

7770

RECORDATION NO. _____ Filed & Recorded

JAN 21 1975 8 05 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT TO ACQUIRE AND LEASE

THIS AGREEMENT dated as of the 21st day of January , 1975 between U.S. STEEL CREDIT CORPORATION, a Delaware corporation (as successor by merger to U.S. Steel Leasing Co., Inc., "Lessor") and HAMMERMILL PAPER COMPANY, a Pennsylvania corporation ("Lessee");

WHEREAS, Lessee has agreed to purchase from North American Car Corporation (the "Seller"), certain equipment (collectively the "Equipment" and individually an "Item of Equipment") described in the Schedule of Equipment which is attached as Exhibit 2 hereto, pursuant to a Purchase Order No. 1120-74UB, dated August 9, 1974, as amended and supplemented, between Seller and Lessee (such purchase order as amended and supplemented to the date hereof is hereinafter called the "Purchase Order"), which has been accepted by Seller and under which Seller has agreed to sell the Equipment to Lessee;

WHEREAS, Lessee desires to lease, rather than to purchase, the Equipment;

WHEREAS, Lessor is willing to purchase the Equipment and lease it to Lessee on the terms and conditions of this Agreement and on the terms and conditions of the Lease (as hereinafter defined); and

WHEREAS, it is contemplated that simultaneously with the execution of this Agreement, Lessor and Lessee will enter into a Schedule to the Equipment Lease Agreement dated as of July 22, 1974 between Lessor and Lessee (such Equipment Lease Agreement, together with all the Schedules and Addenda thereto, is hereinafter called the "Lease"), substantially in the form contemplated by the Lease, leasing the Equipment to Lessee, which Schedule will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

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

1. ASSIGNMENT OF PURCHASE ORDER.

Lessee hereby sells, assigns, transfers and sets over to Lessor all of its right, title and interest (but none of Lessee's duties or obligations) under, in, to and in respect of the Purchase Order including (without limitation) the right of (i) Lessor (including Lessee or any other agent acting for Lessor) to accept delivery of the Equipment pursuant to the Purchase Order and (ii) Lessor to take title to the Equipment and be named as "buyer" in any

documents of title, bills of sale, invoices or other similar documents delivered by Seller in respect of the Equipment; provided, however, that so long as Lessor shall not have notified Seller in writing that an event of default (as defined in the Lease) has occurred and is continuing, Lessee may exercise all rights available to it under the Purchase Order except (a) for the rights assigned hereunder referred to in clauses (i) and (ii) above and (b) that Lessee may not enter into any change order or other amendment or modification to the Purchase Order in respect of any Item of Equipment without the written consent of Lessor if such change order, amendment or modification would result in any rescission, cancellation or termination with respect to any Item of Equipment, or alter the time and place of delivery of any Item of Equipment or the purchase price thereof. Lessee represents and warrants that after execution by the Seller of a Consent to Assignment substantially in the form attached hereto as Exhibit 1, the Seller will be bound to Lessor to sell and deliver the Equipment at the prices set forth in Exhibit 2 attached hereto and prior to February 28, 1975 and at the places set forth in Exhibit 2 or at such other point or points within the United States of America as shall be designated by Lessor. Anything contained herein to the contrary notwithstanding: (i) Lessee shall at all times remain liable to Seller under the Purchase Order to perform all of the duties and obligations of the buyer thereunder, to the same extent as if this assignment and Seller's Consent to Assignment had not been executed unless and to the extent that such duties and obligations are performed by Lessor; (ii) the exercise by Lessor of any of the rights assigned hereunder shall not release Lessee from any of its duties or obligations to Seller under the Purchase Order; and (iii) Lessor shall not have any obligation or liability under the Purchase Order by reason of, or arising out of, this assignment or be obligated to perform any of the obligations or duties of Lessee thereunder or to make any payment or to make any inquiry of the sufficiency of any payment received by Seller or to present or file any claim or to take any other action to collect or enforce any right assigned hereunder, except only that Lessor shall have the obligation to pay the purchase price of the Equipment to Seller to the extent and on the terms and conditions set forth in this Agreement. Lessee agrees that at any time and from time to time, upon the written request of Lessor, Lessee will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lessor may deem advisable in obtaining the full benefits of this assignment and of the rights and powers herein granted.

Lessee hereby irrevocably designates and appoints Lessor, its successors and assigns, Lessee's true and lawful

attorney, with full power (in the name of Lessee or otherwise) to enforce all of the rights, titles and interests which are assigned to Lessor pursuant to this assignment, including (without limitation) all of Lessee's powers, privileges and remedies under the Purchase Order, with full power to file any claims or take any action or institute any proceedings which Lessor may deem advisable or necessary in the premises. Notwithstanding the provisions of the previous sentence, Lessee agrees that, unless and until it shall receive written notice to the contrary from Lessor, it will diligently pursue and enforce, for the benefit of Lessor, each and every one of its powers, rights, privileges and/or remedies under or in respect of the Purchase Order.

In any proceeding brought by Lessee, Seller or any other person involving the enforcement or interpretation of, or otherwise in respect of, the Purchase Order, it shall not be necessary to make Lessor a party to any such proceeding or to join or otherwise involve Lessor in any such proceeding in any manner; provided, however, notwithstanding the foregoing, Lessor shall at all times have the right and privilege to become a party or to be joined or to otherwise become involved in any such proceeding in any manner permitted by law and Lessee shall give Lessor prompt written notice of any such proceeding or proceedings.

2. REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF LESSEE.

In furtherance of the foregoing assignment, Lessee represents, warrants and agrees that

(a) the Purchase Order or a true and correct copy thereof, complete with any and all amendments and supplements thereto and other agreements of any kind or nature relating to the Equipment, is attached as Exhibit 3 hereto;

(b) Lessee will obtain from Seller, substantially in the form attached hereto as Exhibit 1, an executed copy of the Consent to Assignment and deliver the same to Lessor;

(c) Lessee has made no previous assignment of the Purchase Order or of any interest of any nature therein and Lessee has not pledged or granted a security interest in, and agrees that it will not assign, pledge or grant a security interest in, so long as this assignment shall remain in effect, the whole or any part of the rights, title and interest hereby assigned to anyone other than Lessor. There are no financing statements or filings or recordings with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act or other similar filings, recordings or notices on file in any public office with respect to the Purchase Order or the Equipment;

(d) Lessee has made no down payment or advance of money in respect of the Equipment to Seller;

(e) the total cost of the Equipment will not exceed the amount of \$1,179,181.50 as set forth in the Letter Agreement between Lessor and Lessee dated May 3, 1974, as amended (the "Commitment Letter");

(f) Lessee will immediately inspect each Item of Equipment upon delivery thereof and will accept those Items of Equipment which conform to the obligations of Seller and Lessee agrees not to unreasonably withhold such acceptance;

(g) Lessee (i) is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation and has the corporate power and authority to own its property and assets and to transact the business in which it is engaged; (ii) is duly qualified or licensed as a foreign corporation in good standing in every jurisdiction (wherein the Equipment will be located) in which the nature of the business in which it is engaged makes such qualification or licensing necessary; and (iii) has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Commitment Letter, this Agreement, the Purchase Order, the Lease and the other instruments contemplated hereby or thereby;

(h) Neither the execution and delivery of the Commitment Letter, this Agreement, the Lease or the Purchase Order, nor the consummation of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene any provision of law, statute, rule or regulation to which Lessee is subject or any judgment, decree, franchise, order or permit applicable to Lessee, or will conflict or be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance of any nature whatever upon the Equipment (except as the Lease may allow) or upon any of the property or assets of Lessee pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which Lessee is a party or by which it or any of its property may be bound or to which it or any of its property may be subject, or violate any provision of the Certificate of Incorporation or By-Laws of Lessee;

(i) The Commitment Letter, this Agreement, the Lease and the Purchase Order have each been duly authorized, executed and delivered by Lessee and constitute the legal,

valid and binding obligations of Lessee enforceable in accordance with their respective terms. No approval of the stockholders of Lessee is required with respect to the authorization, execution and delivery of any such document. Lessee agrees to furnish to Lessor any documents and other evidence of corporate authorization as Lessor may reasonably request, including records of corporate proceedings, such evidence where appropriate to be certified by proper corporate or governmental authorities;

(j) The Lease and this Agreement have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and all necessary filing fees have been paid, and such filing will protect the Lessor's title and interest in and to the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Lessor in and to the Equipment in the United States of America;

(k) No authorization, approval or consent from any governmental, public or quasi-public body or authority of the United States of America, or of any of the states thereof or of any department or subdivision of any thereof, is necessary to enable Lessee to lease the Equipment under the Lease or to execute, deliver and perform the terms and provisions of the Commitment Letter, this Agreement, the Purchase Order and the Lease;

(l) No 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 Lessee, now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the Lessor's right, title and interest therein; and upon and as of the time of final payment to Seller for any Item of Equipment purchased pursuant to Paragraph 4 hereof, Lessor shall acquire title thereto free and clear of all liens and encumbrances;

(m) There are no actions, suits or proceedings pending or threatened against Lessee before any court or before any governmental or administrative body or agency, the outcome of which might materially and adversely affect the operations, business, property, assets or condition (financial or otherwise) of Lessee, except as stated in Lessee's 1973 Annual Report to its shareholders;

(n) Lessee is not in default under any indenture, agreement or instrument (including, without limitation, the Commitment Letter, this Agreement, the Purchase Order and the Lease) to which it is a party or by which it is bound or no event has occurred and is continuing which under any such indenture, agreement or instrument with the lapse of time and/or the giving of notice would constitute such an event of default;

(o) At any time and from time to time, upon the written request of Lessor, Lessee will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lessor may deem advisable to obtain the full benefits of this Agreement and the transactions herein contemplated.

3. CERTAIN CONDITIONS.

It is a condition precedent to the obligations of Lessor hereunder that:

(a) Seller shall execute and deliver a Consent to Assignment in substantially the form of Exhibit 1 attached hereto;

(b) prior to placing in service any Item of Equipment to be purchased by Lessor hereunder, Lessee agrees to execute and deliver to Lessor a Schedule covering such Item of Equipment, as provided in Paragraph 1 of the Lease; provided, however, that no more than five such Schedules shall be executed and each such Schedule shall cover Items of Equipment of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) total cost. All Schedules shall be executed on or before February 28, 1975;

(c) Concurrently with the execution and delivery of each Schedule to the Lease relating to Items of Equipment, there shall be delivered to Lessor:

(1) by Seller, an opinion of counsel for the Seller substantially in the form of Exhibit 5 attached hereto with such additions and/or changes as Lessor may reasonably request;

(2) by Lessee, an opinion of counsel for Lessee substantially in the form of Exhibit 6 attached hereto with such additions and/or changes as Lessor may reasonably request;

(3) by Lessee, an opinion of special counsel, satisfactory to Lessor, substantially in the form of Exhibit 7 attached hereto with such additions and/or changes as Lessor may reasonably request;

(4) by Lessee, a certificate signed by its proper officers stating that no significant adverse change in the financial condition of Lessee has occurred since the date of the Commitment Letter; and

(d) All representations and warranties of Lessee made in connection with the Commitment Letter, this Agreement, the Purchase Order and the Lease, and any other instrument referred to herein or therein shall be true on and as of the date of execution of each such Schedule and Lessee agrees to deliver to Lessor a certificate signed by its proper officers to such effect.

4. PURCHASE OF EQUIPMENT.

Lessor will purchase each Item of Equipment upon receiving evidence to Lessor's satisfaction that (1) all of the terms and conditions of the Commitment Letter, this Agreement and the Lease and all other agreements between the parties have been satisfied; (2) Lessee has accepted such Item of Equipment for the purposes of the Lease by delivering to Lessor an executed Certificate of Acceptance therefor in the form attached hereto as Exhibit 4 (which shall be conclusive evidence that the Item of Equipment covered thereby has been delivered to Lessee and is acceptable to Lessee); (3) such Item of Equipment has been delivered to the place set forth in Exhibit 2 attached hereto (unless otherwise agreed by Lessor). Concurrently with the purchase of such Item of Equipment by Lessor, Lessor will lease such Item of Equipment to Lessee and Lessee will hire the same from Lessor on the terms and conditions of the Lease by execution and delivery of a Schedule to the Lease. Lessee shall be and remain liable to Seller under the Purchase Order with respect to any Item of Equipment not so purchased by Lessor for any reason whatsoever.

5. INDEMNITIES.

Lessee agrees to assume liability for and to indemnify, protect, defend, save and hold Lessor and its successors, assigns, directors, officers, agents and servants harmless from and against any and all loss, damage, suit, penalty, expense, cost or liability imposed on, incurred

by or asserted against Lessor and its successors, assigns, directors, officers, agents and servants (whether or not also indemnified against by Seller or any other person) in any way relating to or arising out of the Commitment Letter, the Purchase Order, this Agreement, the Lease or the manufacture, sale, delivery, purchase, acceptance, rejection, loss, use, condition, seizure, ownership, possession, operation, performance, suitability, durability, quality, or adequacy of any Item of Equipment delivered or to be delivered under the Purchase Order (including, without limitation, counsel fees and expenses, latent and other defects, claims for patent, trademark or copyright infringement, and the amount of any license and registration fees, sales, use or other taxes not paid or discharged at the time of payment for any Item of Equipment hereunder, and all penalties and interest) and whether or not due to, or based upon, any active or passive negligence of Lessor or any strict liability imposed upon Lessor.

If, for each year the Lease is in effect beginning in 1975, Lessor shall not be entitled to such depreciation deductions, credits and other benefits as are provided for Federal income tax purposes by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), to an owner of new property, including without limitation an allowance for depreciation based on the maximum deduction possible using Lessor's cost as shown in the Schedule to the Lease, and any accelerated method and Asset Depreciation Range permitted by the Code which is elected by Lessor, or if any such deductions, credits or other benefits are lost, disallowed or recaptured, in whole or in part, or if the rate, manner of basis of taking any such depreciation deductions, credits or other benefits shall be changed or affected in whole or in part by reason of any of the following events:

(a) an Item of Equipment was used and not new on the date it was acquired by Lessor, and therefore "the original use" of the Equipment did not commence with the Lessor pursuant to Section 167(c) of the Code and the Income Tax Regulations promulgated thereunder;

(b) an Item of Equipment was not placed in a condition or state of readiness and availability for functioning so as to be deemed to be "first placed in service" by Lessor, pursuant to Section 1.167(a)11 of the Income Tax Regulations, during calendar year 1975;

(c) any action which Lessee takes or fails to take in respect of its income tax returns or otherwise;

(d) any use, operation, improvement, alteration or location of any Item of Equipment by Lessee or any other party having possession or control of such Item of Equipment, whether or not authorized or contemplated under the terms of the Lease;

(e) the removal from service of (except upon payment to Lessor, its successors or assigns of the Stipulated Loss Value in accordance with Paragraph 9(b) of the Lease) or substitution for any Item of Equipment, or the replacement of any part or portion thereof, whether or not such removal, substitution or replacement is authorized or contemplated under the terms of the Lease or by subsequent agreement among the parties hereof;

(f) any change or amendment in the Code or any change in any rule or regulation promulgated by the Internal Revenue Service under the Code, prior to the execution of each Schedule; or

(g) Lessee or any officer, employee or counsel thereof shall make any representation of fact, estimate, opinion, or other statement which the Appellate Division of the Internal Revenue Service determines to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable, or insufficient in whole or in part; or Lessee or any officer, employee or counsel thereof shall fail to state any material fact in connection with the Lease or any documents related hereto;

then, Lessee agrees to pay Lessor the following amounts:

(a) a sum which, after deduction of all taxes required to be paid by Lessor in respect of the receipt thereof under the laws of the United States or of any state, city, or other political subdivision thereof, shall be equal to the amount of such depreciation benefits so lost, disallowed, recaptured or which may not be claimed and any penalties assessed in connection therewith;

(b) the reasonable costs (including, without limitation, all court costs and reasonable attorneys' fees) and expenses of Lessor in connection with the payment, or defense against or appeal from an action for non-payment (whether or not such defense or appeal is successful), of the amounts corresponding to the depreciation benefits lost, disallowed, recaptured or which may not be claimed; and

(c) the amount of all interest which may be assessed by the United States Government, and all other political entities, against Lessor in connection with such loss, disallowance or recapture.

The foregoing amounts shall be payable in cash within ten (10) days after Lessor makes written demand therefor.

The indemnities contained in this Section 5 shall continue in full force and effect notwithstanding the expiration or other termination of the Commitment Letter, this Agreement, the Lease, the Purchase Order or any other agreement. In the event that Lessee is required to make any payment under this Section, Lessee shall pay the person indemnified an amount which, after deduction of all taxes required to be paid by said person in respect of the receipt thereof under the laws of the United States or of any state, city or political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes), shall be equal to the amount of such payment. Lessee's obligations under this Section shall be that of primary obligor irrespective of whether the person indemnified shall also be indemnified with respect to the same or similar matter under any other instrument or agreement by any person and irrespective of any insurance policies which may be in existence with respect to the same. Lessee agrees to give Lessor, and Lessor agrees to give Lessee, prompt written notice of any claim hereby indemnified against.

6. MISCELLANEOUS.

Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. No failure or delay on the part of Lessor in exercising any right, power or privilege hereunder and no course of dealing between Lessee and Seller or Lessee and Lessor shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which Lessor would otherwise have. No notice to or demand on Lessee in any case shall entitle Lessee to any other or further notice or demand in similar or other

circumstances or constitute a waiver of the rights of Lessor to any other or further action in any circumstances without notice or demand. This Agreement shall be binding upon Lessee and its successors and assigns and shall be binding upon and inure to the benefit of Lessor and its successors and assigns.

Lessor agrees that to the extent the Equipment qualifies and to the extent permissible under the Code and regulations thereunder, Lessor will elect to treat Lessee as having acquired the Equipment for purposes of the Investment Tax (Job Development) Credit. Lessor shall incur no liability to Lessee should the Internal Revenue Service for any reason disallow all or any part of the Investment Tax Credit made available to Lessee by such election.

7. RECORDING.

Lessee, at its own expense, will promptly cause this Agreement and any other agreements or instruments executed in connection herewith to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act if necessary, in the opinion of Lessor, to protect Lessor's right, title and interest in and to the Equipment.

8. COUNTERPARTS.

This Agreement may be executed in any number of counterparts, any one of which, when executed and delivered, shall be an original, but all counterparts shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 21st day of January, 1975.

U.S. STEEL CREDIT CORPORATION

(Seal)

By

Asst. Treas.

ATTEST:

Asst. Secy.

HAMMERMILL PAPER COMPANY

(Seal)

By DB Leelan Jr
Executive Vice President

ATTEST:

JB Ender
Assistant Secretary

STATE OF *Pennsylvania*
: SS.:
COUNTY OF *Allegheny*

On this *21st* day of *January*, 1975, before me personally appeared *J. L. Brady*, to me personally known, who being by me duly sworn, says that he is the *Asst. Treas.* of U.S. STEEL CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

Diane L. Powell

(NOTARIAL SEAL)

My Commission Expires

DIANE L. POWELL, Notary Public
PITTSBURGH, ALLEGHENY COUNTY, PA.
MY COMMISSION EXPIRES
OCTOBER 17, 1977

STATE OF *Penna.*)
: SS.:
COUNTY OF *Erie*)

On this *20th* day of *January*, 1975, before me personally appeared *D. S. Leslie, Jr.*, to me personally known, who being by me duly sworn, says that he is the *Exec. Vice Pres.* of HAMMERMILL PAPER COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the 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.

Eleanore L. Loyer

(NOTARIAL SEAL)

My Commission Expires

ELEANORE L. LOYER, NOTARY PUBLIC
ERIE, ERIE COUNTY, PENNSYLVANIA
MY COMMISSION EXPIRES DEC. 20, 1978

CONSENT TO ASSIGNMENT

The undersigned Seller, NORTH AMERICAN CAR CORPORATION (the "Seller"), acknowledges receipt of, and consents to all the terms of, an executed copy of an Agreement to Acquire and Lease (the "Acquisition Agreement") dated as of _____, 1975, between U.S. STEEL CREDIT CORPORATION (as successor by merger to U.S. Steel Leasing Co., Inc., the "Lessor"), and HAMMERMILL PAPER COMPANY (the "Lessee"), and as part of the consideration for the performance by the parties thereto of their obligations thereunder:

1. Consents to the assignment by the Lessee to the Lessor of Lessee's rights in Purchase Order No. 1120-74UB between Lessee and Seller dated August 9, 1974 (as amended and supplemented to the date hereof, the "Purchase Order"), subject to all the terms and conditions of the Acquisition Agreement, and agrees that (a) all representations, warranties, indemnities and agreements of Seller under the Purchase Order shall inure to the benefit of, and shall be enforceable by, Lessor to the same extent as if originally named the buyer therein; (b) Lessor shall not be liable for any of the obligations or duties of Lessee under the Purchase Order nor shall the assignment give rise to any duties or obligations whatsoever on the part of Lessor owing to Seller; (c) Seller consents to the lease of the Equipment by Lessor to Lessee pursuant to the Equipment Lease Agreement, dated as of July 22, 1974 and all addenda and schedules thereto between Lessor and Lessee (the "Lease"); (d) Seller will not enter into or agree to any change order or any other amendment or supplement to or modification of the Purchase Order which would be prohibited by the provisions of the assignment; (e) all notices, requests, demands or other communications to or upon Seller shall be deemed to have been given or made when deposited in the mails, postage prepaid, or in the case of telegraphic notice, when delivered to the telegraph company, addressed to Seller at 222 South Riverside Plaza, Chicago, Illinois 60606, Attention: Mr. William Vail, or such other address as may hereafter be furnished to Lessee and Lessor in writing by Seller; and (f) all deliveries of Equipment shall be made in the manner required by the provisions of the Lease and the Acquisition Agreement.

2. Represents and warrants that the Purchase Order was duly accepted by the Seller, that such acceptance was duly authorized, and that the Purchase Order is a valid and binding obligation of the Seller enforceable in accordance with its terms and is currently in full force and effect.

3. Agrees that the purchase price for the Equipment shall not exceed the amount of \$1,179,181.50 and agrees that, on or before February 28, 1975 (which date may be altered only by a statement in writing signed by the Lessor), (a) Seller shall have delivered the Equipment to Lessee in proper working order, and (b) Lessor shall have received in writing from Lessee its certificate of acceptance of said Equipment.

4. Represents, warrants and agrees that, upon final payment of the purchase price, title to the Equipment shall be vested in Lessor free and clear of liens and encumbrances of any kind whatsoever and that upon request of the Lessor the Seller will furnish to Lessor such evidence of lien-free title as may be reasonably requested, including but not limited to (a) a full warranty Bill of Sale, and (b) an opinion of Seller's counsel that the Seller's Bill of Sale is valid and effective to transfer good title to the Equipment.

5. Agrees that Seller will deliver to Lessor, with a copy to Lessee, Seller's written warranties in substance and in form as required by the Purchase Order. Seller further agrees that neither any examination nor acceptance of any Item of Equipment shall be deemed a waiver by Lessor or Lessee of any of its rights hereunder. By its consent hereto, Seller agrees that all warranties, written or oral, express or implied, are for the benefit of and may be enforced by both Lessor and Lessee or either of them.

6. Warrants that on the date acquired by Lessor each Item of Equipment will be new equipment so that "the original use" thereof will commence with the Lessor pursuant to Section 167(c) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

7. Agrees that Seller shall indemnify and hold Lessor and the Lessee harmless from any and all liability, loss, damage, claim and expense which may arise out of any claims for patent infringement relative to the Equipment.

8. Agrees that all invoices and other documents relative to title to the Equipment covered by the

Purchase Order shall be issued showing that such Equipment has been sold to:

U. S. Steel Credit Corporation
600 Grant Avenue
Pittsburgh, Pennsylvania 15230

Dated:

NORTH AMERICAN CAR CORPORATION

By _____

ATTEST:

Secretary

SCHEDULE OF EQUIPMENT

<u>Description</u>	<u>Price for Each Car</u>	<u>Place of Delivery</u>
25 new railroad gondola cars	\$23,283.63	Kaukauna, Wisconsin
Lettered and Numbered: TPPX 40101 to TPPX 40125		
25 new railroad gondola cars	not more than \$23,883.63	Kaukauna, Wisconsin
Lettered and Numbered: TPPX 40126 to TPPX 40150		

PURCHASE ORDER TERMS AND CONDITIONS

IMPORTANT — READ CAREFULLY

1. **ACCEPTANCE: PURCHASE ORDER CONSTITUTES ENTIRE AGREEMENT** — This Order constitutes Purchaser's offer and may be accepted by Seller only in accordance with the terms hereof. Any acceptance herein of, an offer of Seller, or any confirmation herein of a prior agreement between Purchaser and Seller is expressly made conditional on Seller's assent to the additional or different terms contained herein. This Order may be accepted by Seller by commencement of work, shipment of goods, or furnishing of services hereunder. Dispatch of Seller's acknowledgment form will also act as an acceptance if it agrees with this Order with respect to the description, amount, price and time of delivery of the goods or services ordered. Notwithstanding any waiver in any instance, or any oral agreement, or any instructions, terms and conditions that may be contained in any quotation, acknowledgment, invoice or other form of Seller, no addition to, waiver for the future or modification of, any of the provisions herein contained shall be of any force or effect unless made in writing and executed by Purchaser.
2. **TIME OF THE ESSENCE** — Time of shipment and of other aspects of performance hereunder is of the essence of this agreement.
3. **CHANGES** — Purchaser shall have the right at any time to make changes in this Order by written notice to Seller, and Seller agrees to comply with such changes. If such changes cause a material increase or decrease in Seller's costs or time of performance of this Order, Seller shall notify Purchaser immediately and negotiate an adjustment.
4. **RIGHT OF INSPECTION AND REJECTION** — Material and equipment supplied by Seller shall be received subject to Buyer's inspection and approval within a reasonable time after delivery, notwithstanding prior payment. If specifications or warranties are not met, material and equipment may be returned at Seller's expense. No material or equipment returned to Seller as defective shall be replaced except upon Purchaser's formal authorization.
5. **WARRANTY** — Seller warrants that all goods or services furnished pursuant to this Order will be free from defects in material or workmanship and will be in conformity with the requirements of this Order, including drawings and specifications; if any, or reasonably fit for the purpose disclosed in this Order or in such drawings and specifications, and Seller further warrants that such goods or services will be merchantable and fit for the purpose for which they are sold, and where design is Seller's responsibility, will be free from defects in design. Purchaser's approval of Seller's design or material shall not be construed to relieve Seller of the warranties set forth herein. Without limitation of any rights which Purchaser may have at law by reason of any breach of warranty, goods, which are not as warranted may at any time within twelve (12) months after delivery be returned at Seller's expense. Purchaser at its option may require Seller either to replace such goods at no increase in price (Seller must pay all repacking, transportation and handling charges both ways) or to refund the purchase price and any charges in connection therewith.
6. **PATENT INDEMNITY** — Seller agrees to indemnify, save harmless and defend Purchaser from and against any and all suits, claims, damages, costs, and attorneys' fees arising out of or in connection with any, infringement or claimed infringement of any United States patent in the manufacture, use or sale of the equipment or material furnished under this Order. In case said equipment or material is in such suit, or in final adjudication elsewhere, held to constitute infringement, and the use thereof is enjoined, Seller shall, at its own expense, either procure for Purchaser the right to continue using said equipment or material, or of the option of Purchaser either replace same with equally efficient noninfringing equipment or material, or modify it without impairing its efficiency so it becomes noninfringing, or remove said equipment or material and refund the purchase price and the transportation and installation costs thereof.
7. **INDEMNITY AND INSURANCE** — In consideration of this Order, and in the event that all or any portion of the work covered by this Order will be performed on Purchaser's premises, Seller agrees, as a condition hereof:
 - (a) To indemnify, save harmless and defend Purchaser from and against any and all loss to Purchaser's property, both real and personal, arising or growing out of or in connection with the performance of this Agreement, and from and against any and all claims, demands or suits of whatsoever nature, and any expense incidental thereto, which may be made, claimed or brought by Seller, its employees or agents, or by any other person (including claims by the employees or representatives of employees of Purchaser for Workmen's Compensation) on account of property damage, personal injury, or death sustained or suffered by any person arising or growing out of or in connection with the performance of this Order, or any act or omission in connection therewith, unless caused by the sole negligence of Purchaser.
 - (b) To provide and maintain the kinds and minimum amounts of Insurance prescribed by Purchaser's "Seller's or Contractor's Insurance Certificate" attached hereto and made part hereof as Attachment 1, including the insuring of the indemnity set forth in subparagraph (a) hereinabove. The Seller shall not be permitted to perform any work under this Order on Purchaser's premises until and unless three (3) properly completed and executed copies of said "Seller's or Contractor's Insurance Certificate" have been delivered to Purchaser's Purchasing Department, and written authorization to commence work has been given to the Seller by the Purchaser's Purchasing Department.
 - (c) That no lien or claim of any kind whatever shall be filed by Seller or any subcontractor of Seller, or by any other person, firm or corporation against Purchaser's property for any work performed, or for any material furnished, in connection with the performance of this Order; and Seller agrees that if any lien arising out of the performance of this Order remains unsatisfied after all payments are made, Seller shall refund to Purchaser all monies that the Purchaser may be compelled to pay in discharging such lien, including all costs and a reasonable attorney's fee. Seller further agrees, at Purchaser's request, to execute a no-lien contract in the form prescribed by applicable state law for filing and recording, and to deliver to Purchaser properly executed waivers of all mechanics' and/or materialmen's liens from each of Seller's subcontractors and material suppliers.
8. **WAGES AND HOURS** — In accepting this Order, Seller agrees that in the manufacture of the goods and/or in the performance of the services ordered, Seller has complied, or will comply with the Fair Labor Standards Act of 1938, as amended, and Seller agrees to so certify on all its invoices.
9. **ASSIGNMENT** — Neither this Order nor any interest therein nor any claim arising hereunder shall be transferred or assigned by Seller without the prior written consent of Purchaser.
10. **GOVERNING LAW** — This Order, and the rights and obligations of the parties thereto, shall be determined in accordance with the laws of the State wherein the equipment or material shall be installed, or wherein the work shall be performed hereunder.

EQUAL OPPORTUNITY CLAUSE

(This clause applies only if (a) the amount of this Order is \$10,000 or more, or (b) the amount of this Order is indefinite but may reasonably be expected to amount to \$10,000 or more in the current calendar year.)

During the performance of this Order, the Seller (or Contractor where applicable) agrees as follows:

1. The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
2. The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. The Seller will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Seller's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of the Seller's noncompliance with the nondiscrimination clauses of this Order or with any of such rules, regulations, or orders, this Order may be canceled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
7. The Seller will include the provisions of paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Seller becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Seller may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATE OF ACCEPTANCE

TO: U.S. STEEL CREDIT CORPORATION, as Lessor under the Agreement to Acquire and Lease (the "Agreement") dated as of _____, 1975 between U.S. Steel Credit Corporation and Hammermill Paper Company.

I, duly appointed and authorized representative of Lessee under the Equipment Lease Agreement dated as of July 22, 1974 between the Lessor and the Lessee as named in such Equipment Lease Agreement, do hereby certify that I inspected, received, approved and accepted, on behalf of Lessor and Lessee, delivery under the Equipment Lease Agreement of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

I do further certify that each Item of Equipment described above is in good order and condition and conforms to the specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to the requirements and provisions of the Agreement and Equipment Lease Agreement.

I do further certify that each Item of Equipment described above has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item of Equipment in letters not less than one inch in height as follows:

"Owned by and leased from U.S. Steel Credit Corporation, and subject to an Equipment Lease Agreement recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the manufacturer or the Seller of the Equipment for any warranties either or both of them have made with respect to the Equipment.

Dated:

Inspector and Authorized
Representative of
HAMMERMILL PAPER COMPANY

Opinion of Seller's Counsel

Concurrently with the execution and delivery of each Schedule to the Lease relating to any Item of Equipment, Lessee will deliver to Lessor the written opinion of counsel for Seller, dated such date, addressed to Lessor and to any other person designated by Lessor, in scope and substance satisfactory to them and their counsel, to the effect set forth below.

All terms not specifically defined herein shall have the respective meanings set forth in the Agreement to Acquire and Lease (the "Agreement").

1. The Bill of Sale from Seller to Lessor, dated _____, 197____, the Purchase Order and the Consent to Assignment have been duly authorized, executed and delivered by the Seller and are legal, valid and binding obligations of the Seller enforceable against the Seller in accordance with their respective terms.

2. The Purchase Order has been duly accepted by the Seller and such acceptance has been duly authorized, and the Purchase Order is a valid and binding obligation of the Seller enforceable in accordance with its terms.

3. The Bill of Sale is valid and effective to vest in Lessor title to the Items of Equipment referred to therein free from all claims, liens, security interests and encumbrances of any nature.

4. On the date acquired by Lessor each Item of Equipment will be new equipment so that "the original use" thereof will commence with the Lessor pursuant to Section 167(c) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

5. Neither the execution and delivery of the Bill of Sale, the Purchase Order or the Consent to Assignment, nor the consummation of the transactions therein contemplated, nor compliance with the terms and provisions thereof, will contravene any provision of law, statute, rule or regulation to which the Seller is subject or any judgment, decree, franchise, order or permit applicable to the Seller, or will conflict or be inconsistent with, or result in any

breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the property or assets of the Seller pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument to which the Seller is a party or by which it may be bound or to which it may be subject, or violate any provision of the Certificate of Incorporation or By-Laws of the Seller.

Opinion of Lessee's Counsel

Concurrently with the execution and delivery of each Schedule to the Lease relating to any Item of Equipment, Lessee will deliver to Lessor the written opinion of counsel for Lessee, dated such date, addressed to Lessor and to any other person designated by Lessor, in scope and substance satisfactory to them and their counsel, to the effect set forth below.

All terms not specifically defined herein shall have the respective meanings set forth in the Agreement to Acquire and Lease (the "Agreement").

1. Lessee (i) is a duly organized and validly existing corporation in good standing under the laws of the state of its incorporation and has the corporate power and authority to own its property and assets and to transact the business which it is engaged; (ii) is duly qualified or licensed as a foreign corporation in good standing in every jurisdiction (wherein the Equipment will be located) in which the nature of the business in which it is engaged makes such qualification or licensing necessary; and (iii) has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Commitment Letter, the Agreement, the Purchase Order, the Lease and the other instruments contemplated thereby.

2. Neither the execution and delivery of the Commitment Letter, the Agreement, the Lease or the Purchase Order, nor the consummation of the transactions therein contemplated, nor compliance with the terms and provisions thereof will contravene any provision of law, statute, rule or regulation to which Lessee is subject or, to the best knowledge of such counsel, any judgment, decree, franchise, order or permit applicable to Lessee, or conflict or be inconsistent with, or result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance of any nature whatever upon the Equipment (except as the Lease may allow) or upon any of the property or assets of Lessee pursuant to the terms of, any indenture, mortgage, deed of trust, agreement or other instrument known to such counsel to which Lessee is a

party or by which it or any of its property may be bound or to which it or any of its property may be subject, or violate any provision of the Certificate of Incorporation or By-Laws of Lessee.

3. There are no actions, suits or proceedings pending or, to the best knowledge of such counsel, threatened against Lessee before any court or before any governmental or administrative body or agency, the outcome of which might materially and adversely affect the operations, business, property, assets or condition (financial or otherwise) of Lessee, except as stated in Lessee's 1973 Annual Report to its shareholders.

4. The Agreement, the Commitment Letter, the Lease, and the Purchase Order have each been authorized, executed and delivered by Lessee and constitute the legal, valid and binding obligations of Lessee enforceable in accordance with their respective terms. No approval of the stockholders of Lessee is required with respect to the authorization, execution and delivery of any such document.

5. The Lease and the Agreement have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and all necessary filing fees have been paid, and such filing will protect the Lessor's title and interest in and to the Equipment, and no other filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Lessor in and to the Equipment in the United States of America.

6. No authorization, approval or consent from any governmental, public or quasi-public body or authority of the United States of America, or of any of the states thereof or of any department or subdivision of any thereof, is necessary to enable Lessee to lease the Equipment under the Lease or to execute, deliver and perform the terms and provisions of the Commitment Letter, the Agreement, the Purchase Order and the Lease.

7. No 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 Equipment or in any manner affects or will affect adversely the Lessor's right, title and interest therein.

8. To the best knowledge of such counsel, Lessee is not in default under any indenture, agreement or instrument (including, without limitation, the Commitment Letter, the Agreement, the Purchase Order or the Lease) to which it is a party or by which it is bound and no event has occurred and is continuing which under any such indenture, agreement or instrument with the lapse of time and/or the giving notice would constitute such an event of default.

9. On the date acquired by Lessor each Item of Equipment will be new equipment so that "the original use" thereof will commence with the Lessor pursuant to Section 167(c) of the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

Opinion of Special Counsel

Concurrently with the execution and delivery of each Schedule to the Lease relating to any Item of Equipment, Lessee will deliver to Lessor the written opinion of special counsel, satisfactory to Lessor, dated such date, addressed to Lessor and to any other person designated by Lessor, in scope and substance satisfactory to them and their counsel, to the effect set forth below.

All terms not specifically defined herein shall have the respective meanings set forth in the Agreement to Acquire and Lease (the "Agreement").

1. The Lease and the Agreement were duly filed and recorded with the Interstate Commerce Commission (the "I.C.C.") pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended, at on and assigned Recordation Number . Such recordation will protect the Lessor's title and interest in and to the Equipment and all fees in connection with such filing or recording have been paid and no filing, recording or deposit (or giving of notice) with any other Federal, state or local government or agency or instrumentality thereof is necessary to protect the title and interest of the Lessor in and to the Equipment in the United States of America.

2. There is no filing or recording with the I.C.C. covering the Equipment which has not been discharged or removed of record except the filing and recording of the Lease and the Agreement pursuant to the provisions of Section 20c of the Interstate Commerce Act, as amended.