

10812 A

RECORDATION NO. Filed 1425

SEP 13 1979 - 10 25 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of July 1, 1979

between

WESTINGHOUSE CREDIT CORPORATION

and

LA SALLE NATIONAL BANK,
as Agent

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 1, 1979 ("Assignment"), by and between WESTINGHOUSE CREDIT CORPORATION ("Lessor" or the "Vendee"), and LA SALLE NATIONAL BANK, as Agent ("Vendor") under a Participation Agreement dated as of the date hereof.

The Vendee is entering into a conditional sale agreement dated as of the date hereof (the "CSA-1") with North American Car Corporation ("NAC") and National Steel Car Corporation, Limited ("National"), wherein National has agreed to manufacture, sell and deliver to NAC, and NAC has agreed to sell and deliver to the Vendee, units of railroad equipment described in Annex B thereto.

The Vendee is entering into a conditional sale agreement dated as of the date hereof ("CSA-2") with Railway Marketing Corporation ("RMC") and Pullman Incorporated (Pullman Standard Division) ("Pullman"), wherein Pullman has agreed to manufacture, sell and deliver to RMC, and RMC has agreed to sell and deliver to the Vendee, units of railroad equipment described in Annex B thereto.

CSA-1 and CSA-2 are herein sometimes individually referred to as a "CSA" and collectively as "CSAs" and the equipment described in Annexes B thereto is herein sometimes called "Units".

The Lessor and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease"), providing for the leasing by the Lessor to the Lessee of the Units.

In order to provide security for the obligations of the Lessor under the CSAs and as an inducement to the Vendor to invest in the CSA Indebtedness (as that term is defined in the CSAs), the Lessor agrees to assign to the Vendor, for security purposes, certain of the Lessor's rights in, to and under the Lease;

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

as follows:

1. The Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Lessor as Vendee under the CSAs, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, liquidated damages, or otherwise (such moneys being hereinafter called "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease; provided, however, that the term Payments as used herein shall not be deemed to include (i) payments made by the Lessee to the Lessor pursuant to §§ 6 and 9 of the Lease (except indemnification payments intended to satisfy the obligations of the Lessor to indemnify the Vendor pursuant to Articles 6 and 13 of the CSAs or the obligation of the Lessee to indemnify LaSalle National Bank in its capacity as assignee of the Lease and except to the extent that the Lessor is obligated to pay and discharge claims, liens, charges or security interests under Paragraph 6 of this Assignment). In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the CSAs, and, so long as no Event of Default shall have occurred and be continuing under a CSA, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not

receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor so to notify the Lessor shall not affect the obligations of the Lessor hereunder or under the CSAs except that the Vendor may not declare an event of default under Subparagraph 15(f) of the CSAs which, pursuant to such subparagraph would not constitute an event of default thereunder if the Lessor complied with the provisions thereof unless such event of default is not remedied within 10 days after notification is given as aforesaid.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor. The Lessor shall appear in and defend every action in connection with its obligations or duties under the Lease at its sole cost.

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

4. The Lessor does hereby constitute the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive and compound any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and

provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Lessor under the CSAs, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. The Lessor will pay and discharge any and all taxes, claims, liens, charges or security interests (other than created by the CSAs) on the Lease or the rentals or other payments due or to become due thereunder claimed by any party from, through or under the Lessor, or its successors and assigns (other than the Vendor), not arising out of the transactions contemplated by the CSAs or the Lease (but including tax liens arising out of the receipt of the rentals and other payments under the Lease and any other proceeds from the Units) which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease or such rentals or other payments unless the Lessor shall be contesting the same in good faith by appropriate proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect such interests of the Vendor.

7. The Lessor will from time to time do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, redeposit and rerecord where required) any and all further instruments required by law as reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

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

9. This Assignment shall be governed by the laws

of the Commonwealth of Pennsylvania, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 20 of the CSAs, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the CSAs has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Lessor to the Vendor by this Assignment, without the prior written consent of the Lessor, except the right to receive Payments under Paragraph 1 hereof and to enforce any right, power, agreement or indemnity under the Lease (other than any rights, powers, privileges, authorizations or benefits under §§ 6 and 9 of the Lease to the extent they inure to the benefit of the Lessor); provided, however, that if the Vendor does not seek to enforce any such right, power or agreement or does not seek to collect that portion of the Payments which would otherwise be paid to the Lessor pursuant to the second paragraph of Paragraph 1 of this Assignment, the Lessor shall have the right, only so long as no event of default under the CSAs has occurred and is continuing, to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to recover damages for the breach thereof as provided in § 10(A) of the Lease, but may not, without the prior written consent of the holders of 66-2/3% in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease. Notwithstanding the provisions of the Lease or this Assignment, should the Lessee default in the observance or performance of any obligations contained in §§ 6 or 9 of the Lease to the extent made for the benefit of the Lessor, and such default shall continue for 30 days after written notice thereof from the Lessor to the Lessee, the Lessor shall have the right (but only so long as no event of default shall have occurred and is continuing under the CSAs) to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of such obligations or to recover damages for the breach thereof as provided in § 10(A) of the Lease (which shall constitute collateral security for the payment and performance of the

obligations of the Lessor under the CSAs pursuant to Paragraph 1 of this Assignment and shall be applied as therein provided), but may not, without the prior written consent of the holders of 66-2/3% in principal amount of the CSA Indebtedness, declare an Event of Default under or terminate the Lease. After the occurrence of an event of default under the CSAs the Vendor agrees to (i) permit the Lessor (at Lessor's expense) to enforce performance by the Lessee or to seek to recover damages from the Lessee for the breach of any obligations of the Lessee contained in §§ 6 or 9 of the Lease to the extent made for the benefit of the Lessor (but the Lessor shall not have the right to terminate the Lease without the prior written consent of the Vendor) or (ii) enforce (at Lessor's expense) such performance by, or seek to recover such damages from, the Lessee; provided, however, that Payments received pursuant to this sentence shall constitute collateral security for the payment and performance of the obligations of the Lessor under the CSAs pursuant to Paragraph 1 of this Assignment and shall be applied as therein provided; and provided, further, however, that the foregoing provision shall not be deemed to prohibit or limit in any way the right of the Vendor to enforce any of the rights and remedies under § 10(B) of the Lease. The right of the Lessor under the second preceding sentence shall not affect the rights of the Vendor, before or after the occurrence of an event of default under the CSAs, which arise under or with respect to §§ 6 or 9 of the Lease.

12. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested,

all as of the date first above written.

WESTINGHOUSE CREDIT CORPORATION,

by E. M. Burbank

[Corporate Seal]

Attest: E. M. Lyons
Assistant Secretary

LA SALLE NATIONAL BANK, as Agent,

by _____

[Corporate Seal]

Attest: _____

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 7th day of Sept. 1979, before me personally appeared **R. K. VERBER**, to me personally known, who, being by me duly sworn, says that he is a VICE PRESIDENT of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national 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 national association.

[Notarial Seal]

Luetta Harris
Notary Public

My Commission expires
MY COMMISSION EXPIRES JULY 12, 1980

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ALLEGHENY,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of WESTINGHOUSE CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said 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.

[Notarial Seal]

Notary Public

My Commission expires

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a of LA SALLE NATIONAL BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national 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 national association.

[Notarial Seal]

Notary Public

My Commission expires

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF ALLEGHENY,)

On this 11th day of September 1979, before me personally appeared C. L. Buebank III, to me personally known, who, being by me duly sworn, says that he is a Mgr., Lease Operations of WESTINGHOUSE CREDIT CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said 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.

[Notarial Seal]

Notary Public

My Commission expires

DANIEL L. REMELY, Notary Public
Pittsburgh, Allegheny County, Pa.
My Commission Expires Dec. 7, 1981

CONSENT AND AGREEMENT

The undersigned, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY ("Lessee"), the Lessee named in the Lease ("Lease") referred to in the foregoing Assignment of Lease and Agreement ("Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all Payments (as defined in the Lease Assignment) directly to La Salle National Bank, as Agent ("Vendor"), the assignee named in the Lease Assignment, at 135 South LaSalle Street, Chicago, Illinois 60690, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

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

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

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

This Consent and Agreement 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.

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY,

by



PRESIDENT

[Corporate Seal]

Attest:

