

B.A. LEASE ASSETS, INC.
BANK OF AMERICA CENTER
P.O. BOX 37070
SAN FRANCISCO, CALIFORNIA 94137

7-105A014
Date Jul 15 1977
Fee \$ 50
ICC Washington, D.C.

JUL 15 1977
FEDERAL

July 8, 1977

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Secretary
Interstate Commerce Commission
Washington, D.C. 20423

JUL 11 1977

SECTION 20c FILING

Re: Section 20c Filing

Dear Mr. Secretary:

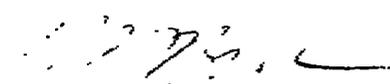
Enclosed for recording under Section 20c of the Interstate Commerce Act are 3 executed counterparts of the Conditional Sale Agreement (the "Agreement") dated as of April 15, 1977, between B.A. Lease Assets, Inc. ("Company") Bank of America Center, P.O. Box 37070, San Francisco, California 94137, and Continental Illinois National Bank and Trust Company of Chicago, as Agent ("Agent"), 231 S. LaSalle Street, Chicago, Illinois 60693.

Under the Agreement the Company conveys full security title to and a security interest in the equipment described therein to the Agent in accordance with the Agreement.

Also enclosed is a check, payable to the Interstate Commerce Commission, in the amount of \$50.00 as the recording fee for the Supplement.

Pursuant to the Commission's rules and regulations for the recording of certain documents under Section 20c of the Interstate Commerce Act, you are hereby requested to duly file two of the enclosed counterparts for record in your office and to return the remaining counterparts, together with the Secretary's Certificate of Recording, to the messenger making this delivery.

Very truly yours,


Walter Buck
Vice President

/dal

Countersigned Louis H. Thornhill

Interstate Commerce Commission
Washington, D.C. 20423

7/15/77

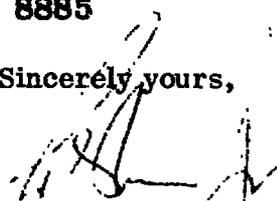
OFFICE OF THE SECRETARY

Walter Buck, Vice Pres.
B.A. Lease Assets, Inc
Bank Of America Center
P.O.Box 37070
San Francisco, Calif. 94137

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **7/15/77** at **10:55am** and assigned recordation number(s) **8885**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

1975
JUL 10 1977-11
UNIVERSITY MICROFILMS
SERIALS ACQUISITION

CONDITIONAL SALE AGREEMENT

Dated as of April 15, 1977

BETWEEN

**CONTINENTAL ILLINOIS
NATIONAL BANK AND TRUST
COMPANY OF CHICAGO,**

as Agent,

AND

B. A. LEASE ASSETS, INC.,

as Vendee

CONDITIONAL SALE AGREEMENT dated as of April 15, 1977, between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Agent under a Finance Agreement dated as of the date hereof (said trust company acting in said capacity being hereinafter called the Vendor and said Finance Agreement being hereinafter called the Finance Agreement) and B. A. LEASE ASSETS, INC. (hereinafter called the Vendee).

The Vendee has accepted delivery of the units of railroad equipment described in Annex A hereto from North American Car Corporation and Union Tank Car Company and has or will make settlement for such units as provided in an equipment purchase agreement dated as of the date hereof (hereinafter called the Equipment Purchase Agreement).

The Vendor has agreed to acquire from the Vendee security title to, and a secured interest in, the units of railroad equipment described in Annex A hereto (said units accepted, delivered and settled for on or before June 30, 1977, being hereinafter called the Equipment) and then conditionally sell its title and interest to the Vendee pursuant hereto.

The Vendee has entered into a lease of the Equipment dated May 17, 1977 (hereinafter called the Interim Lease) with NORTH AMERICAN CAR CORPORATION (hereinafter called the Lessee), and the Vendee and the Lessee are entering into an amended and restated lease of the Equipment in substantially the form annexed as Annex B (the Interim Lease, as so amended and restated, being hereinafter called the Lease).

The Vendee is willing to assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex C hereto (hereinafter called the Assignment of Lease) and the Lessee is willing to consent to such Assignment of Lease pursuant to a Lessee's Consent and Agreement (hereinafter called the Consent) in substantially the form of Annex I to the Assignment of Lease.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Acquisition of Security Title and Interest by Vendor.*
Pursuant to this Agreement the Vendee will sell, assign and transfer to the

Vendor full security title to, and a secured interest in, the Equipment. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

Notwithstanding the preceding provisions of this Article 1, any Equipment, security title to which shall not have been delivered, accepted and settled for pursuant to Article 4 hereof on or before July 31, 1977, pursuant to Article 4 hereof shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

ARTICLE 2. *Representations, Warranties and Agreements of Vendee.*
The Vendee hereby:

(a) represents and warrants to the Vendor, its successors and assigns, that this Agreement, the Participation Agreement, the Equipment Purchase Agreement, the Finance Agreement, the Lease and the Assignment of Lease were duly authorized by it and lawfully executed and delivered by it for a valid consideration, and that, assuming due authorization, execution and delivery by the other parties thereto, said instruments are legal, valid and existing agreements binding upon and enforceable against the Vendee in accordance with their terms and that they are now in force without amendment thereto;

(b) represents and warrants that the Vendee has, or on the Closing Date (as hereinafter defined) will have, legal title to each unit of Equipment and good and lawful right to sell, assign and transfer security title to, and a secured interest in, each unit of Equipment to the Vendor free from all claims, liens, security interests and encumbrances of any nature, except as created by or permitted under this Agreement, including the rights of the Lessee under the Lease, arising by, through or under the Vendee,

(c) represents and warrants that it has not created or taken any action which could result in the creation of any encumbrance (other

than this Agreement and the Lease) upon or with respect to any unit of the Equipment and that the units of the Equipment are free of any lien, charge, security interest or other encumbrance resulting from claims arising by, through or under the Vendee; and

(d) agrees that it will from time to time and at all times, at the request of the Vendor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interest hereby sold, assigned and transferred to the Vendor or intended so to be.

ARTICLE 3. *Conditions to Acquisition of Security Title and Interest.* The Vendor, on the Closing Date (as defined in Article 4 hereof), shall pay to the Vendee an amount equal to the portion of the Purchase Price of the Equipment which, under the terms of said Article 4, is payable by the Vendor, provided that there shall have been delivered to the Vendor at least five business days prior to the Closing Date the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Vendee to the Vendor transferring to the Vendor security title to, and a secured interest in, the units of the Equipment, warranting to the Vendor that the Vendee has legal title to such units and good and lawful right to sell, assign and transfer security title to, and a secured interest in, such units free of all claims, liens, security interest and other encumbrances of any nature except only the rights of the Vendee under this Agreement and the rights of the Lessee under the Lease, and covenanting to defend such title to such units against the demands of all persons whomsoever based on claims arising by, through or under the Vendee;

(b) a counterpart of the bill or bills of sale, the invoice or invoices, the opinions of counsel and the Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 4 of the Equipment Purchase Agreement and § 2 of the Lease;

(c) the opinions of counsel and officer's certificates required by § 15 of the Lease;

(d) an invoice of the Vendee to the Vendor for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee as to the Purchase Price of such units being an amount equal to the purchase price therefor paid by the Vendee pursuant to the Equipment Purchase Agreement;

(e) a certificate of an officer of the Lessee, dated as of the Closing Date, to the effect that (i) each unit of Equipment is new standard-gauge railroad rolling stock first put into service not earlier than the date such unit was acquired by the Vendee and is in good order and repair and in the possession of the Lessee, (ii) no Event of Default or event which with the giving of notice or lapse of time could constitute an Event of Default has occurred and is continuing under the Lease and (iii) the Purchase Price of such Equipment does not exceed the fair market value thereof;

(f) a certificate of an officer of the Vendee, dated as of the Closing Date, to the effect that (i) the representations and warranties of the Vendee set forth in Article 2 of this Agreement are true and correct on and as of the Closing Date as if made on the Closing Date and (ii) no Event of Default or event which with giving of notice or lapse of time could constitute an Event of Default has occurred and is continuing under this Agreement;

(g) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Agent and the Original Investor named in the Finance Agreement, dated as of the Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investor, has been duly authorized, executed and delivered and is a legal, valid, binding and enforceable instrument, (ii) this Agreement, the Lease, the Assignment of Lease and the Consent have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instruments enforceable in accordance with their terms, (iii) security title to, and a secured interest in, the units of the Equipment and the rights of the Lessor under the Lease is validly vested in the Vendor, and (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the certificates of interest delivered under the Finance

Agreement, the Participation Agreement, the Equipment Purchase Agreement, this Agreement, the Lease, the Assignment of Lease or the Consent, or if any such authority is necessary, it has been obtained. (v) this Agreement, the Lease and the Assignment of Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor in any state of the United States of America or in the District of Columbia, (vi) registration of this Agreement or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended (vii) uniform commercial code financing statements relating to the assignment of rentals under subleases of the Equipment from the Lessee to the Vendee made in § 12 of the Lease and relating to the further assignment of such rentals from the Vendee to the Vendor made in the Assignment of Lease have been duly filed in the appropriate offices in the State of California and the State of Illinois (which shall be specified in such opinion), and such financing statements as so filed, are effective in the United States to create in the Vendor (without any present need for any additional filing or recording of any document) a valid, prior, perfected security interest in the Lessee's rights, titles and interests as lessor in and to the rents, proceeds and other moneys payable under existing subleases assigned under the Lease, and (viii) the opinions of counsel referred to in subparagraphs (h), (i) and (j) of this Article 3 are satisfactory in form and substance to such counsel, and the Vendor and said Original Investor are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Agent or the Original Investor;

(h) an opinion of counsel for the Vendee satisfactory to the Original Investor, dated as of the Closing Date, to the effect set forth in clause (vii) of subparagraph (g) of this Article 3 and stating that the Participation Agreement, the Finance Agreement, the Equipment Purchase Agreement, this Agreement, the Lease and the Assignment of Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid and binding instruments, enforceable in accordance with their terms;

(i) the opinion of John E. Flynn, Esq., Vice President—General Counsel of the Lessee, dated as of the Closing Date, to the effect set forth in clause (vii) of subparagraph (g) of this Article 3 and to the effect set forth in § 15 of the Lease;

(j) an opinion of Messrs. Osler, Hoskin & Harcourt, Canadian counsel for the Lessee, to the effect that this Agreement, the Lease and the Assignment of Lease have been properly registered, recorded or filed in the Provinces of British Columbia, Alberta, Saskatchewan, Manitoba and Ontario (being all the mainland provinces of Canada other than Nova Scotia, New Brunswick and Quebec) so as effectively to protect in such provinces the security title of the Vendor to the units of Equipment and its interest in the Lease and no other registration, recording or filing is required in order to protect in such provinces the title and interests of the Vendor in and to the Equipment and the Lease; and

(k) a certificate from a financial officer of the Lessee setting forth figures establishing that payments made by the Vendor on the Closing Date will be legal investments under all laws applicable to investments for New York insurance companies (exclusive of subdivision 17 of Section 81 of the New York Insurance Law).

In giving the opinions specified in subparagraphs (g), (h) and (i) of this Article 3, counsel may qualify any opinion to the effect that any agreement referred to therein is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (g), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Lessee or the Vendee as to such matter.

The obligation of the Vendor hereunder to make payment to the Vendee as herein provided is hereby expressly conditioned upon the Vendor having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment. The Vendor shall not be obligated to make such payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of this Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in this Agreement would constitute an event of default,

shall have occurred and be continuing hereunder. The Vendor shall not be obligated to make payment at any time if such payment is not a legal investment under all laws applicable to investments by New York insurance companies (exclusive of subdivision 17 of Section 81 of the New York Insurance Law). In the event that the Vendor shall not make any such payment, the Vendor shall reassign to the Vendee, without recourse to the Vendor, all right, title and interest of the Vendor in and to the units of the Equipment with respect to which payment has not been made by the Vendor.

ARTICLE 4. *Purchase Price; Conditional Sale to Vendee; Payment.* The term "Purchase Price" as used herein with respect to any unit of the Equipment shall mean the purchase price for such unit paid by the Vendee as provided in the Equipment Purchase Agreement. If on the Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed 146.1842974% of the amount then on deposit with the Vendor pursuant to Paragraph 1 of the Finance Agreement (or such higher amounts as the Vendee may at its option agree to), the Vendor and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than 146.1842974% of the amount then on deposit with the Vendor pursuant to Paragraph 1 of the Finance Agreement (or such higher amount, as aforesaid).

On the Closing Date the Vendor shall pay to the Vendee, in accordance with Article 3 hereof, an amount equal to the lesser of (x) 68.4068% of the aggregate Purchase Price of the Equipment and (y) the amount then on deposit with the Vendor pursuant to Paragraph 1 of the Finance Agreement. The term "Closing Date" shall mean a date not earlier than July 15, 1977, and not later than July 31, 1977, as shall be fixed by the Vendee by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein (unless a shorter notice is otherwise agreed to). The term "business days" as used herein means calendar days, excluding

Saturdays, Sundays and any other day on which banking institutions in New York, New York or Chicago, Illinois, are authorized or obligated to remain closed.

Upon completion of the acquisition of security title to, and a secured interest in, the Equipment by the Vendor pursuant to Articles 1, 2 and 3 of this Agreement, the Vendor will conditionally sell to the Vendee, at a purchase price equal to the portion of the Purchase Price paid by the Vendor for the acquisition of such security title and interest, all its right, title and interest in and to the Equipment.

The Vendee hereby acknowledges itself to be indebted to the Vendor in an amount, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate in 40 semiannual instalments as hereinafter provided an amount, equal to the portion of the Purchase Price of the Equipment paid by the Vendor to the Vendee pursuant to Article 3 hereof (said amount payable in instalments being hereinafter called the Conditional Sale Indebtedness).

The instalments of the Conditional Sale Indebtedness shall be payable semiannually on January 1 and July 1 in each year (or, if any such date is not a business day, on the next succeeding business day), commencing July 1, 1978, to and including January 1, 1998. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 8.95% per annum, and such interest shall be payable, to the extent accrued, on each January 1 and July 1 (or, if any such date is not a business day, on the next succeeding business day) commencing January 1, 1978. The principal amount of the Conditional Sale Indebtedness payable on each of the 40 semiannual payment dates shall be calculated on such a basis that principal and interest payable on each such date shall be substantially in proportion to the amount and allocation of principal and interest set forth for such date in Schedule I hereto, and such 40 instalments of principal will completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the Cut-Off Date schedules, in such number of counterparts as shall be requested by the Vendor, showing the amounts of the Conditional Sale Indebtedness and the interest thereon payable on each interest payment date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at a rate of 9.95% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in this Article 4 and in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payment on January 1, 1978, of the interest then payable in respect of the principal of the Conditional Sale Indebtedness, shall not exceed and shall be payable only out of the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" (as hereinafter defined) to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall not have any personal liability to make any payments under this Agreement whatsoever (except as aforesaid) except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease or the Consent in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent, it being understood that as to all such matters the

Vendor will look solely to the Vendor's rights under this Agreement against the Equipment, to the Vendor's rights under the Consent against the Lessee and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall only mean (i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition (it being understood and agreed that all amounts of "income and proceeds from the Equipment" in excess of the unpaid Conditional Sale Indebtedness and interest thereon or other amounts due to the Vendor under this Agreement shall be paid to the Vendee), and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided

for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder or against the Lessee under the Lease or the Consent. Notwithstanding anything to the contrary contained in Articles 16 and 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. *Security Title to and Secured Interest in the Equipment.* The Vendor shall and hereby does retain security title to and a secured interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. The retention of such title and interest by the Vendor is solely to secure the performance by the Vendee of its obligations under this Agreement and beneficial ownership of the Equipment shall be and remain in the Vendee subject to such performance. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, and full title to and property in the Equipment shall pass to and vest in the Vendee, subject to the rights of the Lessee under the Lease, without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale or other instruments of release for the Equipment releasing its security title to and interest in the Equipment to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or otherwise created by the

Vendor or its assigns and deliver such bill or bills of sale or other instruments to the Vendee at its address referred to in Article 21 hereof. (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided.

ARTICLE 6. *Taxes.* Subject to the provisions of Article 22 hereof, all payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes (except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes), franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions assessed upon the Vendee or which result in a lien upon any part of the Equipment; *provided, however,* that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceeding such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Vendee shall not be obligated to reimburse the Vendor for any impositions

so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance; Casualty Occurrences; Insurance.* Subject to the provisions of Article 22 hereof, the Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair, reasonable wear and tear excepted.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or permanently rendered unfit, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it has reasonably been determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding January 1 or July 1, but not earlier than July 1, 1978, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium each instalment of the Conditional Sale Indebtedness ratably in accordance with the unpaid balance thereof; and the Vendee will promptly furnish to the Vendor a revised schedule of payments of such Conditional Sale Indebtedness and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fifth paragraph of Article 4 hereof.

Upon payment by the Vendee to the Vendor of the full Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article) which bears the same ratio to the entire unpaid Conditional Sale Indebtedness remaining unpaid on such date (without giving effect to any such prepayment or prepayments as aforesaid) as the original Purchase Price for such unit bears to the original aggregate Purchase Price for all units of the Equipment, plus interest accrued thereon but unpaid as of such date.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence and the Vendee shall have made payments pursuant to this Article without deduction for such insurance proceeds or condemnation payments, the Vendor shall pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. *Insurance.* The Vendee will cause the Lessee at all times prior to the payment of the full Conditional Sale Indebtedness in respect of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, to carry and maintain property insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned by it. The proceeds of such property insurance, if any, in excess of \$100,000 in respect of any single loss shall be payable to the Vendor, the Vendee and the Lessee as their interests may appear. The proceeds of such property insurance up to and including \$100,000 in respect of any single loss may be retained by the Lessee; provided that, unless the unit or units of equipment in respect of which such proceeds shall have been payable shall have suffered a Casualty Occurrence, the Lessee shall at all times maintain and keep such unit or units in good order and repair.

ARTICLE 9. *Reports and Inspection.* Subject to the provisions of Article 22 hereof, on or before May 1 in each year, commencing with the year 1978, the Vendee shall cause to be furnished to the Vendor an accurate statement

(a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then undergoing repairs (other than running repairs) or that are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement; *provided, however*, that the Lessee shall not be required to assemble the units of Equipment for purposes of such inspection.

ARTICLE 10. *Marking of Equipment.* Subject to the provisions of Article 22 hereof, the Vendee will cause each unit of the Equipment to be kept numbered with the identifying number of the Lessee as set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to

be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates or any sublessees authorized by § 12 of the Lease.

ARTICLE 11. *Compliance with Laws and Rules.* Subject to the provisions of Article 22 hereof, during the term of this Agreement, the Vendee will comply, and will cause every lessee of the Equipment to comply, in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment (including, without limitation, applicable statutes, regulations and orders relating to equal employment opportunities and environmental standards or controls), to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; *provided, however*, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled to the possession and quiet enjoyment of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for its use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 13 shall be subject to the provisions of Article 22 hereof; *provided, however*, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 14. *Indemnities and Warranties.* Subject to the provisions of Article 22 hereof, the Vendee agrees to indemnify, protect and hold

harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to and a secured interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, or any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title to and a secured interest in the Equipment remains in the Vendor or the release thereof by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of, and the conveyance of the Vendor's security interest in the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 15. *Assignments.* The Vendee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall relieve the Vendee of any obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment by the Vendor, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee (irrespective of the provisions of the last paragraph of Article 4 hereof, Article 22 hereof or any other provision of this Agreement limiting the liability of the Vendee) shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for fifteen days; or

(b) the Vendee (irrespective of the provisions of the last paragraph of Article 4 hereof, Article 22 hereof or any other provision of this Agreement limiting the liability of the Vendee) shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or the Lessee shall for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of the Consent or of the Lease which specifically names the Vendor as beneficiary thereof; or

(c) any proceeding shall be commenced against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or the Lessee under the Lease or the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law

which does not permit any readjustment of the obligations of the Vendee under this Agreement or the Lessee under the Lease or the Consent) and such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days after such proceedings shall have been commenced;

(d) the Vendee or the Lessee shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or commence proceedings under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect of the Federal government or any state or territorial government or any subdivision of either, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver, or (v) on a petition in bankruptcy filed against the Vendee or the Lessee, be adjudicated a bankrupt, or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee under § 12 of the Lease, cause the Lease immediately upon such notice to terminate (and the Vendee hereunder acknowledges the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate of 9.95% per annum. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee wherever situated subject in the case of the Vendee, to the limitations set forth in the last paragraph of Article 4. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Lessee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall at its own expense and risk, forthwith and in the usual manner cause (a) the Equipment to be moved to such point or points as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on the premises of the Lessee or on any lines of railroad or other premises approved by the Vendor until the Vendor shall have leased, sold or otherwise disposed of the same, and

for such purpose the Lessee has agreed pursuant to the Lease to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner. The foregoing liability of the Vendee is subject to the limitations set forth in Article 22 hereof.

At any time during the continuance of a Declaration of Default, the Vendor may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or

otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement, and the balances if any, paid to the Vendee as hereinafter provided.

Any sale hereunder may be held or conducted at New York, New York at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the

purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 persons shall have been solicited in writing to submit bids) it shall be subject to the right of the Lessee to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Lessee shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale and the Lessee has so agreed to pay such amounts pursuant to the Lease.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with the interest from the date of such demand to the date of payment at the rate of 9.95% per annum, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee. The foregoing liability of the Vendee is subject to the limitations set forth in Articles 4 and 22 hereof.

The Vendee will, subject to the last paragraph of Article 4 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* Subject to the provisions of Article 22 hereof, the Vendee will cause this Agreement, any assignments or any amendments or supplements hereof or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to and interests in the Equipment, the Lease and any sublease of the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; *provided, however*, that the Vendee shall not be required to take, or cause to be taken, any such action referred to in this Article 19 (other than filing and recording under Section 20c of the Interstate Commerce Act and other than the filing of financing statements and continuation statements relating to the assignment of rentals under subleases of the Equipment contained in the Assignment of Lease and in § 12 of the Lease) if (1) it deems such action unduly burdensome and (2) after giving effect to the failure to take such action, all action required by law has been taken so as to protect the security title and interest of the Vendor to units of Equipment having a Purchase Price of not less than 90% of the aggregate Purchase Price of all of the then existing Equipment, and the Vendee and the Lessee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Article Headings; Effect and Modifications of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Vendor and Vendee, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the parties hereto with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Lessee.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at Bank of America Center, Leasing Department 656, P.O. Box 37070, San Francisco, California 94137;

(b) to the Vendor, 231 South La Salle Street, Chicago, Illinois 60693, attention of Corporate Trust Department;

(c) to the Lessee, at 222 South Riverside Plaza, Chicago, Illinois 60606, attention of Vice President—Finance;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Immunities; Satisfaction of Undertaking.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee or the Vendor, solely by reason of the fact that such person is an incorporator, stockholder, director or officer as aforesaid, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The covenants of the Vendee under the first paragraph of Article 7, and under Articles 6, 8, 9, 10, 11, 13 (except the proviso to the last paragraph thereof), 14, 17 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects, and be of no further force or effect in so far as they involve personal liability of the Vendee, other than out of "income and proceeds from the Equipment" (as defined in Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regularity or enforceability of the Lease); *provided, however*, that such covenants and obligations shall be deemed covenants of the Vendee within the meaning of subparagraphs (a) and (b) of the first paragraph of Article 16 hereof (it being the intention of the parties hereto that neither the Vendee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). The execution and delivery of the Lease shall be presumed conclusively to have occurred, for

the purpose of this Article, upon the delivery to the Vendee by the Vendor of written confirmation to such effect signed by the Agent. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 23. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY
OF CHICAGO, as Agent

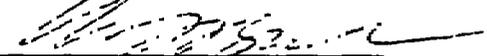
by 
Vice President

[CORPORATE SEAL]

Attest:


Trust Officer

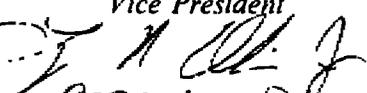
B. A. LEASE ASSETS, INC.

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary


ASST VICE PRES.

11 11 11
11 11 11
11 11 11



STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this *8th* day of *JULY*, 1977 before me personally appeared *DONALD W. ALVIN* to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

[Signature]
Notary Public

My Commission expires *April 26, 1980*

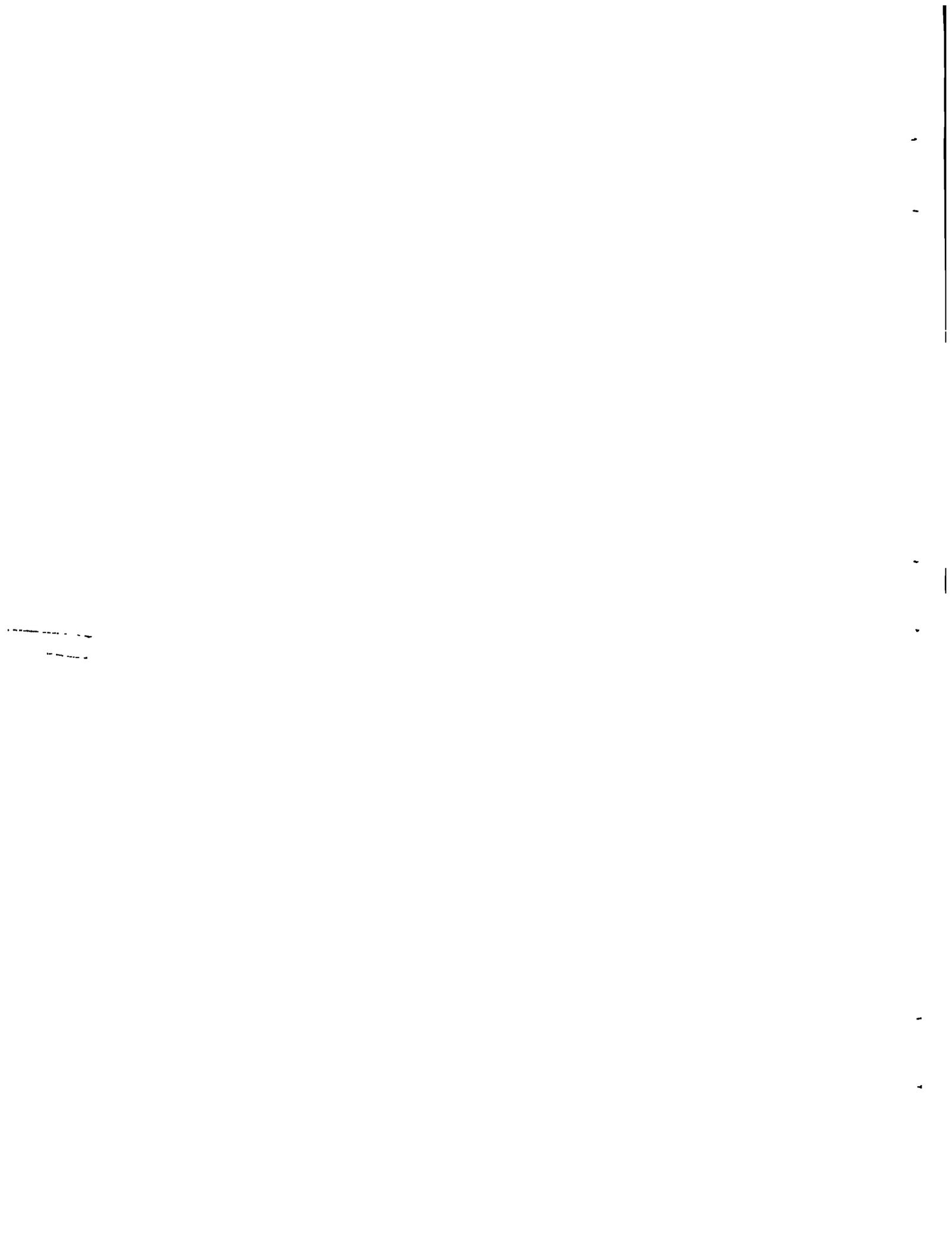
STATE OF CALIFORNIA }
CITY AND COUNTY OF SAN FRANCISCO } SS.:

On this *11th* day of *JULY*, 1977 before me personally appeared *W.A. BUCK and L.O. OLIVER, JR* to me personally known, who, being by me duly sworn, says that *they are* he is a Vice President *AND ASSISTANT VICE PRESIDENT* of B. A. Lease Assets, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Frances Chew
Notary Public

My Commission expires *3-15-80*



SCHEDULE I

**Allocation Schedule of Payments Based on
\$10,000,000 Principal Amount of Conditional Sale Indebtedness**

<u>Payment Date</u>	<u>Total Payment</u>	<u>Interest</u>	<u>Principal</u>	<u>Remaining Unpaid Principal Amount</u>
January 1, 1978	interest only as accrued to date		—0—	\$10,000,000.00
July 1, 1978.....	\$595,788.73	\$447,500.01	\$148,288.72	9,851,711.28
January 1, 1979	595,788.73	440,864.09	154,924.64	9,696,786.64
July 1, 1979	595,788.73	433,931.21	161,857.52	9,534,929.13
January 1, 1980	595,788.73	426,688.09	169,100.64	9,365,828.49
July 1, 1980.....	595,788.73	419,120.84	176,667.89	9,189,160.59
January 1, 1981	595,788.73	411,214.95	184,573.78	9,004,586.81
July 1, 1981	595,788.73	402,955.27	192,833.46	8,811,753.35
January 1, 1982	595,788.73	394,325.97	201,462.76	8,610,290.59
July 1, 1982.....	595,788.73	385,310.51	210,478.22	8,399,812.38
January 1, 1983	595,788.73	375,891.61	219,897.12	8,179,915.26
July 1, 1983.....	595,788.73	366,051.22	229,737.51	7,950,177.75
January 1, 1984	595,788.73	355,770.46	240,018.27	7,710,159.48
July 1, 1984.....	595,788.73	345,029.65	250,759.08	7,459,400.40
January 1, 1985	595,788.73	333,808.18	261,980.55	7,197,419.84
July 1, 1985.....	595,788.73	322,084.55	273,704.18	6,923,715.66
January 1, 1986	595,788.73	309,836.28	285,952.45	6,637,763.21
July 1, 1986.....	595,788.73	297,039.91	298,748.82	6,339,014.39
January 1, 1987	595,788.73	283,670.90	312,117.83	6,026,896.57
July 1, 1987.....	595,788.73	269,703.63	326,085.10	5,700,811.46
January 1, 1988	595,788.73	255,111.32	340,677.41	5,360,134.05
July 1, 1988.....	595,788.73	239,866.01	355,922.72	5,004,211.33
January 1, 1989	595,788.73	223,938.46	371,850.27	4,632,361.06
July 1, 1989.....	595,788.73	207,298.16	388,490.57	4,243,870.50
January 1, 1990	387,989.20	189,913.21	198,075.99	4,045,794.50
July 1, 1990.....	387,898.20	181,049.31	206,939.89	3,838,854.61
January 1, 1991	375,649.79	171,788.75	203,861.04	3,634,993.57
July 1, 1991.....	375,649.79	162,665.97	212,983.82	3,422,009.75
January 1, 1992	363,028.24	153,134.94	209,893.30	3,212,116.45
July 1, 1992.....	363,028.24	143,742.21	219,286.03	2,992,830.40
January 1, 1993	351,457.76	133,929.16	217,528.60	2,775,301.83
July 1, 1993.....	351,457.76	124,194.76	227,263.00	2,548,038.83
January 1, 1994	340,863.77	114,024.74	226,839.03	2,321,199.80
July 1, 1994.....	340,863.77	103,873.69	236,990.08	2,084,209.72
January 1, 1995	329,813.71	93,268.39	236,545.32	1,847,664.40
July 1, 1995	329,813.71	82,682.98	247,130.73	1,600,533.67
January 1, 1996	318,292.92	71,623.88	246,669.04	1,353,864.64
July 1, 1996.....	318,292.92	60,585.44	257,707.48	1,096,157.16
January 1, 1997	306,278.03	49,053.03	257,225.00	838,932.17
July 1, 1997.....	306,278.03	37,542.22	268,735.81	570,196.35
January 1, 1998	595,712.64	25,516.29	570,196.35	0.00

ANNEX A TO CONDITIONAL SALE AGREEMENT

Equipment

<u>Builder</u>	<u>Description</u>	<u>Specifica- tions</u>	<u>Quantity</u>	<u>Serial Numbers (Both Inclusive)</u>	<u>Month of Delivery</u>
Union Tank Car Company	100-ton 17,500 Gallon Capacity Tank Cars	NA-11	7	16850-16852, 16866, 16868, 16873, 16875	May- June 1977
	100-ton 23,650 Gallon Capacity Tank Cars	NA-13	85	76758-76842	May- June 1977
	100-ton 25,000 Gallon Capacity Tank Cars	NA-16	9	25252, 25255- 25256, 25258- 25263	June 1977
North American Car Corporation	100-ton 34,000 Gallon Capacity Tank Cars	2257	10	35389-35398	May- June 1977
	5,750 Cu. Ft Capacity Covered Hopper Cars	HC-163	7	58701-58707	May- June 1977
	4,000 Cu. Ft. Capacity P. D. Covered Hopper Cars	BM4-26	16	99861-99865, 99869-99874, 99895-99899	May- June 1977

LEASE OF RAILROAD EQUIPMENT

Dated as of April 15, 1977,

BETWEEN

**NORTH AMERICAN CAR CORPORATION,
*Lessee***

AND

**B. A. LEASE ASSETS, INC.,
*Lessor***

LEASE OF RAILROAD EQUIPMENT dated as of April 15, 1977, between NORTH AMERICAN CAR CORPORATION (hereinafter called the Lessee), and B. A. LEASE ASSETS, INC. (hereinafter, together with its successors and assigns, called the Lessor).

WHEREAS the Lessor is entering into a conditional sale agreement dated as of the date hereof with CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Agent under a Finance Agreement dated as of the date hereof (such agreement, together with any supplements thereto, being hereinafter referred to as the Security Document and said bank so acting being hereinafter called the Vendor), wherein the Vendor will agree to acquire from and sell to the Lessor security title to the units of railroad equipment described in Schedule A hereto (hereinafter called the Units);

WHEREAS the Lessee has entered into an interim lease dated May 17, 1977, with the Lessor, providing for the leasing of all the Units or such lesser number as are delivered and accepted on or prior to June 30, 1977, as provided in an equipment purchase agreement dated as of the date hereof (hereinafter called the Equipment Purchase Agreement) with respect to the Units;

WHEREAS the Lessee and the Lessor desire to amend and restate and supersede such interim lease in its entirety (including without limitation the provisions of the Interim Lease set forth in Schedule A thereto relating to amounts paid or accrued thereunder), such amended and restated lease to be at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Lessor is assigning for security purposes under the Security Document its rights in, to, and under this Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment);

WHEREAS the Lessee is entering into a Lessee's Consent and Agreement, dated the date hereof (hereinafter called the Consent), pursuant to which the Lessee is consenting to the assignment of the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions:

§ 1. *Net Lease.* This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged

to be due by reason of any past, present or future claims of the Lessee against the Lessor or the Vendor or otherwise whether under this Lease, the Security Document or otherwise nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 2. *Delivery and Acceptance of Units.* The Lessor hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Equipment Purchase Agreement. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Equipment Purchase Agreement. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance substantially in the form of Annex B to the Equipment Purchase Agreement (hereinafter called the Certificate of Acceptance) stating that such Unit has been inspected and accepted on behalf of the Lessee and the Lessor on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon such Unit shall be

deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 40 consecutive semiannual rental payments with respect to each Unit subject to this Lease, payable on January 1 and July 1 in each year commencing July 1, 1978. The 40 semiannual rental payments due on each January 1, and July 1 in each year commencing on July 1, 1978, with respect to each Unit subject to this Lease shall each be in an amount equal to 4.07560% of the Purchase Price (as defined in the Equipment Purchase Agreement) of such Unit; it being understood, however, that the amount of the rentals payable on any payment date shall in any event be an amount sufficient to satisfy the obligations of the Lessor under the Security Document due on such date.

The rentals payable hereunder are subject to adjustment as provided in a Participation Agreement dated as of the date hereof relating to the Units (hereinafter called the Participation Agreement) between the Lessor and the Lessee; *provided, however*, that no such adjustment shall reduce the amount of rentals due on any payment date below that which is necessary to satisfy the obligations of the Lessor under the Security Document on such date.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, San Francisco, California, or Chicago, Illinois are authorized or obligated to remain closed.

Unless the Lease Assignment is not executed and delivered and for so long as any of the Conditional Sale Indebtedness (as defined in the Security Document) shall remain unpaid, the Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first, to apply such payments to satisfy the obligations of the Lessor under the Security Document, known to the Vendor to be due and payable on the date such payments are due and payable hereunder, and second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any

balance promptly to the Lessor or to the order of the Lessor in immediately available funds at such place as the Lessor shall specify in writing. If the Lease Assignment is not executed and delivered, all payments provided for in this Lease shall be made at such place as the Lessor shall specify in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3 hereof.

Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Document. If an event of default should occur under the Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein; *provided, however*, that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under § 12 hereof in respect of such Units.

§ 5. *Identification Marks.* The Lessee will for the benefit of the Lessor and the Vendor cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof

and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Lessor an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Lessor's interests in such Units and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Lessor in such Units while operating in any jurisdiction wherein the Security Document or any instrument in respect thereof has been or is required to be filed, registered, deposited or recorded as provided in Article 19 of the Security Document.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Units may be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates or any authorized sublessee.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured solely by net income based on such receipts, or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments,

charges, fines or penalties other than fines or penalties imposed on or with respect to taxes for which the Lessor is not indemnified under this § 6 (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale (other than a voluntary disposition by the Lessor while no Event of Default shall have occurred and be continuing hereunder), rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Equipment Purchase Agreement or the Security Document, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, interest, property or rights of the Lessor hereunder or the Vendor under the Security Document or subject the Lessor or the Vendor to personal liability for which adequate indemnity shall not have been given. If any impositions shall have been charged or levied against the Lessor directly, are not being contested by the Lessee as hereinabove provided, and have been paid by the Lessor, then the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor or otherwise pursuant to any correlative provision of the Security Document not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said provision.

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

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, or permanently rendered unfit from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, any extended term thereof or until such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below in this § 7. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. If the date upon which the making of such payment by the Lessee in respect of any Unit is required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit (which shall be the same percentage of the Purchase Price as is indicated in the schedule below opposite the last rental payment date), shall pay interest thereon from the end of such term to the date of such payment at the rate of 9.95% per annum. The Lessor hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Lessor, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Lessor after deduction from such excess of the reasonable expenses of the Lessee (and a reasonable profit thereon) incident to such sale.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be that percentage of the Purchase Price of each such Unit as is set forth in the following schedule opposite such date:

<u>Date</u>	<u>Percentage</u>	
	<u>Units other than Section 48(d) Units</u>	<u>Section 48(d) Units</u>
July 1, 1978	109.452%	106.295%
January 1, 1979	110.081	105.140
July 1, 1979	111.439	104.418
January 1, 1980	112.476	103.436
July 1, 1980	113.250	102.380
January 1, 1981	113.711	101.269
July 1, 1981	108.383	99.750
January 1, 1982	108.280	98.525
July 1, 1982	107.915	97.240
January 1, 1983	107.264	95.893
July 1, 1983	99.562	94.128
January 1, 1984	98.085	92.648
July 1, 1984	96.536	91.100
January 1, 1985	94.917	89.481
July 1, 1985	86.180	87.435
January 1, 1986	84.409	85.665
July 1, 1986	82.558	83.813
January 1, 1987	80.622	81.877
July 1, 1987	78.597	79.853
January 1, 1988	76.480	77.735
July 1, 1988	74.266	75.522
January 1, 1989	71.951	73.207
July 1, 1989	69.530	70.786
January 1, 1990	67.035	68.256
July 1, 1990	64.502	65.674
January 1, 1991	61.928	63.038
July 1, 1991	59.291	60.348
January 1, 1992	56.612	57.604
July 1, 1992	53.870	54.804
January 1, 1993	51.084	51.949
July 1, 1993	48.233	49.037
January 1, 1994	45.339	46.067
July 1, 1994	42.376	43.038
January 1, 1995	39.369	39.950
July 1, 1995	36.292	36.801
January 1, 1996	33.169	33.589
July 1, 1996	29.972	30.315
January 1, 1997	26.730	26.976
July 1, 1997	23.410	23.572
January 1, 1998 and thereafter	20.000	20.000

The Lessee agrees that it will in any event pay an amount in respect of the Casualty Value of any Unit at least equal to the Casualty Value payment required to be made by the Lessor under Article 7 of the Security Document. The Casualty Values hereinbefore set forth are subject to adjustment pursuant to the Participation Agreement; *provided* that no such adjustment shall reduce the Casualty Values below that which is necessary to satisfy the obligations of the Lessor under the Security Document.

Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by the Lessee in respect of similar equipment owned or operated by it and the benefits thereof shall be payable to the Vendor, the Lessor and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Document shall not have been paid in full, and thereafter to the Lessor and the Lessee as their interests may appear. Lessee will deliver certificates evidencing any insurance effected or in force in accordance with the provisions of this paragraph and will cause such certificates to be endorsed so as to obligate the insurers thereunder to notify the Lessor at least 30 days in advance of any pending cancelation or material modification. Any policies of insurance carried in accordance with this paragraph shall name the Lessor as an additional named insured as its interests may appear. If the Lessor shall receive any insurance proceeds or condemnation payments and the Lessee shall have made full payment pursuant to this § 7 without deduction for such insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds or condemnation payments to the Lessee up to an amount equal to the sum of (x) the Casualty Value with respect to a Unit paid by the Lessee, plus (y) the reasonable expenses of the Lessee (and a reasonable profit thereon) incident to the handling of such proceeds or payments. Any balance of such proceeds or condemnation payments shall remain the property of the Lessor. All insurance proceeds received by the Lessor in respect of any Unit not suffering a Casualty

Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 8. *Reports.* On or before May 1 in each year commencing with the calendar year 1978, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then undergoing repairs (other than running repairs) or that are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and the Security Document have been preserved or replaced. The Lessor shall have the right by its agents and at its own expense to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease; *provided, however*, that the Lessee shall not be required to assemble the Units of Equipment for purposes of such inspection.

The Lessee agrees to furnish the Lessor and the Vendor (i) as soon as practicable after the end of each of the first three quarterly fiscal periods in each fiscal year of the Lessee, and in any event within 60 days thereafter, copies of the consolidated balance sheet of the Lessee and its consolidated subsidiaries as of the end of each such quarter and consolidated statements of income and of surplus of the Lessee and its consolidated subsidiaries for each such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form, the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by a principal financial officer of the Lessee; (ii) as soon as practicable after the end of each fiscal year of the Lessee, and in any event within 120 days thereafter, copies of the consolidated balance sheet of the Lessee and its consolidated subsidiaries at the end of such year, and consolidated statements of income and of surplus of the Lessee and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of independent certified public accountants of

recognized national standing selected by the Lessee which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in accounting principles or in the application thereof in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; (iii) promptly upon receipt thereof, copies of each other opinion submitted to the Lessee by independent accountants in connection with any examination made by them of any other financial statements of the Lessee in accordance with generally accepted auditing standards; (iv) promptly upon their becoming available, copies of periodic reports and any registration statement or prospectus filed by the Lessee or any subsidiary of the Lessee with any securities exchange or with the Securities and Exchange Commission or any successor agency; (v) immediately upon becoming aware of the existence of any condition or event which constitutes an Event of Default under the Lease or an event of default under the Security Document, a written notice which specifies the nature of the claimed Event of Default and what action the Lessee is taking or proposes to take with respect thereto; (vi) immediately upon becoming aware that any holder of interest in the aggregate Conditional Sale Indebtedness then outstanding has given notice or taken any action in respect to a claimed Event of Default under the Lease or an event of default under the Security Document, a written notice specifying the notice given or action taken by such holder and the nature of the claimed event of default and what action the Lessee is taking or proposes to take with respect thereto; and (vii) with reasonable promptness, such other data as from time to time may be reasonably requested.

Each set of financial statements delivered to the Lessor and the Vendor will be accompanied by a certificate of the President or Vice President and Treasurer, an Assistant Treasurer, the Controller or an Assistant Controller of the Lessee setting forth that the signers have reviewed the relevant terms of this Lease, the Security Document, the Lease Assignment and the Consent and have made, or caused to be made, under their supervision a review of the transactions or conditions of the Lessee and its subsidiaries from the beginning of the accounting period covered by the income statements being

delivered therewith to the date of the certificate and that such review has not disclosed the existence during such period of any condition or event which constitutes an Event of Default under this Lease or an event of default under the Security Document or if any such condition or event existed or exists, or if an event has occurred which, with the giving of notice or the passage of time or both, would constitute such an Event of Default, specifying the nature and period of existence thereof and what action the Lessee has taken or proposes to take with respect thereto.

The Lessee will permit the Lessor, the Vendor or any representatives of the holders of interests in the Conditional Sale Indebtedness (as defined in the Security Document) then outstanding to examine all books and accounts, records and reports and other papers of the Lessee or any subsidiary, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, employees and independent public accountants (and by this provision the Lessee authorizes its accountants to so discuss its affairs) all at such reasonable times and as often as may be reasonably requested.

The Lessor and the Vendor may deliver copies of any of the financial statements furnished pursuant to this § 8, as well as copies of any other information or reports furnished pursuant to this § 8 or any other provisions of this agreement, to any regulatory body, or to any agency, authority or commission, to whose jurisdiction they may be subject.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the manufacturer of the Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the

Lessor that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units (including, without limitation, applicable statutes, regulations and orders relating to equal employment opportunities and environmental standards or controls), to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part of any Unit, the Lessee will conform therewith at its own expense; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered accessions thereto as hereinbelow provided) which is subject to this Lease in good order and repair, reasonable wear and tear excepted.

Except as hereinafter provided, any and all additions to any Unit and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by or in accordance with the Security Document, this Lease or the Lease Assignment) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such Unit adversely. The Lessee may make at its cost additions or improvements to any Unit that are readily removable without causing material damage to such Unit, and if the Lessee shall at its cost make such readily removable additions or improvements to any Unit, the Lessee agrees that it will, prior to the return

of such Unit to the Lessor hereunder. remove the same at its own expense without causing material damage to such Unit. Title to any such readily removable additions or improvements shall remain with the Lessee.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Equipment Purchase Agreement, the Security Document or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The indemnities arising under this paragraph shall not be deemed to operate as a guaranty of the residual value of the Equipment or as a guaranty of the payment of the principal of or interest on the Conditional Sale Indebtedness (as defined in the Security Document).

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee: *provided, however*, that the Lessor shall, to the extent appropriate, join in and execute such reports.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any part of the rental provided in § 3 or § 13 hereof and such default shall continue for 5 business days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Consent, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. the Lessee shall (i) admit in writing its inability to pay its debts generally as they become due, (ii) file a petition in bankruptcy or commence proceedings under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect of the Federal government or any state or territorial government or any subdivision of either, (iii) make an assignment for the benefit of its creditors, (iv) consent to the appointment of a receiver, or (v) on a petition in bankruptcy filed against the Lessee, be adjudicated a bankrupt;

E. any proceedings shall be commenced against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder or under the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Consent), and such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective within 60 days after such proceedings shall have been commenced;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after-tax losses of Federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units

may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of bargain and not as a penalty whichever of the following amounts the Lessor in its sole discretion shall specify (x) a sum, with respect to each Unit, which represents (A) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5.27259% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, plus (B) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the net proceeds of the sale of the Equipment if sold, or, if not sold at such time, the amount the Lessor reasonably estimates to be the sales value of such Unit at such time.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which

might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof or pursuant to Article 16 of the Security Document, the Lessee shall forthwith deliver possession of the Units to the Lessor and shall comply with the provisions of this section upon such return. Each Unit returned to the Lessor pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any accession as provided in § 9 hereof and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been so interchanged) and at the usual speed place such Units upon such storage tracks or cause such Units to be transported to such point or points as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks or premises until such Units have been sold, leased or otherwise disposed of by the Lessor; or

(c) perform such other acts with respect to the Equipment as the Lessor may reasonably request.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity

having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same. In the event that the Units or any thereof are sold pursuant to the exercise of the Vendor's remedies under the Security Document, the Lessee shall pay to the Vendor the per diem interchange for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

The Lessee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit in any reasonable manner in accordance with the terms hereof or of the Security Document.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 9, 10 and 11 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including the Vendor).

The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien.

claim, security interest or encumbrance which arises. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment and the Consent, the Lessee and any of its affiliates shall be entitled to the possession and use of the Units in accordance with the terms hereof, and the Lessee may also (a) furnish any Unit or Units to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies, or (b) sublease any Unit or Units to any person or entity, but only, in either case, upon and subject to all terms and conditions of this Lease and the Security Document, and to all rights of the Vendor under the Security Document and of the Lessor hereunder.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled (subject to the rights of the Vendor and the Lessor referred to in the next preceding paragraph) to the possession of the Units included in such sublease and the use thereof, and, subject to the provisions of § 5, may provide for lettering or marking upon such Units for convenience of identification of the leasehold interest of such sublessee therein. Every such sublease shall be subject to the rights of the Vendor under the Security Document and the Lessor under this Lease in respect of the Units covered by such sublease and the Lessee agrees that it will use its best efforts to cause substantially the following clause to be inserted in each such sublease and each guaranty thereof or of amounts due and payable thereunder. "Lessee [guarantor] agrees that no claim or defense which Lessee [and/or the guarantor] may have against North American Car Corporation shall be asserted or enforced against any assignee of this agreement." The Lessee hereby agrees to and does hereby transfer and assign to the Lessor as security for the Lessee's obligations hereunder all amounts due and payable under any such sublease or any guaranty thereof or of amounts due and payable thereunder. It is understood and agreed that the Lessee will act as the agent of the Lessor to

collect and receive all payments due and to become due under the subleases in respect of the Units, provided that if an Event of Default under this Lease shall occur and be continuing, the Lessor may terminate such agency and such agency shall terminate immediately upon notice of such termination from the Lessor to the Lessee and provided further that prior to receipt of such notice the Lessee may make such use of any moneys received pursuant to its agency as it would otherwise be entitled to except for the assignment of such moneys under the subleases.

The Lessor shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Lessee's rights hereunder or in case of any unauthorized transfer or sublease of any of the Units.

The Lessee agrees not to use or permit the use at any one time of Units having a Purchase Price in excess of 10% of the aggregate Purchase Price of all the then existing Units in any jurisdictions in which the security interest of the Vendor or the title of the Lessor has not been effectively protected.

Notwithstanding any other provision of this § 12, in no event shall the Equipment be used otherwise than wholly or in part within the United States.

Nothing in this § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder and under the Security Document) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

§ 13. *Renewal Option and Right of First Refusal.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than six months prior to January 1, 1998, elect to extend the term of this

Lease in respect of all but not fewer than all of the Units designated as hopper cars in Schedule A to this Lease and/or all but not fewer than all of the Units designated as tank cars in Schedule A to this Lease which shall then be covered by this Lease, for a renewal term of five years commencing on the scheduled expiration of the original term of this Lease at a rental equal to 2.03427% of the Purchase Price of each Unit so designated as a hopper car then subject to this Lease, for each such semiannual rental payment and at a rental equal to 2.03780% of the Purchase Price of each Unit so designated as a tank car then subject to this Lease, for each such semiannual rental payment. The Lessee may by written notice delivered to the Lessor not less than 6 months prior to the scheduled expiration of the extended term of this Lease elect to extend such extended term of this Lease in respect of all but not fewer than all of the Units so designated as tank cars then covered by this Lease for a further renewal term of five years commencing on the scheduled expiration of the extended term in respect of such Units at a rental equal to 1.52835% of the Purchase Price of each such Unit then subject to this Lease, for each such semiannual rental payment. The Lessee may by written notice delivered to the Lessor not less than six months prior to the scheduled expiration of any extended term of this Lease elect to extend such extended term of this Lease in respect of all but not fewer than all of the Units designated as tank cars or all but not fewer than all of the Units designated as hopper cars then covered by this Lease for an additional extended term of one year commencing on the scheduled expiration of the extended term in respect of such Units at a rental equal to the Fair Rental Value of each Unit then subject to this Lease. Renewal rentals shall be payable semiannually, in arrears, on January 1 and July 1 for each year of each renewal term.

Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession), and an informed and willing lessor, under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Ap-

praiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement prior to the 90th day next preceding the expiration of the original term or extended term of this Lease, as the case may be, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

The Lessor agrees that (provided no default hereunder shall have occurred and be continuing) it will not sell the Units, or any of them unless the Lessor shall have given the Lessee at least 30 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase all of the Units relating to such sale at the same price and on the same terms as specified in such notice. Such opportunity of the Lessee shall continue for a period of 20 business days, commencing on the date it receives such notice from the Lessor. The foregoing right of the Lessee shall expire 360 days after the termination of this Lease or any renewal thereof. Upon payment of the purchase price of any Unit, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without recourse, representation or warranties of any kind) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Vendor, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding four months, the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage

period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any accession as provided in § 9 hereof and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable.

§ 15. *Representations and Warranties.* The Lessee represents and warrants (for the benefit of the Lessor and the Vendor) as follows:

A. the Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and (to the Lessee's good faith knowledge) is duly qualified to do business and is in good standing in such other jurisdictions in which the business and activities of the Lessee require such qualification and furthermore, the Lessee agrees to qualify to do business in such other jurisdictions where it may subsequently be required to do so;

B. the Lessee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Lease and the Consent;

C. there are no actions, suits or proceedings (whether or not purportedly on behalf of the Lessee) pending or (to the knowledge of the Lessee) threatened against or affecting the Lessee or any property rights of the Lessee at law or in equity, or before any commission or other administrative agency, which could materially and adversely affect the condition, financial or otherwise, of the Lessee; and the Lessee (to its knowledge) is not (i) in default in any material respect under any order or decree of any court or (ii) in default in any material

respect under any order, regulation or demand of any governmental commission, agency or instrumentality;

D. the Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction materially and adversely affecting the business of the Lessee, or the operations, property or assets or condition, financial or otherwise, of the Lessee;

E. neither the execution and delivery of this Lease or the Consent nor the consummation of the transaction herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality, or of the corporate charter (as amended) or the by-laws (as amended) of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is now a party or by which it may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Lessee pursuant to the terms of any such agreement or instrument;

F. no existing mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interest therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the leasehold interest of the Lessee hereunder in and to the Units;

G. no authorization or approval is required from any governmental or public body with respect to the entering into or performance by the Lessee of this Lease or the Consent;

H. the Participation Agreement, this Lease and the Consent have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery thereof by the other parties thereto, this Lease and the Consent constitute legal, valid and

binding agreements of the Lessee, enforceable in accordance with their respective terms. (subject to the enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally):

I. the Security Document, this Lease and the Lease Assignment have been or, promptly after the execution and delivery thereof and hereof, will be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor and the Lessor in and to the Units and the Lease in any state of the United States of America or in the District of Columbia;

J. The Lessee has furnished to the Lessor and the Original Investor named in the Finance Agreement referred to in the Security Document the consolidated balance sheets of the Lessee as of December 31, 1975, and 1976, and related consolidated statements of income for each of the five years ending December 31, 1976; such consolidated financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby (except for changes in accounting principles or in the application thereof in which the Lessee's independent certified public accountants concur); such statements present fairly the financial condition of the Lessee at such dates and the results of its operations for such periods; and no material adverse change has occurred in the condition, financial or otherwise, of the Lessee since December 31, 1976;

K. the Lessee has filed or has filed for an appropriate extension of such time to file or its parent has caused to be filed or has filed for an appropriate extension of such time to file all Federal, state and local tax returns which (to its knowledge) are required to be filed, and has paid, or made provisions for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts;

L. the "net earnings available for fixed charges" of the Lessee (as the terms "net earnings available for fixed charges" and "fixed charges" are defined in subdivision 2 of section 81 of the New York Insurance Law) for the period of five fiscal years next preceding the date of this Lease have averaged per year not less than one and one-half times the average annual fixed charges of the Lessee applicable to such period and, during one of the last two years of such period, have been not less than one and one-half times the fixed charges of the Lessee for such year, either on a consolidated or non-consolidated basis;

M. the Lessee has not directly or through any agent offered or sold any interest in the aggregate Conditional Sale Indebtedness (as that term is defined in the Security Document) or similar interests from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any interest in the Conditional Sale Indebtedness or similar interests with, any other persons, except the Original Investor (as defined in the Finance Agreement) and not more than three other institutional investors. Neither the Lessee nor any agent on its behalf will offer any interest in the Conditional Sale Indebtedness or similar interests to, or solicit any offer to buy any thereof from, any person or approach or negotiate with any other person in respect thereof, so as to bring the sale of the interests in the Conditional Sale Indebtedness or the certificates of interest delivered pursuant to the Finance Agreement within the registration provisions of the Securities Act of 1933, as amended; and

N. the Lessee has, to the best of its knowledge and belief, complied in all material respects with all applicable statutes, regulations, orders and restrictions of the United States of America and any state, municipality or agency thereof, in respect of the conduct of its business and ownership of its properties (including, without limitation, applicable statutes, regulations, orders and restrictions relating to equal employment opportunities and environmental standards or controls).

The Lessee's representations and warranties in this § 15 shall be true on and as of the Closing Date under the Security Document with the same effect as though such representations and warranties had been made on and as of such Closing Date and on such Closing Date the Lessee shall not be in

default under this Lease or the Consent. On the Closing Date under the Security Document the Lessee shall deliver to the Lessor and the Vendor a certificate of an officer to that effect.

On the Closing Date under the Security Document the Lessee will deliver to the Lessor counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect set forth in clauses A, F, G, H and I in the immediately preceding paragraph, to the effect set forth in clauses C and E in the immediately preceding paragraph to the knowledge of such counsel after due inquiry and further to the effect that the Lessee has full corporate power and authority to carry on its business as now conducted and to execute and deliver the Participation Agreement, the Equipment Purchase Agreement, this Lease and the Consent.

§ 16. *Recording; Further Assurances.* The Lessee, at its own expense will cause this Lease, the Security Document and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, this Lease, each sublease of any Units of the Equipment or any assignment hereof or thereof, or for the purpose of carrying out the intention of this Lease, the Security Document or the assignment thereof or of any such sublease; *provided, however*, that the Lessor and the Lessee shall not be required to take any such action referred to in Article 19 of the Security Document (other than filing and recording under Section 20c of the Interstate Commerce Act and other than the filing of financing statements and continuation statements in respect of the Vendor's interest in each sublease of the Units) if (1) it deems such action unduly burdensome, (2) after giving effect to the failure to take such action, all action required by law has been taken so as to protect the security interest

of the Vendor to units of Equipment having a Purchase Price of not less than 90% of the aggregate Purchase Price of all of the then existing Units, and the Lessee will (a) promptly after the execution and delivery of this Lease, each supplement hereto and each separate instrument of assignment of rentals or other payments under any such sublease required by this § 16 and (b) not later than May 1 in each year commencing with the year 1978, furnish to the Vendor and the Lessor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Security Document shall be filed and recorded with the Interstate Commerce Commission promptly after the execution and delivery hereof and thereof.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at the rate of 9.95% per annum upon the overdue rentals and other obligations for the period of time which they are overdue or such lesser amount as may be legally enforceable.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first-class certified, addressed as follows:

(a) if to the Lessor, at Bank of America Center, Leasing Department 656, P.O. Box 37070, San Francisco, California 94137, and

(b) if to the Lessee, at 222 South Riverside Plaza, Chicago, Illinois 60606, attention of Vice President—Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above such party. Any notice to the Lessee regarding the Lessee's failure to perform any obligation hereunder shall also be furnished to the Lessor.

§ 19. *No Recourse.* No recourse shall be had in respect of any obligation due under the Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Lessor or the Lessee, whether by virtue of any constitutional provision,

statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

§ 20. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement dated as of April 15, 1977, between the Lessee and the Lessor. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Lessor and the Lessee.

§ 21. *Execution.* The Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 23. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

NORTH AMERICAN CAR CORPORATION,

by _____
Vice President

[CORPORATE SEAL]
Attest:

Secretary

B. A. LEASE ASSETS, INC.

by _____
Vice President

[CORPORATE SEAL]
Attest:

Assistant Secretary

by _____

SCHEDULE A TO LEASE

Equipment					
<u>Builder</u>	<u>Description</u>	<u>Specifica- tions</u>	<u>Quantity</u>	<u>Serial Numbers (Both Inclusive)</u>	<u>Month of Delivery</u>
Union Tank Car Company	100-ton 17,500 Gallon Capacity Tank Cars	NA-11	7	16850-16852 16866, 16868, 16873, 16875	May- June 1977
	100-ton 23,650 Gallon Capacity Tank Cars	NA-13	85	76758-76842	May- June 1977
	100-ton 25,000 Gallon Capacity Tank Cars	NA-16	9	25252, 25255- 25256, 25258- 25263	June 1977
North American Car Corporation	100-ton 34,000 Gallon Capacity Tank Cars	2257	10	35389-35398	May- June 1977
	5,750 Cu. Ft. Capacity Covered Hopper Cars	HC-163	7	58701-58707	May- June 1977
	4,000 Cu Ft. Capacity P D Covered Hopper Cars	BM4-26	16	99861-99865, 99869-99874, 99895-99899	May- June 1977

Annex C
to
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated as of April 15, 1977 (hereinafter called this Assignment), by and between B. A. LEASE ASSETS, INC. (hereinafter called the Lessor or the Vendee) and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Agent under a Finance Agreement dated the date hereof (hereinafter called the Agent).

WHEREAS the Vendee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document), with the Agent providing for the conditional sale to the Vendee of the Agent's title to and interest in the units of railroad equipment (hereinafter called the Units) described in Annex A thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS the Lessor and North American Car Corporation in its capacity as lessee (hereinafter called the Lessee) are entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Agent to enter into the Security Document the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Agent; and

WHEREAS the Lessee is consenting to this Assignment pursuant to a Lessee's Consent and Agreement dated as of the date hereof attached hereto as Annex I;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 10 hereof, the Lessor hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including,

without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease and any and all rentals payable to or receivable by the lessor under any sublease of the Units, whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments made by the Lessee to the Vendee, whether as additional rent, indemnity or otherwise, pursuant to the Participation Agreement.

The Agent agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Lessor under the Security Document, subject to the limitations contained in the last paragraph of Article 4 of the Security Document, and any balance shall be paid immediately to and retained by the Lessor. If the Agent shall not receive any rental payment under § 3 of the Lease when due, the Agent shall notify the Lessor at the address set forth in the Lease, but failure to so notify shall not affect the rights and remedies of the Agent hereunder or under the Security Document.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the

Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Agent.

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

(a) the Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Agent, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement, or take any action which has the effect of amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void;

(b) at the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease;

(c) should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Agent for such costs, expenses and fees.

4. Subject to the provisions of paragraph 11 hereof, the Lessor does hereby constitute the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Document, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Lessor.

6. The Lessor will, from time to time, do and perform any other reasonable act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interests of the Agent hereunder.

7. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

8. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in Article 21 of the Security Document, or at such other address as the Agent shall designate to the Lessor in writing.

10. The Agent hereby agrees with the Lessor that the Agent will not, so long as an event of default under the Security Document has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

B. A. LEASE ASSETS, INC.

by _____
Vice President

by _____

[CORPORATE SEAL]

Attest:

Assistant Secretary

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY
OF CHICAGO, AS AGENT

by _____
Vice President

[CORPORATE SEAL]

Attest:

Trust Officer

**Annex I to
Lease Assignment**

LESSEE'S CONSENT AND AGREEMENT

The undersigned, NORTH AMERICAN CAR CORPORATION (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the Assignment of Lease and Agreement dated as of April 15, 1977 (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment.

As an inducement to Continental Illinois National Bank and Trust Company of Chicago, as Agent (hereinafter called the Agent), under a Finance Agreement dated as of April 15, 1977 (a copy of which has been delivered to the Lessee), to enter into the Security Document referred to in the Lease Assignment, pursuant to which B. A. Lease Assets, Inc. (hereinafter called the Lessor), is financing its purchase of units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease; and for other good and valuable consideration, the Lessee agrees that:

(1) it will, subject to the provisions of the third paragraph of § 12 of the Lease, pay all Payments (as defined in the Lease Assignment) directly to the Agent, the assignee named in the Lease Assignment, by bank wire transfer of immediately available funds at 231 South La Salle Street, Chicago, Illinois 60693, Attention of Corporate Trust Department (or at such other address as may be furnished in writing to the Lessee by the Agent) and the obligation of the Lessee to pay all Payments is absolute and unconditional;

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor, the Agent, the Original Investor named in the Finance Agreement referred to above or otherwise, and the payment thereof to the Agent shall be final;

(4) the Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

Notwithstanding anything to the contrary contained in the Conditional Sale Agreement or the Lease, if an event of default has occurred and is continuing under the Conditional Sale Agreement, then so long as the Lessee is not in default under the Lease or this Consent and Agreement and so long as the Lease is not otherwise disaffirmed or terminated and the Lessee continues to make all Payments under the Lease to the Agent and the Agent continues to have the indefeasible right to apply such Payments to the payment of the Conditional Sale Indebtedness and interest thereon and to satisfy all other obligations under the Conditional Sale Agreement, free and clear of all claims, liens and encumbrances, neither the Agent or any person claiming by, through or under the Agent (including the Investors referred to in the Finance Agreement) shall take any action to terminate the Lease or otherwise interfere with the use or possession of the Equipment by the Lessee. It is understood and agreed that the Agent shall not be deemed to have an indefeasible right to apply such Payments if ordered not to do so by an order of any court of competent jurisdiction or if such application of the Payments would, in the reasonable opinion of Messrs. Cravath, Swaine & Moore or other independent counsel for the Agent or the Investors, subject the Agent or the Investors to any reasonable claim, lien or liability by reason thereof.

This Consent and Agreement, when accepted by the Agent and the Lessor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Illinois and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of April 15, 1977.

NORTH AMERICAN CAR CORPORATION,
as Lessee,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 15th day of April 1977.

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY
OF CHICAGO, as Agent

by _____
Vice President

