the covenants, agreements and representations of the Tenant set out in this Lease.

(f) Indemnity of the Tenant

The Landlord agrees to indemnify and save harmless the Tenant in respect of:

- (i) all claims for bodily injury or death, property damage or other loss or damage arising from the conduct of any work by or any act or omission of the Landlord or any agent, employee, contractor or invitee of the Landlord, and in respect of all costs, expenses and liabilities incurred by the Tenant in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining thereto except to the extent such claims and expenses are:
 - (A) caused or contributed to by the actual negligence of the Tenant, its assignees, subtenants, agents, employees, contractors, invitees or licensees; or

- (B) to be insured against by the Tenant pursuant to the terms of this Lease;
- (ii) any loss, cost, expense or damage suffered or incurred by the Tenant arising from any breach by the Landlord of any of its covenants and obligations under this Lease; and
- (iii) all costs, expenses and reasonable legal fees that may be incurred or paid by the Tenant in enforcing against the Landlord the covenants, agreements and representations of the Landlord set out in this Lease.

13. **SUBORDINATION, ATTORNMENT AND CERTIFICATES**

The Tenant agrees that:

(a) **Subordination and Attornment**

This Lease and all the rights of the Tenant hereunder are subject and subordinate to all mortgages now or hereafter existing (including deeds of trust and mortgage and all instruments supplemental thereto) which may now or hereafter affect the Lands and to all renewals, modifications, consolidations, replacements and extensions thereof provided the mortgagee or trustee agrees to accept this Lease if not in default; and in recognition of the foregoing the Tenant agrees that it will, whenever requested by the mortgagee under any such mortgage (including any trustee under a deed of trust and mortgage) attorn to such mortgagee as a tenant upon all the terms of this Lease. The Tenant agrees to execute promptly whenever requested by the Landlord or by such mortgagee an instrument of subordination or attornment, as the case may be, as may be required of it; and

(b) **Certificates**

The Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord (and if required by the Landlord, to any mortgagee [including any trustee under a deed of trust and mortgage] designated by the Landlord) a certificate in writing as to the then status of this Lease, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and the Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord may request.

14. **ACCESS OF LANDLORD**

(a) **Inspection and Access**

The Landlord shall be permitted at any time and from time to time on 24 hours' notice to the Tenant except in cases of emergency where no notice is required to enter and to have its authorized agents, employees and contractors enter the Premises for the purposes of inspection, window cleaning, maintenance, providing janitor service, making repairs, alterations or improvements to the Premises or the Lands, or to have access to utilities and services (including overhead header ducts and access panels, which the Tenant agrees not to obstruct) and the Tenant shall provide free and unhampered access for such purpose, and shall not be entitled to compensation for any inconvenience, nuisance or discomfort caused thereby, provided always that in exercising its rights hereunder the Landlord shall, to the

extent reasonably possible, minimize interference with the Tenant's use and enjoyment of the Premises.

(b) Exhibiting Premises

The Landlord and its authorized agents and employees shall on 24 hours' notice to the Tenant except in cases of emergency where no notice is required be permitted entry to the Premises during the last six (6) months of the Term for the purpose of exhibiting the Premises to prospective lessees and shall be entitled to display signs and/or post notices advertising the availability of the Premises for lease.

15. DELAY AND NON-WAIVER

(a) Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall, after the application of all reasonable efforts, be prevented, delayed or restricted in the fulfillment of any obligation hereunder in respect of the supply or provision of any service or utility, the making of any repair, the doing of any work or any other thing (other than the payment of rent or other moneys due) by reason of:

- (i) strikes or work stoppages;
- (ii) being unable to obtain any material, service, utility or labour required to fulfill such obligation;
- (iii) any statute, law or regulation of, or inability to obtain any permission from, any government authority having lawful jurisdiction preventing, delaying or restricting such fulfillment; or
- (iv) other unavoidable occurrence,

the time for fulfillment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay or restrict the fulfillment thereof, and the other party to the Lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort thereby occasioned; but nevertheless the Landlord will use its best efforts to maintain services essential to the use and enjoyment of the Premises.

(b) Waiver

If either the Landlord or the Tenant shall overlook, excuse, condone or suffer any default, breach or non-observance by the other of any obligation hereunder, this shall not operate as a waiver of such obligation in respect of any continuing or subsequent default, breach or non-observance, and no such waiver shall be implied but shall only be effective if expressed in writing.

16. REMEDIES OF LANDLORD

(a) Remedies of Landlord

In addition to all rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant through improper compliance or non-compliance with any

obligation arising either under this or any other provision of this Lease or under statute or the general law the Landlord:

- (i) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default shall be payable by the Tenant to the Landlord as additional rent forthwith upon demand. The Landlord shall not be authorized to pay directly to the third party on behalf of the Tenant any amount which is rightfully contested by the Tenant in a court of law. Said amount shall only be paid in trust to the appropriate tribunal;
- (ii) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of a non-payment of rent; and
- (iii) if the Tenant shall fail to pay rent or other amount from time to time payable by it to the Landlord hereunder promptly when due, shall be entitled, if it shall demand it, to interest thereon at a rate three percent (3%) per annum in excess of the minimum lending rate to prime commercial borrowers from time to time current at chartered banks in British Columbia from the date upon which the same was due until actual payment thereof.

(b) Remedies Cumulative

The Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, through improper compliance or non-compliance with any obligation arising either under any provision of this Lease or under statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, and the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or the general law.

(c) Right of Re-Entry on Default or Termination

Provided and it is expressly agreed that if and whenever the rent hereby reserved or other moneys payable by the Tenant or any part thereof shall not be paid on the day appointed for payment thereof, whether lawfully demanded or not, and the Tenant shall have failed to pay such rent or other moneys within five (5) business days after the Landlord shall have delivered to the Tenant notice requiring such payment, or if the Tenant shall breach or fail to observe and perform any of the other covenants, agreements, provisos, conditions, rules or regulations and other obligations on the part of the Tenant to be kept, observed or performed hereunder, and the Tenant shall have failed to remedy such breach or failure within five (5) business days after the Landlord shall have delivered to the Tenant notice requiring such remedy or if this Lease shall have become terminated pursuant to any provision hereof, or if the Landlord shall have become entitled to terminate this Lease and shall have given notice terminating it pursuant to any provision hereof, then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises or any part thereof in the name of the whole and the same to have again, repossess and

enjoy as of its former estate, anything in this Lease contained to the contrary notwithstanding.

(d) Termination and Re-Entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease forthwith by leaving upon the Premises notice in writing of such termination.

(e) Payment of Rent on Termination

Upon the delivery by the Landlord to the Tenant of a notice in writing terminating this Lease, whether pursuant to this or any other provision of this Lease, this Lease and the Term shall terminate, rent and any other payments for which the Tenant is liable under this Lease shall be computed, apportioned and paid in full to the date of such termination, and the Tenant shall immediately deliver up possession of the Premises to the Landlord, and the Landlord may re-enter and take possession of them.

(f) Re-letting

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease the Landlord in addition to all other rights it may have, shall have the right as agent of the Tenant to enter the Premises and re-let them and to receive the rent therefor and as the agent of the Tenant to take possession of any furniture or other property thereon and to sell the same at public or private sale without notice and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of the rent due and to become due under this Lease and the Tenant shall be liable to the Landlord for the deficiency if any.

17. IMPROPER USE OF PREMISES

(a) Cancellation of Insurance

If any policy of insurance upon the Lands or any part thereof from time to time effected by the Landlord shall be canceled or about to be canceled by the insurer by reason of the use or occupation of the Premises by the Tenant or any assignee, subtenant or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation (as the case may be) of such policy of insurance, the Landlord may at its option terminate this Lease by leaving upon the Premises notice in writing of such termination.

(b) Non-authorized Use, Bankruptcy

In the event that without the written consent of the Landlord the Premises shall be used by any other persons than the Tenant or its permitted assigns or subtenants or for any purpose other than that for which they were leased, or occupied by any persons whose occupancy is prohibited by this Lease, or if the Premises shall be vacated or abandoned, or remain unoccupied for fifteen (15) days or more while capable of being occupied, or if the balance of the Term or any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or

insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence, then in any such case the Landlord may at its option terminate this Lease by leaving upon the Premises notice in writing of such termination and thereupon, in addition to the payment by the Tenant of rent and other payments for which the Tenant is liable under this Lease, rent for the current month and the next ensuing three (3) months shall immediately become due and be paid by the Tenant.

GENERAL PROVISIONS

18. Registration of Lease – The Tenant covenants and agrees with the Landlord not to register this Lease without the prior written consent of the Landlord and that the Landlord shall not be obligated to deliver to the Tenant this Lease in registerable form.

19. Lease Constitutes Entire Agreement – The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions express or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease except as expressly set out in this Lease, including Schedule "A", "B", "C", "D" and "E" which are incorporated into and form part of this Lease, and that this Lease constitutes the entire agreement between the Landlord and the Tenant and may not be modified except as herein explicitly provided or except by agreement in writing executed by the Landlord and the Tenant.

20. Notices – Any notice required or contemplated by any provision hereof shall be given in writing, and if to the Landlord or the Beneficial Owner, either delivered to an executive officer of the Landlord or the Beneficial Owner or mailed by prepaid registered mail addressed to the Landlord or the Beneficial Owner at the Building, and if to the Tenant, delivered to the Tenant mailed by prepaid registered mail addressed to the Tenant at both the Premises and the address for the Tenant shown on the Lease Summary. Every such notice shall be deemed to have been given when delivered, or if mailed as aforesaid, upon the third normal business day after posting provided it is mailed in Canada. The Landlord or the Beneficial Owner may from time to time by notice in writing to the Tenant designate another address in Canada as the address to which notices are to be mailed to it, or specify another location in the Building to which such notices are to be mailed and may require that copies of notices be sent to an agent designated by it.

21. Interpretation – In this Lease, "herein", "hereof", "hereby", "hereunder", "hereto", "hereinafter" and similar expressions refer to this Lease and not to any particular paragraph, paragraph or other portion thereof, unless there is something in the subject matter or context inconsistent therewith; "business day" means any of the days from Monday to Friday inclusive of each week unless such day is a holiday, and such additional days as may be designated by the Landlord; and "normal business hours" means the hours from 8 a.m. to 5 p.m., and such other hours as may be designated by the Landlord, on business days; and the parties agree that all of the provisions of this Lease are to be construed as covenants and agreements as though words importing such covenants and agreements were used in each separate paragraph hereof, and that should any provision or provisions of the Lease be illegal or not enforceable it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties hereto as though the said provision or provisions had never been included, and further that the captions appearing for the provisions of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or of any provision hereof.

22. Extent of Lease Obligations – This Lease and everything herein contained shall enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors, permitted

assigns and other legal representatives, as the case may be, of each and every of the parties hereto, subject to the granting of consent by the Landlord to any assignment or sublease and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party, and where there is more than one tenant or there is a male or female party the provisions hereof shall be read with all grammatical changes thereby rendered necessary and all covenants shall be deemed joint and several.

23. Parking – The Landlord shall make available to the Tenant during the Term of this Lease and the renewal Term, ninety-one (91) parking stalls in the Building. The Tenant will advise the Landlord at least one (1) clear calendar month prior to the beginning of the Term how many parking stalls the Tenant requires. If at the commencement of the Term the Tenant requires less than ninety-one (91) parking stalls but subsequently needs additional parking stalls (up to the maximum of ninety-one (91) available stalls), then the Tenant shall provide the Landlord with at least 45 days' written notice of such additional requirement. The rental for the parking stalls shall be the prevailing market rate, from time to time, in the Lonsdale Quay business area, currently \$90.00 per month per stall as of the Commencement date.

24. Landlord's Enquiries and Clean Up by Tenant

- (a) The Tenant hereby authorizes the Landlord to make inquiries from time to time with respect to the Tenant's compliance with any laws and regulations pertaining to the Tenant, the Tenant's business and the Premises, including without limitation, laws and regulations pertaining to Hazardous Substances and the protection of the environment generally. The Tenant shall provide such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.
- (b) If any governmental authority having jurisdiction shall require the clean-up of any Hazardous Substances held, released, spilled, abandoned or placed upon the Premises, the Building or the Lands or released into the environment by the Tenant in the course of the Tenant's business or as a result of the Tenant's use or occupancy of the Premises, then the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work required and shall keep the Landlord fully informed and provide to the Landlord full information with respect to the proposed plans and comply with the Landlord's reasonable requirements with respect to such plans.

25. Landlord's Inspection – The Landlord may at any time and from time to time inspect the Tenant's goods within the Premises and the Tenant's records for the purpose of identifying the nature of such goods and the existence of any Hazardous Substances. The Tenant shall assist the Landlord in such inspection.

26. Ownership of Hazardous Substances – If the Tenant brings or creates within the Premises or on the Lands any Hazardous Substances then, notwithstanding any rule of law to the contrary, such Hazardous Substances shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord, notwithstanding the degree of affixation to the land and notwithstanding the expiry or earlier termination of this Lease.

27. Survival of Covenants – The obligations of the Tenant relating to Hazardous Substances shall survive the expiry or earlier termination of this Lease. If the performance of those obligations requires access to the Premises or the Lands, the Tenant shall have such access only at such times and upon such terms and conditions as the Landlord may specify. The Landlord may, at the Tenant's cost and expense, undertake the performance of any necessary work in order to complete such obligations of the Tenant.

Having commenced such work, the Landlord shall have no obligation to the Tenant to complete such work.

28. Documentation, Administration and Legal Fees – Each of the Tenant and the Landlord shall pay its own costs and expenses relating to the negotiation and preparation of the Lease and any amendments or modifications to the Lease.

INTERRUPTION OF SERVICE

29. (a) **Interruption of Service.** Subject to Section 6(e), no damages, compensation, or claim shall be payable by the Landlord, and this Lease and the obligations of the Tenant to perform all of its covenants and agreements hereunder shall in no way be affected, impaired, reduced, or excused, in the event that there shall be an interruption, curtailment, or suspension of the Building's HVAC, utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, or personnel), or other Building's systems serving the Premises or any other services required of the Landlord under this Lease (an "Interruption of Service"), by reason of:
- (i) any casualty (not only damage caused by a fire, bad weather, and other similar occurrences but also by an act of war, terrorism, or bioterrorism);
 - (ii) an accident;
 - (iii) an emergency;
 - (iv) shortages of labor or materials; or
 - (v) any other causes of any kind whatsoever that are beyond the control of Landlord, including, but not limited to:
 - (A) Lack of access to Building or the Premises (which shall include, but not be limited to, the lack of access to Building or the Premises when it or they are structurally sound but inaccessible due to evacuation of the surrounding area or damage to nearby structures or public areas);
 - (B) Any cause outside Building;
 - (C) Reduced air quality or other contaminants within Building that would adversely affect Building or its occupants (including, but not limited to, the presence of biological or other airborne agents within Building or the Premises);
 - (D) Disruption of mail and deliveries to Building or the Premises resulting from a casualty;
 - (E) Disruption of telephone and telecommunications services to Building or the Premises resulting from a casualty;
 - (F) Blockages of any windows, doors or walkways to Building or the Premises resulting from a Casualty.

- (b) Landlord's Interruption of Service. The Landlord reserves the right, without any liability to the Tenant, except as otherwise expressly provided in this Lease, and without being in breach of any covenant of this Lease, to effect an Interruption of Service, as required by this Lease or by law, or as Landlord in good faith deems advisable, whenever and for so long as may be necessary, to make repairs, alterations, upgrades, changes, or for any other reason, to Building's HVAC, utility, sanitary, elevator, water, telecommunications, security, or other Building's systems serving the Premises, or any other services required of the Landlord under this Lease.

In each instance above in this Section 29, the Landlord shall exercise reasonable diligence to eliminate the cause of the Interruption of Service, if resulting from conditions within Building, and to conclude the Interruption of Service. The Landlord shall give the Tenant notice, when practicable, of the commencement and anticipated duration of such Interruption of Service.

- (c) No Remedies. Subject to Section 6(e), the occurrence of an Interruption of Service pursuant to Paragraphs (a) and (b) hereof shall not:
 - (i) Constitute an actual or constructive eviction of the Tenant, in whole or in part;
 - (ii) Entitle the Tenant to any abatement or diminution of Rent, Additional Rent, or any other costs due from the Tenant pursuant to this Lease;
 - (iii) Relieve or release the Tenant from any of its obligations under this Lease; or
 - (iv) Entitle the Tenant to terminate this Lease

unless such Interruption of Service continues for a period 90 days.

30. Renewal

- (a) If the Tenant duly and punctually observes and performs the covenants, agreements, conditions, and provisos in this Lease on the part of the Tenant to be observed and performed, the Landlord shall at the expiration of the Term, at the cost of the Tenant and on written notice (the "**Renewal Notice**") delivered by the Tenant to the Landlord in the manner provided for this Lease not earlier than 270 days and not later than 80 days prior to the expiration of the Term, grant to the Tenant a renewal lease of the Premises or portion thereof identified in the Renewal Notice for a further term of 5 years (the "**Renewal Term**") from the expiration of the Term, upon all of the covenants, agreements, conditions, and provisos contained in this Lease except this covenant for renewal and except the Basic Rent to be paid during the Renewal Term.
- (b) The Basic Rent for the Renewal Term shall be the then-fair market rent for the portion of the Premises identified in the Renewal Notice, being the rent which would be paid for such portion in its then-current condition (including all leasehold improvements thereto) as between persons dealing in good faith and at arm's length. If the Landlord and the Tenant have not mutually agreed on the amount of the Basic Rent three months prior to the commencement of the Renewal Term, then Basic Rent shall be decided by binding arbitration under clause 30(d), provided that the annual Basic Rent payable during the Renewal Term shall not be less than the annual Basic Rent paid on a per square foot basis during the last year of the Term. Until the Basic Rent has been determined as provided herein, the Tenant shall pay the monthly Rent on the per square foot rate payable in the

last month of the Term; and upon the determination of the Basic Rent the Landlord and the Tenant shall make the appropriate adjustment without interest.

- (c) The Landlord and the Tenant acknowledge and agree that under clause 1.1 the Tenant is given the option of renewing the Term only for one renewal term of 5 years, and at the expiration of the Renewal Term there shall be no further right of renewal.
- (d) If under the provisions of clause 30(b) the Landlord and the Tenant have failed to agree as to the Basic Rent payable the portion of the Premises identified in the Renewal Notice with respect to the Renewal Term by the date specified in clause 30(b), then the determination of the Basic Rent shall be referred to a board of three arbitrators and the following shall apply:
 - (i) one arbitrator shall be appointed by each of the Landlord and the Tenant and a third arbitrator shall be appointed in writing by the first two named arbitrators;
 - (ii) if the Landlord or the Tenant refuses or neglects to appoint an arbitrator within 10 business days after the other serves a written notice upon the party so refusing or neglecting to make that appointment, the arbitrator first appointed shall, at the request of the party appointing him or her, proceed to determine the Basic Rent as if he or she were a single arbitrator appointed by both the Landlord and the Tenant for the purpose;
 - (iii) if two arbitrators are so appointed within the time prescribed and they do not, within business 10 days from the date of appointment of the second arbitrator agree upon the appointment of the third arbitrator, then upon the application of either the Landlord or the Tenant the third arbitrator shall be appointed by a Judge of the Supreme Court of British Columbia;
 - (iv) the determination made by the arbitrators or the majority of them, or by the single arbitrator, as the case may be, shall be final and binding upon the Landlord and the Tenant and their respective successors and assigns;
 - (v) each party shall pay the fees and expenses of the arbitrator appointed by it and one-half of the fees and expenses of the third arbitrator;
 - (vi) each party shall bear its own costs in respect of the arbitration under this Section 30; and
 - (vii) the provisions of this clause shall be deemed to be a submission to arbitration within the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c. 55, and any statutory modification or re-enactment thereof, provided that any limitation on the remuneration of the arbitrators imposed by that legislation shall not apply.
- (e) The renewal lease of the Renewal Term is deemed to incorporate all of the terms and provisions of the Lease as modified by this Section 30, but excluding this Section 30, and the parties ratify and confirm all of the terms and conditions of the Lease as so amended. The parties shall not be obliged to enter into a separate renewal lease to give effect to this Section 30 but the Tenant will, at the Tenant's cost, execute a separate renewal lease if required by the Landlord to do so.

31. Early Termination – The Tenant shall have the option to be exercised by written notice delivered by the Tenant to the Landlord no later than January 14, 2007 (the "Early Termination Notice") to terminate this Lease as to all or a portion of the Premises as specified in the Early Termination Notice, provided that in the event of termination as to a portion of the Premises, such portion shall not be less than 2,000 square feet in Rentable Area (excluding the 15% gross up) and shall be adjacent to the common area elevators to the extent necessary to permit access and egress. In the event such Early Termination Notice is given, this Lease shall be terminated as to the portion of the Premises referred to therein effective July 13, 2007 upon which date the Premises or such portion thereof specified in the Early Termination Notice shall be surrendered to the Landlord without any further obligation or liability to the Landlord under the terms of this Lease. To the extent the Tenant retains the portion of the Premises under the Lease as specified in the Early Termination Notice, the Rent, including Basic Rent shall as of and from July 14, 2007 be prorated accordingly.

32. Assignment or Sale By Landlord – If the Landlord sells, leases or otherwise disposes of the Premises or any part thereof, or if the Landlord assigns this Lease or any interest of the Landlord hereunder, and to the extent that the purchaser, lessee under such Lease or assignee thereof has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, thereupon without further agreement, be freed and relieved of all liability with respect to such covenants and obligations.

33. Time – Time is of the essence of this Lease.

34. Governing Law – This Lease will be exclusively governed by the laws of the Province of British Columbia and the laws of Canada applicable therein. Express as expressly aforesaid, the parties will attorn to the exclusive jurisdiction of the Courts of the Province of British Columbia in respect of all matters arising hereunder.

35. Beneficial Owner – The Beneficial Owner, as sole beneficial owner of the Premises, hereby authorizes and directs the Landlord, as bare trustee and registered owner of the Premises, to enter into and be bound by the provisions of this Lease. Further, the Beneficial Owner covenants and agrees to effect and complete performance of all and singular the terms, covenants and conditions contained in this Lease on the part of the Landlord to be kept, observed and performed. It is agreed that in provisions herein providing a release, indemnity or other exculpatory language in favour of the Landlord, "Landlord" shall include the Beneficial Owner and each of the Landlord's and the Beneficial Owner's officers, directors, agents, employees, contractors and persons for whom either the Landlord or the Beneficial Owner is in law responsible.

IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first written above.

221 WEST ESPLANADE CO. LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

CANADIAN NATIONAL RAILWAY COMPANY

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BCR PROPERTIES LTD.

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE "A"

(Attach Plans showing Premises heavy black outlined with breakout of Rentable Area provided to CN by M.J. Campbell's letter of March 3/04)

[Plan to be inserted will show the floor plans totalling 54,154 square feet Rentable Area.]

SCHEDULE "B"

The "Lands"

City of North Vancouver

Parcel Identifier: 007-124-589
Lot 4
District Lot 271
and the Bed and Foreshore of Burrard Inlet
Plan 18650

The "Adjacent Lands"

City of North Vancouver

Parcel Identifier: 007-136-943
Lot 3 of the Bed of Burrard Inlet
Lying in front of District Lot 271
Plan 18595

SCHEDULE "C"

Janitor and Cleaning Service Schedule

NOTE: The Landlord may amend or vary the following schedules as experience indicates advisable, provided consistent high standards of maintenance as contemplated by the schedules are maintained.

PART 1 - PREMISES

Description of Service

All janitorial services required in accordance with standards applicable to first-class office buildings in the Greater Vancouver area.

PART 2 - COMMON AREAS

All janitorial and supervisory services required in accordance with standards applicable to first-class office buildings in the Greater Vancouver Area.

PART 3 - ADDITIONAL SERVICES

Services available to the Tenant on request or by arranged schedule, at extra charge:

- (1) Desk and furniture waxing and polishing
- (2) Fabric furniture spot cleaning and shampooing
- (3) Washing of metal furniture, waste baskets and composition desk tops, washing of leather and vinyl furniture
- (4) Supply of executive type hand towels, special hand soap in private washrooms
- (5) Extra servicing of private washrooms, board rooms, specified executive areas, meeting rooms, etc.
- (6) Treatment of wooden paneling, doors and special effects
- (7) Ceiling, wall washing and spot re-decorating
- (8) Furniture re-arrangements, setting up conference arrangements, file cabinet moving
- (9) Removal of overburden waste such as dead files, or cartage of other heavy items
- (10) Special waxing and re-finishing of floors above standard frequency, special treatment of computer rooms and specialized areas
- (11) Removal of waste in excess of normal office use
- (12) Maintenance of live plantings within tenant areas

- (13) Disinfecting telephone mouth pieces with a germicide
- (14) Cleanup after conferences, meetings, special lunch room cleanups
- (15) Servicing of tenants' drinking water dispensers and water carafes in executive areas
- (16) Provision for special destruction of confidential documents
- (17) Washing of partition glass
- (18) Servicing of offices after use on Saturdays, Sundays, holidays or if required due to use after normal building cleanup.

SCHEDULE "D"

Rules and Regulations

The Tenant shall observe the following Rules and Regulations (as amended, modified or supplemented from time to time by the Landlord as provided in the Lease):

1. The Tenant shall not use or permit the use of the Premises or bring or keep anything therein in such manner as to create any objectionable noises, odors or other nuisance or hazard or increase the risk of fire, or breach any applicable provision of municipal by-law or other lawful requirement applicable thereto or any requirement of the Landlord's insurers, shall not permit the Premises to be used for cooking (except with the Landlord's prior written consent) or for sleeping, shall keep the Premises tidy and free from rubbish, shall deposit rubbish in receptacles which are either designated or clearly intended for waste and shall leave the Premises at the end of each business day in a condition such as to facilitate the performance of the Landlord's janitor services in the Premises.
2. The Tenant shall not abuse, misuse or damage the Premises or any of the improvements or facilities therein, and in particular shall not deposit rubbish in any plumbing apparatus or use it for other than the purposes for which it is intended, and shall not deface or mark any walls or other parts of the Premises. No broadloom or carpeting shall be affixed to the Premises by means of a non-soluble adhesive or similar product.
3. The Tenant shall not perform, patronize or (to the extent under its control) permit any canvassing, soliciting or peddling in the Building, shall not install in the Premises any machines vending or dispensing refreshments or merchandise and shall not permit food or beverages to be delivered to the Premises by any persons who have been prohibited by the Landlord from bringing food or beverages to the Building, and the Tenant shall require any food or beverages being delivered to the Premises to be so delivered by such means and at such times as have been authorized by the Landlord.
4. The entrances, lobbies, elevators, passages, staircases and other facilities of the Building are for use only for access to the Premises and other parts of the Building, and the Tenant shall not obstruct or misuse such facilities, or permit them to be obstructed or misused by its agents, employees, invitees or others under its control.
5. No safe or heavy equipment shall be moved by or for the Tenant unless the consent of the Landlord is first obtained and unless all due care is taken. Such equipment shall be moved upon the appropriate steel-bearing plates, skids or platforms and subject to the Landlord's direction, and at such times, by such means and by such persons as the Landlord shall have approved. No furniture, freight or bulky matter of any description shall be moved in or out of the Premises or carried in the elevators of the Building except during such hours as the Landlord shall have approved. Hand trucks and similar appliances shall be equipped with rubber tires and other safeguards approved by the Landlord, and shall be used only by prior arrangement with the Landlord.
6. The Tenant shall permit and facilitate the entry of the Landlord, or those designated by it, into the Premises for the purpose of inspection, repair, window cleaning and the performance of janitor

services and other proper purposes, and shall not permit access to main header ducts, janitor and electrical closets and other necessary means of access to mechanical, electrical and other facilities to be obstructed by the placement of furniture, carpeting or otherwise. In the event of such obstruction, the Tenant will be responsible for the cost of providing such access. The Tenant shall not place any additional locks or other security devices upon any doors of the Premises or change any existing locks without the prior written approval of the Landlord and subject to any conditions imposed by the Landlord for the maintenance of necessary access.

7. The Landlord may require that all or any persons entering and leaving the Building at any time other than during normal business hours satisfactorily identify themselves and register in books kept for the purpose, and may prevent any person from entering the Premises unless provided with a key thereto and a pass or other authorization from the Tenant in a form satisfactory to the Landlord, and may prevent any person removing any goods therefrom without written authorization.
8. The Tenant shall refer to the Lands and the Building only by the names from time to time designated by the Landlord for them respectively, and shall use such names only for the business address of the Premises and not for any promotional or other purpose.
9. The Tenant shall not interfere with window coverings installed upon exterior windows, and shall close or if such window coverings are remotely controlled) permit to be closed such window coverings during such hours from dusk to dawn as the Landlord may require, and shall not install or operate any interior drapes installed by the Tenant so as to interfere with the exterior appearance of the Building or the climate control system of the Building.

SCHEDULE "E"

Determination of Rentable Area

For the purposes of the annexed Lease, whenever used in the annexed Lease with respect to the Premises or any other leaseable premises within the Building, the term "Rentable Area" shall be calculated by first determining that area shown outlined in the floor plan of the leased premises, in square feet or square meters, computed by measuring to the inside finish of permanent outer building walls, other than columns (which shall be considered to be the inside of the window glass whenever the outer building wall measured vertically from finished floor to the underside of the finished ceiling at the perimeter wall is at least 50% glass) to the office side of corridors and/or other permanent partitions or walls and to the centre line of partitions which separate the premises from adjoining leaseable areas, but in no event shall deductions be made for interior columns. The area so calculated shall be multiplied by a factor of 1.15 in order to arrive at the Rentable Area.

SCHEDULE Z

REVITALIZATION AGREEMENT