

DEC 18 1974

## EQUIPMENT MORTGAGE

INTERSTATE COMMERCE COMMISSION

THIS EQUIPMENT MORTGAGE AGREEMENT, dated as of December 18, 1974, is executed by NORTH AMERICAN CAR CORPORATION (the "Company"), and The First National Bank of Chicago, Continental Illinois National Bank and Trust Company of Chicago, Crocker National Bank, Bank of America National Trust and Savings Association, Chase Manhattan Bank, N.A., National Bank of North America and Wells Fargo Bank, N.A. (herein collectively called the "Banks" and individually a "Bank") and The First National Bank of Chicago, as Agent (the "Agent") under this Assignment and under that Loan Agreement (the "Loan Agreement") dated December 18, 1974 among the Company, the Agent, and the Banks, to induce the Banks to extend credit to the Company subject to the terms and conditions set forth in the Loan Agreement.

THEREFORE, in consideration of the premises, the Company agrees as follows:

SECTION 1. *Definition of Equipment Mortgage.* In order to secure prompt payment of the principal and interest of the Notes (as defined in the Loan Agreement), whether now or hereafter outstanding, and faithful performance and observance by the Company of all its agreements and covenants contained in the Loan Agreement, this Equipment Mortgage, and all other documents executed in connection with the Loan Agreement (herein collectively called the "Indebtedness"), the Company does hereby pledge, mortgage, and grant a security interest unto the Banks in and to the following:

(a) Any and all railroad cars in which the Banks are granted a security interest pursuant to the Loan Agreement. The Company hereby agrees to execute, record (pursuant to Section 14 hereof) and deliver to the Agent a Supplement to the Mortgage in the form of Attachment I hereto describing all property in which the Banks are granted a security interest (which property, together with all substitutions, replacements, modifications and accessions thereto, is hereinafter called the "Equipment");

(b) All proceeds (including, without limitation, insurance and indemnity payments) from the sale or loss or other dispositions of the Equipment;

(c) All rights, claims, causes of action, if any, which the Company may have against any manufacturer of the Equipment, or against any lessee or sublessee of the Company as lessor, and the proceeds of such rights, claims and causes of action.

All such rights, claims, causes of action and proceeds together with the Equipment hereinafter sometimes collectively called "Collateral."

The Banks shall and hereby do retain full security title to and property in the Equipment. Whenever reference herein is made to the title of the Banks to the Equipment such reference shall be deemed to mean the security interest of the Banks under this Equipment Mortgage.

When and only when the Indebtedness has been paid in full, and when the obligations of the Banks to advance funds to the Company have terminated, and all the Company's obligations herein contained shall have been performed, absolute right to possession of, title to and property in the Equipment shall pass to and vest in the Company.

SECTION 2. *Representations and Warranties.* The Company represents and warrants:

(a) That it is the owner of all Equipment listed in any Supplement to the Mortgage, that there will be no encumbrances or liens of any kind or character against any of said Equipment and that it has good right and lawful authority to transfer, convey, assign, and mortgage the same.

(b) That all Equipment which it identifies as New Equipment is not more than 18 months old at the time that it is subjected to the Mortgage and that all Equipment which it identifies as Used Equipment is not more than 6 years old at the time it is subjected to the Mortgage.

(c) The Company will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Banks or result in a lien upon any part of the Equipment, *provided, however*, that the Company shall be under no obligation to pay any impositions where the nonpayment thereof does not, in the opinion of the Banks, adversely affect the title, lien property or rights of the Banks in or to the Equipment or otherwise under this Equipment Mortgage. If any impositions for which the Company is liable as aforesaid shall have been charged or levied against the Banks directly and paid by the Banks, the Company shall reimburse the Banks upon presentation of an invoice therefor, and any amounts so paid by the Banks shall be secured by and under this Equipment Mortgage.

**SECTION 3. *Maintenance and Repair; Casualty Occurrences; Release of Equipment.*** The Company agrees that, at its own cost and expense, it will maintain and keep all the Equipment in good order and repair.

In the event of the loss, for any reason, damage, theft or destruction of any of the Equipment or of the obsolescence of any of the Equipment (herein a "Casualty Occurrence") or in the event that the Company requests a release of any such Equipment for the purpose of selling such Equipment to a third party the Company shall pay to the Banks an amount equal to the Collateral Value (as defined in the Loan Agreement) of such Equipment for application against the Notes, and, upon such payment and upon the written request of the Company, the Agent shall release such Equipment from the lien of the Equipment Mortgage.

**SECTION 4. *Reports and Inspections.*** The Company shall cause to be furnished to the Agent within 45 days after the end of each quarter an accurate statement setting forth the amount and description of all Items of Equipment that have suffered a Casualty Occurrence during such quarter. The Company shall provide such other information regarding the condition and state of repair of the Equipment as the Banks may reasonably request. On or before March 31 in each year, the Company shall provide an opinion of counsel acceptable to Banks to the effect that the Equipment Mortgage constitutes a first and prior lien on the Collateral while such Collateral is located in the United States of America. The Banks shall have the right to inspect the Equipment and the records with respect thereto at such reasonable times as the Banks may request; *provided, however*, that the Company shall not be required to assemble the Collateral for such inspection unless there exists an Event of Default hereunder.

**SECTION 5. *Marking of Equipment.*** The Company will keep and maintain, plainly, distinctly, permanently and conspicuously marked on such Item of Equipment suitable for marking, in letters not less than one inch in height:

**TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER THE TERMS OF AN EQUIPMENT TRUST AGREEMENT RECORDED UNDER SECTION 20(c) OF THE INTERSTATE COMMERCE ACT.**

or other appropriate words stenciled on the Item of Equipment with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Banks' security title to and property in the Equipment and its rights hereunder.

Once the Equipment is so marked the Company will not permit the identifying number of any Item of Equipment to be changed.

**SECTION 6. *Compliance with Laws and Rules.*** During the term of this Equipment Mortgage, the Company will comply, and will cause every lessee or user of the Equipment to comply, with all rules, regulations, orders and laws pertaining to the use, operation, or maintenance of the Equipment existing in the jurisdictions in which its or such lessees' operations involving the Equipment may extend; *provided, however*, that the Company, in good faith, may contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Agent, adversely affect the property or rights of the Banks under this Equipment Mortgage.

**SECTION 7. *Possession and Use.*** So long as an Event of Default specified in Article 11 hereof shall not have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment, but only subject to all of the terms and conditions of this Equipment Mortgage. The Company

may also lease the Equipment to any railroad company or other corporation or entity, *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Banks under this Equipment Mortgage and (ii) the Company shall not lease, assign or permit any items of Equipment to regular service in any area where the lien of this Mortgage is not perfected as to such Equipment, except that the Company may lease or permit Equipment to be located where the lien of the Mortgage is not perfected so long as the Collateral Value of such Equipment does not exceed 20% of the total Collateral Value of all Equipment.

**SECTION 8. *Indemnities and Warranties.*** The Company agrees to indemnify, protect and hold harmless the Banks from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, penalties and interest, arising out of or as the result of the entering into or the performance of this Equipment Mortgage, the retention by the Banks of security title to the Equipment, the use, operation, condition, purchase, delivery, rejection, storage or return of any of the items of Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the items of Equipment resulting in damage to property or injury or death to any person during the period when security title thereto and the Bank's lien remain in the Banks or the transfer of title to the Equipment by the Banks pursuant to any of the provisions of this Equipment Mortgage. This covenant of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Indebtedness and the release and the conveyance of security title to the Equipment to the Company, or the termination of this Equipment Mortgage in any manner whatsoever. The Agent shall give notice to the Company of claim arising hereunder and the Company shall have the right to take up and defend any such claim.

The Company 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 Item of Equipment or all the Equipment.

The Company agrees to indemnify, protect and hold harmless the Banks from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company, its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full satisfaction of the Indebtedness and the release and the conveyance of security title to the Equipment to the Company, or the termination of this Equipment Mortgage in any manner whatsoever.

**SECTION 9. *The Agent.*** The Agent shall not be responsible to the Banks for the validity or effectiveness of any Collateral given to or held by it as Agent hereunder, or for failure to demand Collateral hereunder, or for the specification or failure to specify any particular assets and property to become Collateral hereunder, or for errors in establishing values of Collateral hereunder, or for the validity or effectiveness of any assignment, mortgage, pledge, security agreement or financing statement made to and accepted by it hereunder, nor for the filing, recording, re-filing, continuing or re-recording of any thereof, nor shall it be liable to the Banks because of any invalidity of the security provisions of the Equipment Mortgage or any other agreement, whether arising from statute, law or decision of any court, or by reason of any action or omission to act on its part not the result of gross negligence or willful misconduct. The Agent accepts its duties hereunder subject to the terms and conditions of § 15 the Loan Agreement.

**SECTION 10. *No Set-off.*** The rights of the Banks to payment of the Indebtedness as well as any other rights hereunder shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of breach of any warranty with respect to the Equipment, any other indebtedness or liability at any time owing to the Company or any insolvency, bankruptcy, reorganization or similar proceedings by or against the Company. The Company hereby waives, to the extent permitted by applicable law, any and all rights which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Equipment Mortgage, except in accordance with the express terms hereof.

**SECTION 11. *Defaults.*** The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

- (a) There shall occur an Event of Default under Section 14 of the Loan Agreement; or
- (b) The Company shall fail to perform any agreement under this Equipment Mortgage within 30 days after notice from any Bank; or
- (c) Any representation made to any Bank in connection with this Equipment Mortgage shall be materially false.

**SECTION 12. Remedies.** In case the Agent shall demand possession of the Equipment pursuant to this Equipment Mortgage, the Agent may designate some premises for the delivery of the Equipment to the Agent, and the Company shall, at its own expense, forthwith cause the Equipment to be detached, assembled and shall arrange for such Equipment to be moved to such point and shall there deliver the Equipment to the Agent.

This Agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court having jurisdiction in the premises, the Banks shall be entitled to a decree against the Company requiring specific performance hereof. The Company hereby expressly waives any and all claims against the Banks and the Agent or its agents for damages of whatever nature in connection with any retaking of any item of Equipment in any manner.

At any time during the continuance of an Event of Default, the Agent, with or without retaking possession thereof, at its election and upon reasonable notice to the Company, and other persons to whom the law may require notice of the time and place, may, sell the Equipment, or any part thereof, free from any and all claims of the Company, or any other party claiming from, through or under the Company at law or in equity, at public or private sale and with or without advertisement as the Agent may determine.

Any sale hereunder may be held or conducted at Chicago, Illinois, at such time or times as the Agent may specify (unless the Agent shall specify a different place or places, in which case the sale shall be held at such place or places as the Agent 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 Agent may determine. The Company shall be given written notice of such sale not less than ten days prior thereto by telegram or registered mail addressed as provided in Section 18 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Company to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intended purchaser or a better price. The Banks may bid for and become the purchaser of the Equipment, or any of it, so offered for sale. In the event that any Bank shall be the purchaser thereof, it shall not be accountable to the Company upon a subsequent disposition of the Equipment.

If, as provided in this Section 12, the Banks or the Agent shall exercise any of the powers conferred by this Equipment Mortgage, all payments made by the Company to the Banks hereunder and the proceeds of any judgment collected from the Company by the Banks hereunder, and the proceeds of every sale or lease by the Banks hereunder of any of the Collateral, together with any other sums which may then be held by the Banks under any of the provisions hereof, shall be applied to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Banks in accordance with the provisions of this Equipment Mortgage and (b) of the Indebtedness.

Each and every power and remedy hereby specifically given to the Banks 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 simultaneously and as often and in such order as may be deemed expedient by the Banks or the Agent. 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 Banks or the Agent 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 Company shall not otherwise alter or affect the Banks' or the Agents' rights or the Company's obligations hereunder. The Company's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Banks' or the Agents' rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Banks under the remedies herein provided, there shall remain any amount due to it under the provisions of this Equipment Mortgage or the Notes, the Company shall pay the amount of such deficiency to the Banks upon demand, and, if the Company shall fail to pay such deficiency, the Banks may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Banks, there shall remain a surplus in the possession of the Banks, such surplus shall be paid to the Company.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Banks in enforcing its remedies under the terms of this Equipment Mortgage or preparing to enforce its remedies after a default hereunder. In the event that the Banks shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Banks may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 12, are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

**SECTION 13. *Applicable State Laws.*** Any provision of this Equipment Mortgage prohibited by any applicable law or any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Equipment Mortgage. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Equipment Mortgage shall be deemed to be a Chattel Mortgage and enforced as such.

Except as otherwise provided in this Equipment Mortgage, the Company, 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 Items of Equipment 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 Banks' rights under this Equipment Mortgage and any and all rights of redemption.

**SECTION 14. *Recording.*** The Company will cause this Equipment Mortgage, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act, and the Company 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 Banks for the purpose of proper protection, to the satisfaction of counsel for the Banks, of its title to the Equipment and its rights under this Equipment Mortgage or for the purpose of carrying out the intention of this Equipment Mortgage; and the Company will promptly furnish to the Banks certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Banks.

**SECTION 15. *Satisfaction of Mortgage and Termination of Mortgage.*** When the Notes have been paid in full and the Banks have no further commitments to advance funds to the Company and all obligations of the Company hereunder, under the Notes and under the Loan Agreement have been fulfilled, the Agent, acting on behalf of the Banks shall release the lien of this Equipment Mortgage with respect to the Collateral by an appropriate document in recordable form and thereupon this Equipment Mortgage shall be satisfied and void. The Agent, acting on behalf of the Banks, shall release from time to time such portion of the Equipment from the lien of this Mortgage as provided by § 5.4 of the Loan Agreement.

**SECTION 16. *Payment of Expenses.*** The Company will pay for all the costs and expenses incident to this Equipment Mortgage and all reasonable costs and expenses in connection with the perfection of the Banks' lien upon the Equipment.

**SECTION 17. *Article Headings; Effect and Modification of Agreement.*** All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Equipment Mortgage.

No variation or modification of this Equipment Mortgage and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Banks and the Company.

SECTION 18. *Notices.* 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 Company at:

North American Car Corporation  
222 South Riverside Plaza  
Chicago, Illinois 60606  
Attention: V. P.-Finance

(b) To the Banks at:

Their respective names and respective addresses set forth in the signature page of the Loan Agreement.

SECTION 19. *Law Governing.* The terms of this Equipment Mortgage and all rights and obligations hereunder shall be governed by the laws of Illinois; *provided, however,* that the parties shall be entitled to all rights conferred by this filing, recording or deposit hereof in the appropriate office(s) pursuant to Section 20c of the Interstate Commerce Act.

SECTION 20. *Counterparts.* This Mortgage may be executed by the parties hereto individually, or in any combinations of the parties hereto, in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

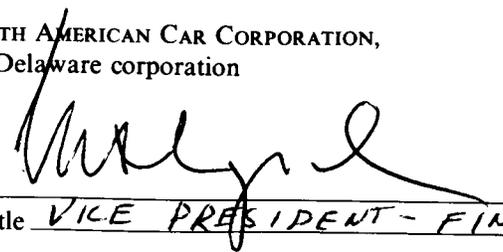
SECTION 21. *Execution.* Although this Equipment Mortgage is dated as of December 18, 1974, for convenience the actual date or dates of execution hereby by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

[CORPORATE SEAL]

ATTEST:

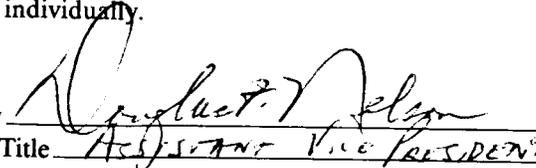
  
SECRETARY

NORTH AMERICAN CAR CORPORATION,  
a Delaware corporation

By   
Title VICE PRESIDENT - FINANCE

[CORPORATE SEAL]

THE FIRST NATIONAL BANK OF CHICAGO,  
as agent on behalf of each of the Banks and  
individually.

By   
Title ASSISTANT VICE PRESIDENT

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 23<sup>RD</sup> day of DECEMBER, 1974 before me personally appeared MARTIN A LYNCH, to me personally known, who being by me duly sworn says that he is the V.P. FINANCE of North American Car Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Norm M. Helibrandt*  
Notary Public

[SEAL]

My commission expires 5.6.78

STATE OF Illinois }  
COUNTY OF Cook } ss.:

On this 23<sup>RD</sup> day of December, 1974, before me personally appeared Douglas G. Nelson, to me personally known, who being by me duly sworn says that he is the Assistant Vice President of The First National Bank of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Douglas G. Nelson*  
Notary Public

[SEAL]

My commission expires

My Commission Expires Nov. 9, 1975

**ATTACHMENT I**

**Supplement to the Mortgage and to the Assignment of Leases**

North American Car Corporation, a Delaware corporation (the "Company") does hereby pledge, mortgage, and grant a security interest unto The First National Bank of Chicago, Continental Illinois National Bank and Trust Company of Chicago, Crocker National Bank, Chase Manhattan Bank, N.A., Bank of America National Trust and Savings Association, National Bank of North America, and Wells Fargo Bank, N.A. (the "Banks") in and to the railroad cars described in the Schedule attached hereto.

The Company hereby assigns to the Banks all its right, title, and interest in, to and under the following Leases, pursuant to and subject to the terms and conditions of the Assignment of Leases referred to above:

<u>Date of Lease</u>	<u>Lessee</u>	<u>Equipment Leased</u>	<u>Term of Lease</u>	<u>Monthly Rental</u>
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The Company hereby certifies that it has complied with all the terms and conditions of said Assignment of Leases, and that all representations and warranties contained in said Assignment are true and correct as of the date hereof.

This Supplemental Mortgage and Assignment of Leases is issued pursuant to and is governed by the terms and provisions of that certain Equipment Mortgage and Assignment of Leases dated December 18, 1974 among the Company and the Banks and filed under §20(c) of the Interstate Commerce Act on \_\_\_\_\_, 1974 at \_\_\_\_\_ as Document Number \_\_\_\_\_.

[CORPORATE SEAL]

NORTH AMERICAN CAR CORPORATION

ATTEST

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that he is the \_\_\_\_\_ of North American Car Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[SEAL]

My commission expires \_\_\_\_\_

### Assignment of Leases

This Assignment of Leases dated as of December 18, 1974 (the "Assignment") is executed by North American Car Corporation, a Delaware corporation (the "Company") in favor of The First National Bank of Chicago, Continental Illinois National Bank and Trust Company of Chicago, Crocker National Bank, Bank of America National Trust and Savings Association, Chase Manhattan Bank, N.A., National Bank of North America, and Wells Fargo Bank, N.A. (herein collectively called the "Banks", and individually a "Bank"), and The First National Bank of Chicago, as agent (the "Agent") for the Banks under this Assignment and under that certain Loan Agreement (the "Loan Agreement") dated as of December 18, 1974, among the Banks, the Agent, and the Company, in order to induce the Banks to extend credit to the Company on the terms and subject to the conditions set forth in the Loan Agreement.

THEREFORE, in consideration of the premises, the Company agrees as follows:

§ 1. *Rights Assigned.* In order to secure the prompt payment of the principal and interest on the Notes (as defined in the Loan Agreement), whether now or hereafter outstanding, and of all other indebtedness of the Company payable or to be payable under this Assignment, the Loan Agreement and any other document executed pursuant to the Loan Agreement (hereinafter collectively called the "Indebtedness") and the faithful performance and observance by the Company of all of its agreements and covenants contained in each of the aforesaid documents, the Company does hereby convey, pledge, sell, mortgage, assign, transfer, set over and grant a security interest unto the Banks in and to all right, title, and interest (the "Rights") of the Company in and to those certain leases (the "Leases") whether now or hereafter existing, covering any item of Equipment (as defined in § 1.13 of the Loan Agreement) between the Company, as lessor, and other persons, as lessees (the "Lessees"), including, but not limited to, (i) the right to receive all moneys due and to become due under the Leases, (ii) all claims for damages arising out of the breach thereof, (iii) the right to terminate any Lease, to perform thereunder and to compel performance of the terms thereof, (iv) the right to receive all moneys and claims for moneys due and to become due to the Company, (v) all claims for damages and all insurance and other proceeds in respect of the actual or constructive loss of, or the requisition (whether of title or use), condemnation, sequestration, seizure, forfeiture or other taking of, the Equipment subject always to the rights of the Lessees under the Leases and (vi) the right to take possession of the Equipment, subject to the rights of the Lessees.

§ 2. *Supplemental Assignment.* The Company shall execute and deliver to the Agent a Supplemental Assignment of Leases (a "Supplemental Assignment") in the form of Attachment I hereto listing all Leases which are from time to time assigned to the Banks. The Company shall deliver such Supplemental Assignments to the Agent listing all Leases relating to Equipment.

§ 3. *Receipt of Rent.* The Company shall be permitted to receive and dispose of, for their own account and notwithstanding § 1 hereof all moneys due and to become due under the Leases and to exercise all rights and make all claims under the Leases for their own account and notwithstanding the foregoing paragraph, unless and until Event of Default (as defined in § 17 hereof) has occurred and is continuing in which event the Rights shall devolve upon the Agent as prescribed in § 1 hereof and the Company, or the Agent in the name of the Company, shall take all actions necessary (including giving of notice to the Lessees) to cause all moneys due from the Lessees to be paid to the Agent at its office at One First National Plaza, Chicago, Illinois or such other address as the Agent may designate.

§ 4. *Performance of Borrowers Obligations Under Leases.* It is expressly agreed that anything herein contained to the contrary notwithstanding (i) the Company shall remain liable under each Lease to perform all the obligations assumed by it thereunder, (ii) after the occurrence and continuation of an Event of Default the obligations of the Company under any Lease may be performed by the Agent or its nominee or other assignee of the Agent without releasing the Company therefrom and (iii) the Agent shall have no obligation or liability under the Leases by reason of, or arising out of, this Assignment and shall not be obligated to perform any of the obligations of the Company under any Lease or to make any payment or to make any inquiry of the sufficiency of any payment received by it or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder.

§ 5. *Documents for Perfection of Security Interest.* The Company agrees that at any time and from time to time, upon the written request of the Agent, the Company will promptly and duly execute and deliver any and all such further instruments and documents as is necessary to obtain the full benefits of this Assignment and of the rights and powers herein granted, including without limitation the execution and filing with the Interstate Commerce Commission of the Supplemental Assignments and the execution and delivery of such Uniform Commercial Code financing and continuation statements, and the filing thereof in such jurisdictions as is necessary to perfect the Agent's interest. To the extent permitted by applicable law, the Company hereby authorizes the Agent to execute and file any such financing or continuation statements without necessity of the signature of the Company. The Company will cause the following language to be stamped on all executed Leases in their possession: "This Lease has been assigned by the Company as collateral security for indebtedness of the Company."

§ 6. *Warranties and Representations.* The Company hereby represents and warrants that the Leases executed or to be executed by it are now or will be at the time of execution thereof enforceable in accordance with their terms subject to applicable bankruptcy, insolvency or other similar laws affecting creditors rights generally. The Company hereby further represents and warrants that the Company has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the rights hereby assigned by it to anyone other than the Banks, their successors or assigns. The Company further represents and warrants that the following language will appear in each Lease:

It is understood that some of the cars furnished Lessee under this Agreement and North American's rights under this Agreement may, at the time of delivery to Lessee or at some future time during the term of this Agreement, be subject to the terms of a mortgage, deed of trust, equipment trust, pledge or assignment or similar security arrangement. Lessee agrees that the cars may be stenciled or marked to set forth the ownership of any such cars in the name of a mortgagee, trustee, pledgee, assignee or security holder and that this Agreement, and Lessee's rights hereunder, are and shall at all times be subject and subordinated to any and all rights of any mortgagee, trustee, pledgee or security holder. As to the cars subject hereto, this Agreement and the rentals hereunder may have been assigned and may in the future be assigned to the holder, if any, of the superior lien from time to time on each car as determined with reference to the filings under Section 20c of the Interstate Commerce Act; however, until notified to the contrary by any person reasonably proving to Lessee's satisfaction that he is the assignee of this Agreement or the rentals hereunder, Lessee is to pay all rentals to the order of North American.

The Company will use its best efforts to have the following language inserted in all Leases executed after the date hereof:

Lessee hereby consents to and accepts such assignment. Lessee agrees that no claim or defense which Lessee may have against North American shall be asserted or enforced against this Agreement.

§ 7. *Notices.* All notices hereunder shall be given in writing and, if relating to the Company to 222 South Riverside Plaza, Chicago, Illinois, Attention: Vice President—Finance and if to the Agent, at One First National Plaza, Chicago, Illinois 60670 Attn: Division G, and if to the Banks, to their addresses as set forth on the signature page of the Loan Agreement.

§ 8. *Governing Law.* This Assignment 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.

§ 9. *Successors and Assigns.* This Assignment shall be binding upon and inure to the benefit of the Company and the Banks, and their respective successors and assigns, except that the Company may not assign or transfer their rights hereunder without the prior written consent of the Agent.

§ 10. *Governing Law.* This Assignment is intended to comply with the laws of the jurisdiction wherein the Assignment is to be enforced, and any provisions hereof not so complying shall be deemed to be modified accordingly in the manner and to the extent which shall best effect the intentions and purposes reflected in and contemplated by the Assignment.

§ 11. *Cumulative Remedies.* Each right, power and remedy herein specifically granted to the Agent or the Banks or otherwise available shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity, or otherwise. Each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time by the Agent as authorized by § 15 of the Loan Agreement. The exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by the Agent in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Company or an acquiescence therein. No waiver by the Agent or any breach or default of or by the Company under the Assignment shall be deemed to be a waiver of any other or similar, previous, or subsequent, breach or default.

§ 12. *Indemnification.* The Company hereby agrees to assume liability for, and does hereby agree to indemnify, protect, save and keep harmless the Agent and the Banks, and their respective successors, assigns, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including legal fees and expenses, of whatsoever kind and nature, imposed on, incurred by or asserted against the Agent and the Banks or any of the Banks or their respective successors, assigns, agents and servants, in any way relating to or arising out of the Assignment, or the manufacture, purchase, acceptance, rejection, ownership, delivery lease, possession, use, operation, condition, sale, return or other disposition of any equipment subject to the Leases (including, without limitation, latent and other defects, whether or not discoverable by the Agent, the Banks or the Company and any claim for patent, trademark or copyright infringement).

§ 13. *Appointment of Agent as Attorney.* If any Event of Default (as defined in § 17) shall occur and be continuing, then the Company constitutes the Agent and its successors and assigns, its true and lawful attorney, irrevocably and with full power of substitution, in its name or otherwise, to demand, receive, compromise, sue for, and give acquittance for, any and all moneys and claims for moneys due and to become due under the Leases or otherwise arising out of the Assignment, to endorse any checks or other instruments or orders in connection therewith, and to file any claims or to take any actions or institute any proceedings with respect thereto which to the Agent or its successors or assigns may seem necessary or advisable. Anything herein contained to the contrary notwithstanding, neither the Agent nor its nominee or assignee shall have any obligation or liability by reason of or arising out of the Assignment to make any inquiry as to the nature or sufficiency of, to present or file any claim with respect to, or to take any action to collect or enforce the payment of, any amounts to which it may be entitled at any time or times by virtue of the Assignment.

§ 14. *Waiver of Benefit of Certain Laws.* To the fullest extent that it may lawfully so agree, the Company shall not at any time insist upon, claim, plead, or take any benefit or advantage of any appraisal, valuation, stay, extension, moratorium, redemption, or any similar law now or hereafter in force in order to prevent, delay, or hinder the enforcement of the Assignment or the absolute sale of any part or all of the Leases or the possession thereof by any purchaser at any sale thereof, and the Company, for itself and all who may claim through it, as far as it or they now or hereafter lawfully may do so, hereby waives the benefit of all such laws.

§ 15. *Purchase of Leases by Banks.* At any public sale pursuant to § 17 hereof, the Agent or its agent may to the extent permitted by applicable law bid for and purchase the Leases offered for sale for account of the Banks, and, upon compliance in full with the terms of such sale, may hold, retain, and dispose of such property without further accountability therefor to the Company or any other party.

§ 16. *Settlement of Claims by Company.* The Agent makes no representations or warranties with respect to the Leases or any part thereof, and the Agent shall not be chargeable with any obligations or liabilities of the Company with respect thereto. The Company shall settle any and all claims with respect to the Leases and the Agent shall have no liability or obligation arising out of any of such claims.

§ 17. *Defaults.* The occurrence of any one or more of the following events shall constitute an Event of Default hereunder:

- (a) There shall occur an Event of Default under Section 14 of the Loan Agreement or

(b) The Company shall fail to perform any agreement under this Assignment of Leases within 30 days after notice from any Bank; or

(c) Any representation made to any Bank in connection with this Assignment shall be materially false.

§ 18. *Remedies.* (a) Upon the occurrence and during the continuance of any Event of Default the Agent may do any one or more of the following acts to the extent and in the manner authorized by § 15 of the Loan Agreement:

(i) exercise all the rights and remedies in foreclosure and otherwise granted to secured parties under the provisions of applicable laws;

(ii) institute legal proceedings for the specific performance of any covenant or agreement herein undertaken by the Company or for aid in the execution of any power or remedy herein granted;

(iii) institute legal proceedings to foreclose upon and against the security interest granted in and by this Assignment, to recover judgment for all amounts then due and owing as Indebtedness, and to collect the same out of any sale of or collections upon the Leases;

(iv) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any Leases;

(v) notify Lessees under the Leases in the name of the Company or otherwise to make Lease payments directly to the Agent or as may otherwise be directed by the Agent;

(vi) personally, or by agents or attorneys, enter into and upon any premises wherein the Leases or any part thereof may then be situated, and take possession of all or any part thereof; demand, collect, and retain all hire, earnings and all other sums due and to become due in respect of the same from any party whomsoever, accounting only for net earnings arising from such use, if any, after charging against all receipts from the use of the same and from any subsequent sale thereof, by court proceedings or pursuant to subsection (vii) of this § 18(a) all costs and expenses of, and damages or losses by reason of, such use or sale; or

(vii) personally, or by agents or attorneys, enter upon and into any place wherein the same may then be located, and take possession of any part or all of the Leases, with or without process of law and without being responsible for loss or damage, and sell or dispose of all or any part of the same, free from any and all claims of the Company or of any other party claiming by, through, or under the Company at law, in equity, or otherwise, at one or more public or private sales, in such place or places, at such time or times, and upon such terms as the Agent may determine, in its sole and complete discretion and in light of its own best interests, with or without any previous demand on or notice to the Company or advertisement of any such sale or other disposal; and for the aforesaid purposes, all notice of sale, advertisement, and demand and any right or equity of redemption otherwise required by, or available to the Company under, applicable law are hereby waived by the Company to the fullest extent permitted by applicable law. The power of sale hereunder shall not be exhausted by one or more sales, and the Agent may from time to time adjourn any sale to be made pursuant to this § 18(a).

(b) If the Agent shall demand possession of Leases or any part thereof pursuant to this Assignment, the Company shall, subject to the terms hereof and at their own expense, forthwith cause Leases or any part thereof designated by the Agent to be assembled and made available or delivered to the Agent at any place reasonably designated by the Agent.

(c) In the event that any mandatory requirement of applicable law shall obligate the Agent to give prior notice to the Company of any of the foregoing acts, the Company hereby covenants and agrees that a notice of such act sent to North American Car Corporation, 222 South Riverside Plaza, Chicago, Illinois, Attention: Vice President—Finance by certified U.S. mail, return receipt requested, at least five (or such longer period as may be required by applicable law) business days before the date of any such act shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time and place of any public sale hereunder and reasonable notification of the time after which any private sale or other intended disposition to be made hereunder is to be made.

(d) The proceeds from the sale of the Leases pursuant to any of the provisions of this § 18 (or otherwise received hereunder by the Agent) shall be applied as provided in the Loan Agreement.

(e) No sale or other disposition of all or any part of any unit of Equipment by the Agent pursuant to this § 18 shall be deemed to relieve the Company of its liability for any deficiency in any part of its obligations hereunder.

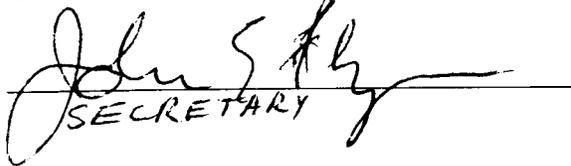
§19. *Releases.* Upon request of the Company, the Agent on behalf of the Banks will release the security interest of the Banks hereunder in any Lease if the security interest of the Banks in the Equipment subject to the Lease has been released pursuant to the terms and conditions of the Loan Agreement.

§ 20. *Counterparts.* This Assignment of Leases may be executed by the parties hereto individually, or in any combinations of the parties hereto, in several counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

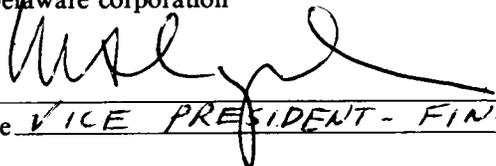
§ 21. *Disclaimer of Agent.* The Agent shall not be responsible to the Banks for the validity or effectiveness of any Leases given to or held by it as Agent hereunder, or for the validity or effectiveness of any assignment, mortgage, pledge, security agreement or financing statement made to and accepted by it hereunder, nor for the filing, recording, re-filing, continuing or re-recording of any thereof, nor shall it be liable to the Banks because of any invalidity of the security provisions of this Assignment or any other agreement, whether arising from statute, law or decision of any court, or by reason of any action or omission to act on its part not the result of gross negligence or willful misconduct.

IN WITNESS WHEREOF, the Company, the Banks and the Agent have caused this Assignment to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

[CORPORATE SEAL]  
ATTEST

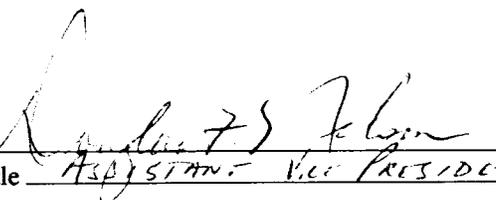
  
SECRETARY

NORTH AMERICAN CAR CORPORATION,  
a Delaware corporation

By   
Title VICE PRESIDENT - FINANCE

[CORPORATE SEAL]

THE FIRST NATIONAL BANK OF CHICAGO,  
as agent on behalf of each of the Banks and  
individually

By   
Title ASSISTANT VICE PRESIDENT

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 23<sup>RD</sup> day of DECEMBER, 1974, before me personally appeared MARTIN A. LYNCH, to me personally known, who being by me duly sworn says that he is the Vice President of North American Car Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Aron M. Mikbrant  
Notary Public

[SEAL]

My commission expires 5-6-78

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 8<sup>th</sup> day of December, 1974, before me personally appeared Douglas F. Nelson, to me personally known, who being by me duly sworn says that he is the Assistant Vice President of The First National Bank of Chicago, a national banking association, that the seal affixed to the foregoing instrument is the corporate seal of said Association, that said instrument was signed and sealed on behalf of said Association 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 Association.

Nicholas W. LeFay  
Notary Public

[SEAL]

My commission expires \_\_\_\_\_  
My Commission Expires Nov. 9, 1975

**ATTACHMENT I**

**Supplement to the Mortgage and to the Assignment of Leases**

North American Car Corporation, a Delaware corporation (the "Company") does hereby pledge, mortgage, and grant a security interest unto The First National Bank of Chicago, Continental Illinois National Bank and Trust Company of Chicago, Crocker National Bank, Chase Manhattan Bank, N.A., Bank of America National Trust and Savings Association, National Bank of North America, and Wells Fargo Bank, N.A. (the "Banks") in and to the railroad cars described in the Schedule attached hereto.

The Company hereby assigns to the Banks all its right, title, and interest in, to and under the following Leases, pursuant to and subject to the terms and conditions of the Assignment of Leases referred to above:

<u>Date of Lease</u>	<u>Lessee</u>	<u>Equipment Leased</u>	<u>Term of Lease</u>	<u>Monthly Rental</u>
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The Company hereby certifies that it has complied with all the terms and conditions of said Assignment of Leases, and that all representations and warranties contained in said Assignment are true and correct as of the date hereof.

This Supplemental Mortgage and Assignment of Leases is issued pursuant to and is governed by the terms and provisions of that certain Equipment Mortgage and Assignment of Leases dated December 18, 1974 among the Company and the Banks and filed under §20(c) of the Interstate Commerce Act on \_\_\_\_\_, 1974 at \_\_\_\_\_ as Document Number \_\_\_\_\_.

[CORPORATE SEAL]

NORTH AMERICAN CAR CORPORATION

ATTEST

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 197\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn says that he is the \_\_\_\_\_ of North American Car Corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

[SEAL]

My commission expires \_\_\_\_\_