



NORTH AMERICAN CAR CORPORATION

222 SOUTH RIVERSIDE PLAZA • CHICAGO, ILLINOIS 60606 U.S.A. • (312) 648-4000 • TELEX 255222

Nov 29 1 33 PM '78

November 28, 1978

No. 8-333A069

ROGER A. NOBACK
VICE PRESIDENT - LAW

I. C. C.
FEE OPERATION BR.

RECORDATION NO. 9872 Filed 1425

Date NOV 29 1978

Fee \$ 50.

NOV 29 1978 - 1 40 PM

ICC Washington, D. C

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Section 11303(a) (old 20c) Filing: North American
Car Corporation ("North American") Interim Agreement
and Lease dated as of November 28, 1978

Dear Mr. Secretary:

Enclosed for recording under Section 11303(a) (old Section 20c) of the Interstate Commerce Act are executed counterparts of the Interim Agreement and Lease ("Agreement") dated as of November 28, 1978, between North American, ("Lessee") 222 South Riverside Plaza, Chicago, Illinois 60606 and Connecticut Bank and Trust Company, as owner-trustee, One Constitution Plaza, Hartford, Connecticut 06115 ("Lessor").

Under the Agreement, Lessee leases the equipment described therein from the Lessor in accordance therewith.

Also enclosed is a check, payable to the Interstate Commerce Commission in the amount of \$50 as the recording fee for the Agreement.

Pursuant to the Commissions rules and regulations for the recording of certain documents under Section 11303(a) of the Interstate Commerce Act, you are hereby requested to duly file two of each of the enclosed counterparts for record in your office and to return the remaining counterparts, together with the Secretary's Certificate of Recording, to the messenger making this delivery.

If you have any questions, please contact me.

Very truly yours,

RAN/dal
enc.

Handwritten signature: Larry Jones

Interstate Commerce Commission
Washington, D.C. 20423

11/28/78

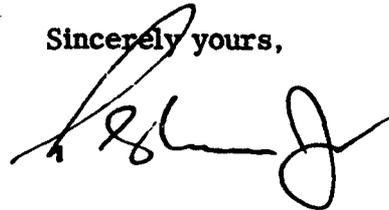
OFFICE OF THE SECRETARY

Roger A NoBack
Vice President-Law
North American Car Corp.
222 South Riverside Plaza
Chicago, Illinois 60606

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 11/29/78 at 1:40pm , and assigned recordation number(s) 9872

Sincerely yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9872 Filed 1423

NOV 28 1978 11 40 AM

INTERSTATE COMMERCE COMMISSION

INTERIM AGREEMENT AND LEASE

INTERIM AGREEMENT AND LEASE, dated as of November 28, 1978, between North American Car Corporation, a Delaware corporation (together with its successors and assigns being hereinafter referred to as "NACC") and The Connecticut Bank and Trust Company, a Connecticut banking corporation, not in its individual capacity but solely as owner trustee (in such capacity, the "Trustee") of a trust dated the date hereof the beneficiary of which is General Electric Credit Corporation, a New York corporation (together with its successors and assigns being hereinafter referred to as "GECC").

WHEREAS, in recent weeks GECC and NACC have been negotiating the terms of a potential transaction whereby GECC would purchase from NACC certain types of railroad rolling stock which would be subject to leases from NACC to its customers and which would be managed and serviced by NACC; GECC and NACC have agreed that it is not possible to complete the negotiation of these arrangements in time for transactions to commence thereunder as each had expected.

WHEREAS, GECC, through the Trustee, and NACC wish to enter into this Interim Agreement to cover certain items of railroad equipment which would otherwise have been included in the arrangement under negotiation, and which, subject to the terms of this agreement, will be included in such arrangements if the negotiations are successfully completed.

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

1. The Trustee agrees that it will purchase on the terms and conditions set forth herein the railroad cars ("Cars") described in Exhibit A at purchase prices to be determined by NACC, but not in excess of 115% of the sum of (i) the purchase price NACC shall have contracted to pay the builder of the Cars plus (ii) the fair market value of any physical improvements made by NACC to such cars prior to their delivery under this Agreement plus (iii) transportation costs and sales taxes for such Cars, up to an aggregate purchase price for all Cars

not in excess of \$10,500,000. This commitment will terminate at the close of business on January 31, 1979 with respect to any portion thereof as to which NACC has not notified the Trustee of a firm payment date and amount and in any case the Trustee shall have no obligation to pay for Cars after March 31, 1979. The Trustee understands that, based on information currently available to NACC, the Trustee will be expected to disburse funds under this commitment of approximately \$8,500,000 on December 1, 1978 and \$2,000,000 on February 1, 1979.

2. The Trustee understands that NACC will sub-lease the Cars to companies that will be the users thereof (any such sub-lease being referred to as a "Sub-lease"). NACC shall notify the Trustee whenever it enters into a Sub-lease and shall provide the Trustee and GECC with a complete copy thereof. NACC represents and warrants to the Trustee that NACC has not assigned any Sub-lease to any person and will not assign any Sub-lease to any person, except as provided in paragraph 8 hereof.

3. In the event the Trustee's purchase commitment in this agreement is insufficient to pay for all the Cars listed in Exhibit A, a sufficient number of Cars, not theretofore delivered will be deleted from Exhibit A so that the aggregate purchase prices of the remaining undelivered Cars when added to the aggregate purchase prices of all Cars delivered shall not exceed the Trustee's purchase commitment.

4. The Trustee agrees that it will pay the purchase price for the Cars at such time or times as to which it has received at least two business days' written notice from NACC. On each payment date the Trustee will only pay for the Cars then being purchased if it has previously received from NACC a Bill of Sale with respect to such Cars in the form attached as Exhibit B, together with an invoice from NACC for the purchase price thereof which shall separately state the purchase price of the Cars and any improvements or additions thereto, such as liners in the case of tank cars.

5. The Trustee will have no obligation to make any purchase or payment under this agreement unless NACC shall have filed this agreement with the Interstate Commerce Commission under Section 11303(a) of the Interstate Commerce Act and the Trustee shall have received a copy hereof with such filing certified.

6. Simultaneously with purchase of each Car from NACC, the Trustee as lessor will lease, and hereby does lease, such Car to NACC as lessee on the following terms and conditions and subject to the other provisions of this agreement:

General Terms: The terms and conditions of the Lease, dated as of March 15, 1975, between NACC and Exchange National Bank of Chicago, as Trustee of a Trust the beneficiary of which is GECC ("Reference Lease"), which lease was filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on June 9, 1975, recordation number 7946-B, shall be the terms of the Lease of the Cars mutatis mutandis as if the Cars were Units under such Lease without any distinction among groups of Units or Cars, except that:

(i) the terms and conditions of the Reference Lease shall not apply to the extent that they are replaced by other terms set forth below or are otherwise inconsistent with the terms and conditions of this agreement, and

(ii) insofar as the terms and conditions of the Reference Lease are for the benefit of certain investors and their agent, or for the purpose of protecting their security interest therein, such terms and conditions shall be given no effect until the circumstance described in paragraph 9(i) below shall occur except that such terms and conditions shall be given effect at all times to the extent that they are for the benefit of the Trustee, as lessor.

Rent: There will be one interim rental payable on February 1, 1979 at the rate of .016755% of the purchase price of each Car for each day elapsed from and including the date such Car was delivered to February 1, 1979 and therefrom there will be 80 consecutive quarterly rental payments at a Basic Lease Rate, on a quarterly basis, of 1.94962% of the purchase price for each Car. All rentals shall be paid to the Trustee at the address to which notices to the Trustee are sent.

Term: Commencing on the date of delivery of each Car, and terminating as to all Cars on January 1, 1999, except as provided by the terms of this agreement.

Groups: All Cars delivered hereunder shall be considered to belong to one Group.

Casualty Value: Casualty Value of each Car as of any date on which a payment is to be made in respect of a casualty shall be that percentage of the purchase price of such Car as is set forth in Exhibit C.

Discount Rate: The discount rate referred to in section 10(b)(ii) of the Reference Lease shall be 6%.

Identification Marks: Each Car shall bear the identification mark set forth in Exhibit A hereto applicable to it.

Renewal Option: NACC shall have an option to renew the lease term of this agreement for all, but not less than all, of the Cars then subject to this agreement for a period of five years upon notice delivered to GECC not less than six months prior to January 1, 1999. The rental rate for any renewal shall be 50% of the Basic Lease Rate for each Car then subject to lease for each quarterly period.

NACC Warranties and Patent Indemnity: NACC agrees to independently extend to the Trustee, both in its individual and in its fiduciary capacity, the same warranties or indemnities with respect to any Car, or any physical improvements thereto, that the builder thereof extends to NACC (or if NACC is the builder, that NACC extends to its most favored customers of similar railroad equipment or physical improvements thereto) with respect to (a) freedom from defects in material or workmanship, (b) compliance with performance or construction requirements, specifications and standards or (c) the non-infringement of such Car or any physical improvement thereto, or the manufacture, assembly, design or use thereof, with patent or other similar property rights of others.

Indemnities. The indemnities of NACC to the Trustee in Section 9 of the Reference Lease shall include, in addition to the specific matters referred to therein, for the purposes of this agreement, an indemnity for strict tort liability and any indemnity to the Trustee shall be both in its individual and fiduciary capacities.

Notice to Trustee: Notices to the Trustee shall be given to it at One Constitution Plaza, Hartford, Connecticut 06115, attention of Corporate Trust Department with a copy to GECC, 260 Long Ridge Road, P. O. Box 8300, Stamford, Connecticut 06904, Attention of Manager-Operations, Leasing and Industrial Loans Financing Department with a copy to the Investment Officer-Air/Rail.

7. NACC agrees that so long as any Cars are subject to this agreement, GECC shall be indemnified with respect thereto to the extent set forth mutatis mutandis in the provisions set out in paragraph 5 of the Participation Agreement, dated as of March 15, 1975, as amended on the date hereof (the "Participation Agreement") between GECC and NACC.

All references in such paragraph 5 to the United States Internal Revenue Code of 1954, or any regulations thereto, shall mean such Code or regulations as in effect on the date hereof. Any requirement in such paragraph 5 that GECC contest any proposed adjustment which contravenes a Ruling (it being understood no Ruling is required to be obtained by this agreement) shall be interpreted as allowing GECC the option, in its sole discretion, to contest such adjustment.

8. In the event the negotiation of the transaction described in the first recital of this agreement is consummated prior to January 31, 1979, the Cars shall become subject to that agreement in the manner therein provided and, upon effective assignment to GECC of the Sub-Leases, this agreement and the lease of the Cars herein provided shall then terminate as to all those Cars which are then covered by such other agreement.

9. In the event such transaction is not consummated, or if it is consummated after January 31, 1979, this agreement shall continue for its stated term except that:

(i) it is the expectation of the parties that this agreement will be converted into a leveraged lease having substantially the terms set forth in the Participation Agreement and the related documents as referred to therein with such changes as may be necessary to comply with Revenue Procedures 78-21 and 75-28, as amended to the date such leveraged lease transaction is consummated or any successor Revenue Procedure, provided such leveraged lease can be accomplished on reasonably acceptable terms to NACC, the Trustee and GECC. The parties agree to negotiate in good faith to accomplish that end. It is further understood that the basic economic terms of the lease in such leveraged lease arrangement shall be the same as those set forth in this agreement, except that the rental, casualty value and other amounts payable thereunder will be adjusted by the Trustee to reflect the actual amount of indebtedness used to finance such leveraged lease arrangement (the Trustee, at the instruction of GECC, having assumed indebtedness in principal amount equal to 63% of the purchase price of the Cars for purposes of the rental, casualty value and related figures in this agreement) and to reflect variations in the annual interest rate on such indebtedness from the interest rate (10%) assumed by the Trustee, at the instruction of GECC, in computing the rentals, casualty value and other figures in this agreement; or

(ii) if it is not possible to arrange a leveraged lease transaction on terms satisfactory to the parties hereto as set forth in (i) above, the rental rate set forth in paragraph 6 shall be adjusted retroactively to the commencement date for each Car to a rate of 2.196388% of the purchase price of each Car per annum; the casualty values for the Cars shall be as set forth in Exhibit D; and this agreement shall otherwise continue in effect for its full term.

In either case above, if either the amount of funds required to be disbursed by the Trustee hereunder or the timing of the disbursements is different than the amount and timing assumed by this Agreement, the rentals will be adjusted to preserve the net economic return contemplated by GECC.

10. Should the parties fail to reach agreement on the transaction described in the first recital to this agreement, it is hereby agreed that neither party shall have any liability as a result of such failure no matter what the cause thereof, it being understood that neither party has any obligation whatsoever to enter into such transaction.

11. It is expressly understood and agreed by and between the parties hereto, anything in this agreement to the contrary notwithstanding, that each and all of the representations, undertakings, warranties and agreements in this agreement, or in the Reference Lease, made on the part of the Trustee are each and every one of them made and intended not as personal representations, undertakings, warranties and agreements by The Connecticut Bank and Trust Company or for the purpose or with the intention of binding the said bank personally but are made and intended for the purpose of binding only the Trust Estate as such term is defined in the Trust Agreement dated the date hereof between The Connecticut Bank and Trust Company and GECC and this agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said bank or on account of any representation, undertaking, warranties or agreement of the Trustee, either expressly or implied, all such personal liability, if any, being expressly waived and released by the NACC and by all persons claiming by, through or under NACC provided, however, that NACC, and all persons claiming by, through or under NACC, may look to said Trust Estate for satisfaction of the same.

12. This agreement (i) shall be governed by and construed in accordance with the law of the State of New York, (ii) may not be assigned (except as provided in the terms of the Reference Lease) by either party without the consent of the other, and (iii) may be executed in counterparts all of which taken together shall constitute one and the same instrument.

13. This agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this agreement 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.

[Corporate Seal]

NORTH AMERICAN CAR CORPORATION

ATTEST:

By

J. M. O'Zema

[Signature]

[Corporate Seal]

THE CONNECTICUT BANK AND TRUST COMPANY, not in its individual capacity but solely as Owner Trustee

ATTEST:

By

STATE OF *Illinois*)
 : SS.:
COUNTY OF *Cook*)

On this *27th* day of *November*, 19*48*, before me personally came *James H. Ozanne*, to me known, who, being by me duly sworn, did depose and say that he resides at *Geneva Illinois*; that he is the *President* of NORTH AMERICAN CAR CORPORATION, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Debra A. LaRue
Notary Public.

STATE OF)
 : ss.:
COUNTY OF)

On this day of , 19 , before me personally came , to me known, who, being by me duly sworn, did depose and say that he resides at ; that he is the of THE CONNECTICUT BANK AND TRUST COMPANY, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Notary Public

EXHIBIT A

| <u>Quantity</u> | <u>Serial Number</u> | <u>Description</u> |
|-----------------|----------------------|---|
| 53 | NATX 77064-77115 | Class 111A100W3, 100 ton, 24,000 gallon capacity tank car |
| 40 | NATX 81109-81148 | Class 111A100W1, 100 ton, 24,000 gallon capacity tank cars |
| 1 | NAHX 479631 | Class LO, 100 ton, 4,750 cu. ft. hopper cars |
| 46 | NAHX 479635-479680 | Same as above |
| 50 | NAHX 479750-479799 | Same as above |
| <u>50</u> | NAHX 479850-479899 | Same as above |
| 239 | | |

FORM OF BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned North American Car Corporation, a Delaware corporation ("NACC"), for and in consideration of the sum of \$1, lawful money of the United States of America, paid to it upon or before the execution and delivery of this Bill of Sale by The Connecticut Bank and Trust Company, a Connecticut banking corporation, not in its individual capacity but solely as owner trustee (in such capacity, the "Trustee") of an owner trust, the beneficiary of which is General Electric Credit Corporation, a New York corporation ("GECC"), the receipt whereof is hereby acknowledged, and for other good and valuable consideration, has granted, bargained, sold and delivered unto the Trustee at the time of delivery thereof, and by this Bill of Sale does hereby confirm the granting, bargaining, sale and delivery unto the Trustee at said time of the Units of Railroad Equipment described on Schedule A annexed hereto (hereinafter called the "Cars"), to have and to hold the Cars unto the Trustee, its successors and assigns, forever.

NACC hereby represents and warrants to the Trustee and indemnifies the Trustee, both as to its individual and fiduciary capacities, all to the same extent as the builder or builders of the Cars contained in the Manufacturing Agreement attached hereto as Schedule B have represented and warranted to or indemnified NACC.

NACC further covenants and agrees with the Trustee as follows:

1. NACC hereby represents, warrants and covenants The Trustee that:

(i) the Trustee acquired from the undersigned marketable title to such Cars, subject to no claims, liens, security interests or encumbrances of any kind, other than the rights of the Lessee under the Lease;

(ii) at the time of delivery, such Cars were new Section 38 property within the meaning of Section 48(b) of the Code; and

(iii) such Cars conform to all Federal Railroad Administration requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the type and character of the Cars as of the date of delivery thereof.

2. NACC will warrant and defend the validity of this Bill of Sale and the title acquired by the Trustee to the Cars from NACC against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be signed as its binding obligation.

Dated: , 19 .

NORTH AMERICAN CAR CORPORATION

By _____

EXHIBIT C

CASUALTY VALUES [Leveraged]

| <u>Quarterly Rental Payment Number</u> | <u>Casualty Value</u> |
|--|-----------------------|
| From delivery through Quarterly Rental Payment Number 1 | 107.36 |
| 2 | 107.95 |
| 3 | 108.47 |
| 4 | 108.92 |
| 5 | 109.30 |
| 6 | 109.63 |
| 7 | 109.90 |
| 8 | 110.12 |
| 9 | 110.29 |
| 10 | 110.41 |
| 11 | 110.48 |
| 12 | 110.50 |
| 13 | 110.53 |
| 14 | 103.92 |
| 15 | 103.80 |
| 16 | 103.64 |
| 17 | 103.43 |
| 18 | 103.17 |
| 19 | 102.87 |
| 20 | 102.53 |
| 21 | 102.32 |
| 22 | 95.24 |
| 23 | 94.78 |
| 24 | 94.27 |
| 25 | 93.73 |
| 26 | 93.15 |
| 27 | 92.54 |
| 28 | 91.88 |
| 29 | 91.21 |
| 30 | 83.99 |
| 31 | 83.24 |
| 32 | 82.46 |
| 33 | 81.64 |
| 34 | 80.80 |
| 35 | 79.93 |
| 36 | 79.03 |
| 37 | 78.10 |
| 38 | 77.15 |
| 39 | 76.18 |
| 40 | 75.19 |
| 41 | 74.17 |
| 42 | 73.14 |

Quarterly Rental Payment Number

Casualty Value

| | |
|-------------------|-------|
| 43 | 72.08 |
| 44 | 71.00 |
| 45 | 69.91 |
| 46 | 68.79 |
| 47 | 67.66 |
| 48 | 66.51 |
| 49 | 65.35 |
| 50 | 64.17 |
| 51 | 62.98 |
| 52 | 61.77 |
| 53 | 60.55 |
| 54 | 59.31 |
| 55 | 58.05 |
| 56 | 56.78 |
| 57 | 55.50 |
| 58 | 54.19 |
| 59 | 52.38 |
| 60 | 51.54 |
| 61 | 50.19 |
| 62 | 48.82 |
| 63 | 47.43 |
| 64 | 46.03 |
| 65 | 44.61 |
| 66 | 43.17 |
| 67 | 41.71 |
| 68 | 40.23 |
| 69 | 38.74 |
| 70 | 37.23 |
| 71 | 35.71 |
| 72 | 34.18 |
| 73 | 32.64 |
| 74 | 31.09 |
| 75 | 29.52 |
| 76 | 27.95 |
| 77 | 26.38 |
| 78 | 24.79 |
| 79 | 23.20 |
| 80 | 21.60 |
| 81 and thereafter | 20.00 |

EXHIBIT D

CASUALTY VALUES [Unleveraged]

| <u>Quarterly Rental Payment Number</u> | <u>Casualty Value</u> |
|--|-----------------------|
| From delivery through Quarterly Rental Payment Number 1 | 106.44 |
| 2 | 107.03 |
| 3 | 107.57 |
| 4 | 108.05 |
| 5 | 108.47 |
| 6 | 108.83 |
| 7 | 109.15 |
| 8 | 109.42 |
| 9 | 109.64 |
| 10 | 109.82 |
| 11 | 109.96 |
| 12 | 110.05 |
| 13 | 110.07 |
| 14 | 103.61 |
| 15 | 103.57 |
| 16 | 103.49 |
| 17 | 103.36 |
| 18 | 103.20 |
| 19 | 102.99 |
| 20 | 102.74 |
| 21 | 102.54 |
| 22 | 95.64 |
| 23 | 95.28 |
| 24 | 94.88 |
| 25 | 94.44 |
| 26 | 93.96 |
| 27 | 93.45 |
| 28 | 92.90 |
| 29 | 92.47 |
| 30 | 85.21 |
| 31 | 84.56 |
| 32 | 83.88 |
| 33 | 83.16 |
| 34 | 82.41 |
| 35 | 81.63 |
| 36 | 80.75 |
| 37 | 79.83 |
| 38 | 78.88 |
| 39 | 77.92 |
| 40 | 76.95 |
| 41 | 75.96 |
| 42 | 74.95 |

Quarterly Rental Payment Number

Casualty Value

| | |
|-------------------|-------|
| 43 | 73.93 |
| 44 | 72.89 |
| 45 | 71.84 |
| 46 | 70.77 |
| 47 | 69.68 |
| 48 | 68.57 |
| 49 | 67.45 |
| 50 | 66.31 |
| 51 | 65.15 |
| 52 | 63.97 |
| 53 | 62.77 |
| 54 | 61.55 |
| 55 | 60.32 |
| 56 | 59.06 |
| 57 | 57.78 |
| 58 | 56.48 |
| 59 | 55.16 |
| 60 | 53.82 |
| 61 | 52.46 |
| 62 | 51.07 |
| 63 | 49.67 |
| 64 | 48.24 |
| 65 | 46.78 |
| 66 | 45.30 |
| 67 | 43.80 |
| 68 | 42.28 |
| 69 | 40.72 |
| 70 | 39.15 |
| 71 | 37.55 |
| 72 | 35.92 |
| 73 | 34.26 |
| 74 | 32.58 |
| 75 | 30.87 |
| 76 | 29.13 |
| 77 | 27.36 |
| 78 | 25.57 |
| 79 | 23.74 |
| 80 | 21.89 |
| 81 and thereafter | 20.00 |