

Case entered in 8/29 - B

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RECORDATION NO. _____ Filed & Recorded

LEASE OF RAILROAD EQUIPMENT

AUG 10 1973 9 15 AM

COMMERCE COMMISSION

BETWEEN

AMERICAN ROAD EQUITY CORPORATION

AND

NORTH AMERICAN CAR CORPORATION

Dated as of August 1, 1973

LEASE OF RAILROAD EQUIPMENT dated as of August 1, 1973, between AMERICAN ROAD EQUITY CORPORATION, a Delaware corporation (hereinafter called the Lessor), and NORTH AMERICAN CAR CORPORATION, a Delaware corporation (hereinafter called the Lessee).

WHEREAS the Lessee has entered or will enter into manufacturing agreements with Pullman Incorporated (Pullman Standard Division), Butler Manufacturing Company and Thrall Car Manufacturing Company, pursuant to which the Lessee agrees to purchase and take delivery of the railroad equipment described in Schedule A hereto as manufactured by such companies, and the Lessor has entered or will enter into a manufacturing agreement with the Lessee, pursuant to which the Lessor agrees to purchase and take delivery of the railroad equipment described in Schedule A hereto as manufactured by the Lessee (such agreements being hereinafter called the Manufacturing Agreements); and

WHEREAS the Lessee has assigned or will assign its rights under the Manufacturing Agreements with Pullman Incorporated (Pullman Standard Division), Butler Manufacturing Company and Thrall Car Manufacturing Company to the Lessor pursuant to assignments of the manufacturing agreements (hereinafter called the Assignments); and

WHEREAS the Lessee desires to lease from the Lessor all the units of said railroad equipment, or such lesser number of units as are delivered and accepted on or prior to December 31, 1973, and settled for on or prior to January 15, 1974 (each such unit being hereinafter called a Unit and all of such units being hereinafter called the Units), at the rentals and for the term and upon the conditions hereinafter provided;

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

§ 1. *Delivery and Acceptance of Units; Settlement.* Each Unit to be delivered pursuant to a Manufacturing Agreement will be delivered

to the Lessee at the same point or points within the United States of America at which such Unit is delivered to the Lessor under such Manufacturing Agreement, such point or points, however, to be mutually acceptable to the Lessor and the Lessee. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Lessor and the Lessee and to execute and deliver to the Lessor a certificate of acceptance in substantially the form attached hereto as Schedule B (hereinafter called a Certificate of Acceptance), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee under this Lease and shall be subject thereafter to all the terms and conditions of this Lease.

The obligation of the Lessor to settle for any Unit on any Closing Date (as defined in the Manufacturing Agreements) shall be subject to the conditions set forth in Article 4 of the Manufacturing Agreements and to the following additional conditions:

A. the representations and warranties of the Lessee contained in subparagraphs A through G, inclusive, of the last paragraph of § 9 of this Lease shall be true and accurate on and as of such Closing Date as though made on and as of such Closing Date, no event shall have occurred and be continuing which would constitute an Event of Default (as hereinafter defined) or would constitute an Event of Default but for the requirements that notice be given or time elapse or both and the Lessor shall have received a certificate signed by a responsible officer of the Lessee to such effect;

B. the Lessor shall have received an opinion of counsel to the Lessee, dated such Closing Date and in form and substance satisfactory to the Lessor, with respect to the matters set forth in said subparagraphs A through G; and

C. the Lessor shall have received such other certificates and documents as the Lessor shall have reasonably requested.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, one payment on December 31, 1973 and

40 consecutive semiannual payments, payable on June 30 and December 31 in each year commencing June 30, 1974. The rental payment payable on December 31, 1973 shall be in an amount equal to .000278% of the Purchase Price (as defined in the Manufacturing Agreements) of each Unit then subject to this Lease for each day elapsed from and including the date such Unit has been settled for pursuant to Article 3 of the Manufacturing Agreements. The semiannual rental payments shall each be in an amount equal to 4.1183% of the Purchase Price of each Unit subject to this Lease on the date of such payment.

If any of the semiannual rental payment dates referred to above is not a business day the semiannual rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

The Lessee shall make all rental and other payments provided for in this Lease by bank wire transfer to Manufacturers National Bank of Detroit, American Road Equity Corporation Account No. 100-106881, 151 West Fort Street, Detroit, Michigan 48226, or at such other place as the Lessor shall specify in writing. The Lessee agrees to make each such payment in immediately available funds in the city where such payment is to be made.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease or lack of right, power or authority of the Lessor to enter into this Lease

or by reason of any failure by the Lessor to perform any of its obligations herein contained, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the acceptance thereof by the Lessee pursuant to § 1 hereof and, subject to the provisions of §§ 6 and 10 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder as provided in § 2 hereof (such term being sometimes hereinafter called the original term), unless such term shall have been extended as provided in § 13 hereof, in which case on the date on which the final semiannual payment of rent in respect thereof is due hereunder as provided in said § 13.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the words "LEASED FROM AMERICAN ROAD EQUITY CORPORATION, OWNER, UNDER A LEASE OF RAILROAD EQUIPMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to

time may be required by law or reasonably requested in order to protect the title of the Lessor to such Unit and the rights of the Lessor under this Lease. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit except in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where such filing, recordation or deposit shall then be required.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee, its affiliates or any sublessee permitted by § 12 hereof on railroad equipment used by them of the same or a similar type for convenience of identification of their respective rights to use the Units as permitted under this Lease or any sublease permitted by § 12 hereof.

§ 5. *Taxes.* The rentals and other amounts otherwise required to be borne by the Lessee under this Lease are exclusive of all taxes, assessments, fees and charges, including Interest Equalization Tax (hereinafter called "Imposts"), levied and imposed by the United States, any state or governmental unit (domestic or foreign), or any agency, instrumentality or taxing jurisdiction thereof:

- (i) with respect to this Lease;
- (ii) upon any Unit or Units or any interest of the Lessor and the Lessee therein;
- (iii) upon or on account of the sale, purchase, lease, transfer, ownership, possession, use, operation, maintenance, registration,

delivery or return of the Unit or Units to or by the Lessor or the Lessee; or

(iv) on account of or measured by the earnings or gross receipts arising from the ownership, lease, possession or use of the Unit or Units, or the value added thereto, other than taxes imposed on or measured by the net income of the Lessor except any such net income tax which is in substitution for, or relieves the Lessee from the payment of, any tax or other charge which the Lessee would otherwise be obligated to bear under this § 5.

The Lessee shall bear the burden and make timely remittances to appropriate tax collectors of all such excluded Imposts and file timely, with each appropriate taxing jurisdiction, all returns, statements and reports legally required with respect thereto, and shall bear the burden of and remit any interest, fines and penalties exacted because of the Lessee's failure to discharge timely the Lessee's obligations hereunder. In addition, the Lessee shall indemnify and hold the Lessor harmless from all taxes imposed under the laws of the United States, any state, political subdivision or taxing authority thereof incurred by the Lessor by virtue of the Lessee's payment of any such Imposts, fines, interest, penalties or charges. Notwithstanding the Lessee's obligation to bear the burden of the said excluded Imposts, the Lessor shall file required returns, statements, and reports relating to (i) sales or use taxes, and remit the amounts thereof to the tax collector, in those taxing jurisdictions which by law do not permit or require the computation of such taxes on the basis of rental receipts, and (ii) occupation, privilege and license taxes and fees (including taxes and fees on or measured by earnings and gross receipts) required by law to be filed by the Lessor, and remit the amounts thereof. The Lessee shall reimburse the Lessor promptly upon demand for the amount of all Imposts required hereunder to be borne by the Lessee that are remitted by the Lessor.

The Lessee shall not be required to remit to any taxing jurisdiction any Impost, unless remittance may not legally be withheld, if and so long as the Lessee shall in good faith, with due diligence, and by appro-

priate judicial or administrative proceedings, contest the validity, applicability, or amount thereof. No Impost shall be judicially contested without the prior concurrence of the Lessor, which concurrence shall not unreasonably be withheld.

The Lessee shall, whenever requested by the Lessor, submit to the Lessor copies of returns, statements, reports, billings, and remittances, or furnish other evidence satisfactory to the Lessor, of the Lessee's performance of its duties under this § 5. The Lessee shall also furnish, promptly upon request, such data relating to any Unit or Units as the Lessor reasonably may require to permit the Lessor's compliance with the requirements of any taxing jurisdiction. The Lessee shall, without the necessity of a specific request, give prompt written notification to the Lessor of the precise property tax assessment jurisdiction, or jurisdictions, in which each Unit is initially located, and if the situs thereof is thereafter changed the Lessee shall, promptly upon the Lessor's request, notify the Lessor the precise assessment jurisdiction(s) in which each Unit is subsequently situated.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties imposed on the Lessee by this § 5, the Lessor hereby authorizes the Lessee to act in the name and on behalf of the Lessor; provided, however, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith, as a result of, or incident to, any action by the Lessee pursuant to this authorization.

§ 6. *Payment for Casualty Occurrences.* The Lessee shall bear the risk of the Units being lost, destroyed or otherwise rendered permanently unfit or unavailable for use after delivery thereof to and acceptance by the Lessee hereunder. Whenever any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall, within 8 days

after it shall have been determined that such Unit has suffered a Casualty Occurrence, notify the Lessor with respect thereto. On the rental payment date next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to such rental payment date plus a sum equal to the Casualty Value of such Unit as of such rental payment date in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and title to such Unit shall pass to and vest in the Lessee.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in § 14 hereof, the Lessee shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit as of the rental payment date next preceding such Casualty Occurrence. Upon the making of any such payment by the Lessee in respect of any Unit, title to such Unit shall pass to and vest in the Lessee.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date (such numbers commencing with the rental payment due on December 31, 1973):

<u>Rental Payment Date No.</u>	<u>Percentage</u>	<u>Rental Payment Date No.</u>	<u>Percentage</u>
1 -----	101.00%	11 -----	99.09%
2 -----	101.78	12 -----	93.94
3 -----	101.78	13 -----	93.29
4 -----	102.65	14 -----	92.51
5 -----	103.33	15 -----	91.58
6 -----	103.82	16 -----	85.86
7 -----	104.14	17 -----	84.67
8 -----	99.63	18 -----	83.35
9 -----	99.61	19 -----	81.92
10 -----	99.43	20 -----	80.37

<u>Rental Payment Date No.</u>	<u>Percentage</u>	<u>Rental Payment Date No.</u>	<u>Percentage</u>
21 -----	78.72%	37 -----	43.76%
22 -----	76.99	38 -----	41.01
23 -----	75.17	39 -----	38.19
24 -----	73.31	40 -----	35.28
25 -----	71.40	41 -----	32.30
26 -----	69.43	42 -----	29.23
27 -----	67.41	43 -----	28.55
28 -----	65.33	44 -----	27.84
29 -----	63.19	45 -----	27.12
30 -----	60.99	46 -----	26.38
31 -----	58.73	47 -----	25.61
32 -----	56.40	48 -----	24.83
33 -----	54.01	49 -----	24.02
34 -----	51.55	50 -----	23.19
35 -----	49.03	51 and thereafter -	22.34
36 -----	46.43		

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Any damage payments from others, any condemnation payments and any net insurance proceeds in respect of insurance carried by or on behalf of the Lessee, received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries), shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. The excess of such condemnation payments, if any, after deduction of payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessor and the excess of such damage payments or net insurance proceeds, after deduction of payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessee. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this § 6 without deduction for such Recoveries, the Lessor shall pay such Recoveries to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such Recoveries (except any balance of damage payments or net insurance proceeds, which shall

be paid to the Lessee) shall remain the property of the Lessor. All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§ 7. *Insurance.* The Lessee will cause to be carried and maintained for the benefit of the Lessor policies of insurance on the Units subject to this Lease insuring the Lessor against loss or damage resulting from risks comparable to those risks insured against by the Lessee on other cars owned or leased by the Lessee, in an amount at least equal to the Casualty Value from time to time of such Units; *provided, however*, that the Lessee shall not be required to insure any such Unit the risk of loss of which is borne by any sublessee or user permitted by § 12 hereof. The Lessee will pay the premiums of such insurance and deliver to the Lessor at least once in every year, a certificate signed by a responsible officer of the Lessor (i) showing the amount, number and description of all Units the risk of loss of which is not then borne by a sublessee permitted by § 12 hereof, (ii) stating that insurance is in effect as to such Units and showing the amount or amounts thereof and (iii) naming the insurer or insurers. If the Lessee shall fail to maintain such insurance, the Lessor may (but shall be under no obligation so to do) cause the Units to be insured in such amount as the Lessor shall deem advisable for its protection and may demand and recover from the Lessee the premiums on such insurance plus any expense incurred by the Lessor in order to pay such premiums.

§ 8. *Annual Reports; etc.* On or before April 1 in each year, commencing with the year 1974, the Lessee will furnish to the Lessor, in such number of counterparts or copies as may reasonably be requested, a certificate of a responsible officer of the Lessee, dated as of the preceding December 31, (i) showing the amount, description and numbers of all Units then subject to this Lease, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the 12-month period ending on such December 31 (or during the period commencing on the date of this Lease and ending on December 31, 1973 in the case of the first such certificate) and such other information regarding the condition and state of repair of the Units as the Lessor may reasonably request and (ii) stating that, in the case of all Units

repaired or repainted during such period, the markings required by § 4 hereof have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its agents, but shall not be under any obligation and shall not incur any liability or obligation by reason of its failure, to inspect the Units and the records of the Lessee with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

The Lessee will also furnish to the Lessor (i) within 90 days after the end of each of the first three quarterly fiscal periods in each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and its consolidated subsidiaries prepared by it as of the close of such period, together with the related consolidated statements of income and of surplus for such period, all in reasonable detail and certified by the principal accounting or financial officer of the Lessee, (ii) within 120 days after the close of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and its consolidated subsidiaries as of the close of such fiscal year, together with the related consolidated statements of income and of surplus for such fiscal year, all in reasonable detail and certified by a recognized national firm of independent public accountants, (iii) within 60 days after the close of each quarterly fiscal period of the Lessee, a certificate of the Lessee, signed by the principal financial officer of the Lessee, to the effect that such officer has reviewed the terms and provisions of this Lease and has made, or caused to be made under his supervision, a review of the transactions and condition of the Lessee during the preceding quarterly fiscal period, and that such review has not disclosed the existence during such period, nor does such officer have knowledge of the existence as at the date of such certificate, of any condition or event which constitutes an Event of Default or which, after notice or lapse of time or both, would constitute an Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Lessee has taken or is taking or proposes to take with respect thereto, (iv) promptly upon the sending, making available or filing of the same, all such reports and financial statements as the Lessee shall send or make available to its stockholders or file with the Securities and Exchange Commission (except Forms 8-K and 10-Q and Registration Statements under the Securities Act of 1933 [excluding the final prospectuses forming a part thereof, which shall be so furnished] unless requested) or any national securities exchange on

which any securities of the Lessee are listed, and (v) from time to time such other information as the Lessor may reasonably request. The Lessee also agrees promptly to furnish to the Lessor notice in writing of (a) any matter which, in the opinion of the Lessee, might materially adversely affect the Lessee's financial condition, affairs or operations, (b) any default by the Lessee (as principal or guarantor or other surety) in the payment of any principal of or premium, if any, or interest on any indebtedness in excess of \$500,000 in respect of borrowed money or in the observance or performance of any of the covenants, conditions or agreements contained in any evidence of such indebtedness or of any mortgage, indenture or other agreement relating thereto, which default shall result in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and (c) any default by the Lessee in the payment of rent under any lease which provides for payments from the Lessee to a lessor aggregating in excess of \$500,000 or in the observance or performance of any of the covenants, conditions or agreements contained in any such lease, which default shall result in such lease being declared in default or such lessor exercising any of its remedies thereunder.

§ 9. *Disclaimer of Warranties; Compliance with Laws, Rules and Regulations; Maintenance; Indemnification; Representations and Warranties.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to its title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact, during the term of this Lease so long as an Event of Default shall not have occurred and be continuing, to assert and enforce from time to time, in the name of and for the account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have against the manufacturer of the Units or of the components thereof. The Lessor shall have no responsibility or liability to the Lessee or any other per-

son with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in any Certificate of Acceptance are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all laws of the jurisdictions in which operations involving any Unit subject to this Lease may extend, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission, if applicable, and any other legislative, executive, administrative or judicial body or officer exercising any power or jurisdiction over any such Unit, to the extent such laws and rules affect the operation or use of such Unit; and the Lessee shall and does hereby indemnify the Lessor and agrees to hold the Lessor harmless from and against any and all liability that may arise from any infringement or violation of any such laws or rules by the Lessee, the Lessee's employees or any other person. In the event that such laws or rules require the alteration of any Unit or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense and to use, maintain and operate such Unit in full compliance with such laws and rules so long as such Unit is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replace-

ments made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in the same operating order, repair and condition as when originally delivered to the Lessee (or installed on such Unit), reasonable wear and tear excepted.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (other than any special devices, racks or assemblies at any time attached or affixed to any such Unit, the cost or purchase price of which is not included in the Purchase Price of such Unit and the title to which is in a person or entity other than the Lessor or the Lessee) shall be considered accessions to such Unit and, without cost or expense to the Lessor, there shall immediately be vested in the Lessor the same interests in such accessions as the interests of the Lessor in such Unit. The Lessee may make alterations or modifications to any Unit so long as they do not affect the value of such Unit adversely. The Lessee shall not permit any special device, rack or assembly to be attached or affixed to any Unit which may not be readily removed from such Unit without materially impairing such Unit or the value thereof unless such special device, rack or assembly is to be considered an accession to such Unit.

The Lessee agrees to indemnify and save harmless the Lessor against any charge or claim made against the Lessor and against any expense, loss or liability (including but not limited to strict liability imposed by statute or rule of law, counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor may incur in any manner by reason of entering into or performing this Lease or any of the instruments or agreements referred to herein or contemplated hereby (other than expenses [including counsel fees and expenses] incurred in connection with the preparation, execution and delivery of this Lease, the Manufacturing Agreements and the Assignments and the settlement for any of the Units pursuant to Article 3 of the Manufacturing Agreements, which expenses shall be borne by the Lessor) or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, use, operation, condition, delivery, rejection, storage or return of, any Unit while subject to this Lease or until no longer in the possession of or stored by the Lessee in accordance with the terms hereof, whichever is later, and to indemnify and save harmless the Lessor against any charge, claim, expense, loss or liability (including but not limited to strict

liability imposed by statute or rule of law, counsel fees and expenses) on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property, or injury to or death of any person. The indemnities contained in this paragraph shall survive payment of all other obligations under this Lease and the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of, and furnish a copy to, the Lessor) any and all reports known by the Lessee to be required to be filed by the Lessor, or requested by the Lessor to be filed, with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Units or the leasing of the Units to the Lessee.

The Lessee represents and warrants to and for the benefit of the Lessor that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Delaware with full power (corporate and other) to enter into the Manufacturing Agreements, the Assignments and this Lease, and the Lessee is duly qualified to do business as a foreign corporation and is in good standing under the laws of the State of Illinois;

B. the Manufacturing Agreements, the Assignments and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, such filing and recordation will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other Federal, state, local or foreign government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Manufacturing Agreements, the Assignments or this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound, nor will such action result in a violation of the provisions of the certificate of incorporation or the by-laws of the Lessee or any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Lessee or any of its properties;

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

G. no proceedings are pending or threatened against the Lessee before any court or governmental agency or body which would materially adversely affect the Lessee's condition or operations so as to materially adversely affect the Lessee's ability to perform its obligations hereunder.

§ 10. *Default.* If, during the continuance of this Lease, one or more of the following events (herein sometimes called Events of Default) shall occur:

A. the Lessee shall default in the payment of any part of the rental provided for in § 2 or § 17 hereof or in the payment of any part of the Casualty Value of any Unit provided for in § 6 hereof and such default shall continue for ten days; or

B. the Lessee shall make or permit any assignment or transfer of this Lease or any sublease or use of any of the Units otherwise than as permitted by § 12 hereof; or

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

D. any representation or warranty made by the Lessee herein or in any document or certificate furnished the Lessor in connection herewith or pursuant hereto shall prove to be incorrect as of the time when made in any material respect unless the same shall be remedied without any damage to the Lessor within 30 days after written notice thereof to the Lessee; or

E. the Lessee shall default (as principal or guarantor or other surety) in the payment of any principal of or premium, if any, or interest on any indebtedness in excess of \$500,000 in respect of borrowed money or in the observance or performance of any of the covenants, conditions or agreements contained in any evidence of such indebtedness or of any mortgage, indenture or other agreement relating thereto, and such default shall result in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, except that such default shall not constitute an Event of Default hereunder unless at the time of such default at least 25% in number of the aggregate of (i) all evidences of such indebtedness or other agreements relating thereto and (ii) all leases providing for aggregate rental payments over the term thereof, from the Lessee to a lessor, in excess of \$500,000 include, as an event or events of default thereunder, a default or defaults of the same or similar kind provided for in this subparagraph E and/or subparagraph F below; or

F. the Lessee shall default in the payment of rent under any lease which provides for payments from Lessee to a lessor aggregating in excess of \$500,000, or the Lessee shall default in the observance or performance of any of the covenants, conditions or agreements contained in such a lease and such default shall result in such lease being declared in default or such lessor exercising any of its remedies thereunder, except that such default shall not constitute an Event of Default hereunder unless at the time of such default at least 25% in number of the aggregate of (i) all evidences of such indebtedness or other agreements relating thereto and (ii) all leases providing for rental payments from the Lessee to a lessor in excess of \$500,000 include, as an event or events of default thereunder, a default or defaults of the same or similar kind provided for in this subparagraph F and/or subparagraph E above; or

G. the Lessee shall consent to the appointment of a receiver, trustee or liquidator of itself or of a substantial part of its property, or the Lessee shall admit in writing its inability to pay its debts generally as they come due, or shall make a general assignment for the benefit of creditors, or the Lessee shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization in a proceeding under any bankruptcy laws (as now or hereafter in effect) or an answer admitting the material allegations of a petition filed against the Lessee in any such proceeding, or the Lessee shall by voluntary petition, answer or consent, seek relief under the provisions of any other now existing or future bankruptcy or other similar law providing for the reorganization or winding-up of corporations, or providing for an agreement, composition, extension or adjustment with its creditors; or

H. an order, judgment or decree shall be entered by any court or governmental agency of competent jurisdiction appointing, without the consent of the Lessee, a receiver, trustee or liquidator of the Lessee or of any substantial part of its property, or any substantial part of the property of the Lessee shall be sequestered, and any such order, judgment or decree of appointment or sequestration shall remain in force undismitted, unstayed or unvacated for a period of 60 days after the date of entry thereof; or

I. a petition against the Lessee in a proceeding under the Federal bankruptcy laws or other insolvency laws (as now or hereafter in effect) shall be filed and shall not be withdrawn or dismissed within 60 days thereafter, or if, under the provisions of any law providing for reorganization or winding-up of corporations which may apply to the Lessee, any court of competent jurisdiction shall assume jurisdiction, custody or control of the Lessee or of any substantial part of its property and such jurisdiction, custody or control shall remain in force unrelinquished, unstayed or untermiated for a period of 60 days;

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

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units then subject to this Lease shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit plus the present value, at the time of such termination, of the Lessor's right to require the Lessee to purchase such Unit upon the expiration of the original term of this Lease pursuant to § 13 hereof over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 5.4% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor, after considering all pay-

ments to be made hereunder to Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Investment Credit (as defined in § 17 hereof) with respect to the Units which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use any Unit or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as shall, in the reasonable opinion of the Lessor, after considering all payments to be made hereunder to Lessor, cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled (at the times and in the amounts that would otherwise have been allowable) to utilization of all or such portion of the ADR Deduction (as defined in § 17 hereof) which was lost, not claimed, not available for claim or disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the inaccuracy of any statement in any letter or document furnished to the Lessor by the Lessee, the termination of this Lease, the Lessee's loss of the right to use such Unit or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall

not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 11. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units then subject to this Lease to the Lessor. Each Unit returned to the Lessor pursuant to this § 11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in § 9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith and in the usual manner and at usual speed, cause such Units to be transported to such point or points within the United States of America as shall reasonably be designated by the Lessor, and

B. arrange for the Lessor to store such Units for a period not exceeding 360 days on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the Lessee hereby irrevocably appoints

the Lessor as the agent and the attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit. In connection therewith the Lessee will supply the Lessor with such documents as the Lessor may reasonably request.

§ 12. *Assignment; Possession and Use.* This Lease and the rentals and other sums due hereunder shall be assignable in whole or in part by the Lessor without the prior written consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including but not limited to the rights under §§ 5, 9, 10 and 17 hereof) shall inure to the benefit of the Lessor's assigns as if named herein as the Lessor. Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and each assignee of the Lessor.

This Lease shall not be assignable in whole or in part by the Lessee without the prior written consent of the Lessor; *provided, however*, that this Lease may be assigned by the Lessee to any of its affiliates; and *provided, further*, that no such assignment shall relieve the Lessee from any of its obligations hereunder. So long as no Event of Default exists hereunder and the Lessee shall have fully complied with the provisions of the fifth paragraph of this § 12 and the third paragraph of § 17 hereof, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to a sublessee incorporated in the United States of America (or any State thereof or the District of Columbia) or Canada (or any Province or Territory thereof) for use upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia) or Canada (or any Province or Territory thereof), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease; *provided, however*, that if the Lessee subleases or permits the use of any Unit in Canada (or any Province or Territory thereof), the Lessee shall, except as otherwise provided in § 15 hereof, first have (a) taken all

necessary action to protect the right, title and interest of the Lessor in the Units to be so subleased or used and (b) furnished the Lessor with an opinion of Canadian counsel satisfactory to the Lessor to the effect that such action is all that is necessary to protect the right, title and interest of the Lessor in such Units; and *provided further*, that any such sublease or use shall be consistent with the provisions of § 17 hereof.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however*, that every such sublease shall expressly subject the rights of the sublessee thereunder to the rights and remedies of the Lessor under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

In addition to, and not in limitation of, any rights or remedies which the Lessor might otherwise have, the Lessor shall have the right to declare this Lease terminated in case of any assignment or transfer of the Lessee's rights hereunder or in case of any sublease or use of any of the Units otherwise than as permitted by this § 12.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except as aforesaid and other than an encumbrance resulting from claims against the Lessor not related to the ownership or leasing of the Units an encumbrance created by the Lessor) which may at any time be imposed on or with respect to any Unit (including any accession thereto) or the interest of the Lessor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this § 12.

§ 13. *Renewal and Purchase Option; Purchase Obligation.* If this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all, but not fewer than all, of the Units then subject to this Lease, for a five-year period commencing on the scheduled termination of the original term of this Lease

and ending on the fifth anniversary of such scheduled termination, at a rental payable in 10 semiannual payments, each such payment to be in an amount equal to 40% of the semiannual rental payment rate payable during the original term as provided in § 2 hereof, such semiannual payments to be made on June 30 and December 31 of each year of such extended term.

If the Lessee shall not elect to extend the term of this Lease for an additional period of five years pursuant to this § 13, the Lessor may by written notice delivered to the Lessee not less than 90 days prior to the end of the original term of this Lease require the Lessee to purchase all, but not fewer than all, the Units then subject to this Lease for a purchase price equal to 12.5% of the Purchase Price of such Units, and forthwith upon the expiration of the original term of this Lease the Lessee shall pay to the Lessor in immediately available funds an amount equal to such purchase price.

If the Lessee shall have elected to extend the term of this Lease for an additional period of five years pursuant to this § 13, the Lessee may by written notice delivered to the Lessor not less than 180 days prior to the end of the extended term of this Lease, provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, elect to purchase all, but not fewer than all, of the Units then subject to this Lease at the end of such term for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before 120 days prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, the majority of a panel of three independent appraisers, one of whom shall

be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne ratably by the Lessor and the Lessee.

Upon payment of any purchase price described above, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under the Lessor) for such Units, and such other documents as may be required to release such Units from the terms and scope of this Lease and to transfer title thereto to the Lessee or such assignee or nominee, in such form as may reasonably be requested by the Lessee, all at the Lessee's expense.

§ 14. *Return of Units Upon Termination of Term.* As soon as practicable on or after the termination of the term of this Lease with respect to any Unit, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or of another party as the Lessor may designate, or in the absence of such designation, on such storage tracks of the Lessee or of another party, as the Lessee may select, and permit or arrange for the Lessor to store such Unit on such tracks for a period not exceeding 180 days and transport the same at any time within such 180-day period to any reasonable place on the lines of any railroad within the United States at an expense not greater than the cost to transport the same up to 1500 miles all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Unit is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same. Each Unit returned to the Lessor pursuant to this § 14 shall (i) be in the same operating order, repair and condition as

when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in § 9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which, within 90 days after expiration of this Lease, the Lessor shall elect to abandon, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume, and hold the Lessor harmless from, all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill or bills of sale (without representations or warranties) transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of this Lease; *provided, however,* that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments provided for therein in respect of any Unit experiencing a Casualty Occurrence during the term of this Lease.

§ 15. *Recording and Expenses.* Prior to the delivery and acceptance of any Unit hereunder, the Lessee will, without expense to the Lessor, cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and the Lessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Lessor's interests in

the Units or for the purpose of carrying out the intention of this Lease; *provided, however*, that the Lessee shall not be required to take any such action in respect of the use of any Unit in any jurisdiction outside the United States if (1) the Lessee deems such action to be unduly burdensome, (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law to protect the title of the Lessor to Units having a fair value of not less than 95% of the aggregate Purchase Price of all the Units then subject to this Lease, and (3) any Unit at any time located in such jurisdiction shall have been marked with the markings specified in § 4 hereof.

The Lessee will promptly furnish to the Lessor evidence of all such filing, registering, recording, depositing, refileing, reregistering, re-recording and/or re-depositing and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Lessor.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10% per annum on the overdue rentals and other obligations for the period of time during which they are overdue.

§ 17. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including, without limitation, the maximum accelerated depreciation deduction (hereinafter called the ADR Deduction) authorized under Section 167 of the Code utilizing the "class life" prescribed in accordance with Section 167 (m) with respect to the Units and the 7% investment credit (herein called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Code.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such actions and execute such documents as may

be reasonable and necessary to facilitate accomplishment of the intent thereof. The Lessee agrees to keep and make available for inspection and copying by the Lessor such records as will enable the Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the ADR Deduction with respect to the Units.

Notwithstanding anything to the contrary contained in § 12 hereof, the Lessee represents and warrants that (i) all the Units constitute property the entire Purchase Price of which qualifies for the Investment Credit under Section 38 of the Code; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute “new section 38 property” within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude “the original use of such property” within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute “section 38 property” within the meaning of Section 48(a) of the Code, will not be used predominantly outside the United States within the meaning of said Section 48(a) (or any exception thereto) and will be used by railroad companies; and (iv) this Lease is a lease for Federal income tax purposes and that the Lessor, as the owner of the Units, is entitled to all deductions, credits and other benefits as are provided by the Code with respect to the Units. The Lessee will maintain sufficient records to verify such use.

If (i) the Lessor (A) shall not be entitled to full use of the Investment Credit with respect to any Unit not the subject of an election by the Lessor under Section 48(d) of the Code, (B) shall have its tax increased on account of the recomputation of such Investment Credit pursuant to Section 47 of the Code, or (C) shall not be entitled for each of its taxable years (or portions thereof) during which this Lease is in effect to the ADR Deduction with respect to any Unit (as a result of not being allowed to the Lessor in the amounts and at the times the ADR Deduction would otherwise have been allowed); and (ii) such loss of Investment Credit or ADR Deduction or increase in tax pursuant to Section 47 of the Code is caused by or is the result of any act, failure to act, event or reason whatsoever (other than (a) a failure by the Lessor to make a timely claim for such Investment Credit or ADR Deduction in the manner prescribed by law, (b) as a result of the Lessor hav-

ing insufficient income to benefit from such Investment Credit, (c) a voluntary transfer by the Lessor without the consent of the Lessee of legal title to any Unit or a disposition of or reduction of its interest in such Unit other than as a result of any Casualty Occurrence or Event of Default hereunder, and if such transfer by the Lessor or disposition or reduction shall be the direct cause of such loss, (d) if the Lessee shall have paid to the Lessor the Casualty Value of any such Unit pursuant to § 6 hereof, and (e) a change in the tax law with respect to the Investment Credit or ADR Deduction subsequent to the date that each Unit is settled for) including without limitation the inaccuracy in law or in fact of the representations and warranties set forth in the preceding paragraph of this § 17, any statement in any letter or document furnished to the Lessor by the Lessee in connection with any application for a ruling of the Internal Revenue Service or otherwise, any Event of Default under this Lease, any Casualty Occurrence with respect to, or the sale, transfer, loss or other disposition of any Unit, then the Lessee shall pay to the Lessor, as supplemental rent, a sum (computed separately for each calendar year, or portion thereof) which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States, any political subdivision thereof, or under the laws of any taxing authority or governmental subdivision of a foreign country, shall be equal to the sum (net of any net income tax savings realized by the Lessor solely by reason of foreign income taxes being imposed on the Lessor with respect to the receipt of such sum) of (x) the amount of the Investment Credit lost by the Lessor (as a result of not being allowed to the Lessor in the amounts and at the times the Investment Credit would otherwise have been allowed) and (y) the increase in the Lessor's tax on account of any recomputation of Investment Credit, pursuant to Section 47 of the Code, and (z) an amount for each taxable year (or portion thereof) sufficient to give the Lessor the same after-tax cash flow for such taxable year (or portion thereof) as is contemplated by this Lease as would have resulted had the ADR Deduction been allowed to the Lessor in the amounts and at the times the ADR Deduction would otherwise have been allowed on the aforesaid basis, together with any interest or penalty which may be assessed by the United States Government against the Lessor in connection with such loss or recomputation of Investment Credit, or loss of ADR Deduction on the aforesaid basis,

which amount (or amounts) shall be payable on written demand made at any time after payment of the consequential additional income tax. If the Lessor, as a result of a loss of ADR Deductions with respect to any year under circumstances which required the Lessee to indemnify the Lessor with respect to such loss, becomes entitled to the benefit of additional depreciation deductions with respect to any subsequent year, the Lessor shall pay the Lessee an amount equal to the sum of the Federal income tax savings realized by the Lessor with respect to such subsequent year because of such additional depreciation deductions when, as, if and to the extent such Federal income tax savings are realized, provided that such sum shall not exceed the amounts previously paid to the Lessor under this § 17 with respect to a loss of ADR Deductions and such amount payable to the Lessee shall be credited ratably against the amount of rentals payable by the Lessee in the year such tax savings are realized by the Lessor.

If any portion of the rent to the Lessor under this Lease for any calendar year shall be treated as income from sources without the United States, the Lessee shall pay the Lessor, as supplemental rent, an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt of such amount under the laws of any Federal, state or local government or taxing authority in the United States, or under the laws of any taxing authority or governmental subdivision of a foreign country, shall be equal to the excess of the foreign tax credit which would have been allowable to the Lessor with respect to such year and all prior years if the Lessor had not participated in the transactions contemplated by this Lease over the foreign tax credit actually allowed to the Lessor with respect to such years (plus any foreign tax credits which would have been allowed but for the failure by the Lessor to properly claim such credit), together with any interest, penalties, or additions to tax which may be assessed by the United States Government against the Lessor as a result of such loss of foreign tax credits, which amount (or amounts) shall be payable on written demand made at any time after payment of the consequential additional income tax.

For purposes of this § 17, the term "Lessor" shall include the "common parent corporation" and all other corporations included in the affiliated group, within the meaning of Section 1504 of the Code, of which the Lessor is a member.

The indemnities contained in this § 17 shall apply whether or not any Unit is delivered hereunder. Except as otherwise provided, the indemnities contained in this § 17 shall survive the termination of this Lease and are expressly made for the benefit of, and shall be enforceable by the Lessor, its respective successors, assigns, agents and servants.

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

If to the Lessor—American Road Equity Corporation, Industrial Financing, CIR, P.O. Box 1729, Dearborn, Michigan 48121, attention of Manager—Senior Loan Officer;

If to the Lessee—North American Car Corporation, 222 South Riverside Plaza, Chicago, Illinois 60606, attention of Vice President—Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Any certificate, document or report required to be furnished by either party hereto to the other party shall be delivered to the address set forth above for such party.

§ 19. *Right to Possession.* So long as the Lessee is not in default under the terms of this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease without any interruption by the Lessor or by persons claiming under or through the Lessor.

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

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all

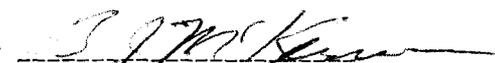
other agreements, oral or written, with respect to the Units, other than the Manufacturing Agreements and the Assignments. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 21. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument. Although this Lease is dated as of the date first set forth above, for convenience, 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.

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited or in which any Unit may be located.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be duly executed as of the date first above written.

AMERICAN ROAD EQUITY CORPORATION

By 
J. J. McKim
 Loan Officer

NORTH AMERICAN CAR CORPORATION,

By 
Francis W. Feeder
 Vice President

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this *9th* day of August, 1973, before me personally appeared *B. J. McKenna*, to me personally known, who, being by me duly sworn, says that he is a *Managing* Loan Officer of AMERICAN ROAD EQUITY 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.

M. J. [Signature]
Notary Public

My Commission expires

Notary Public State of Illinois
My Commission Expires December 18, 1976

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this *9th* day of August, 1973, before me personally appeared *Francis W. Kredler*, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR 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.

M. J. [Signature]
Notary Public

My Commission expires

Notary Public State of Illinois
My Commission Expires December 18, 1976

SCHEDULE A

<u>Manufacturer</u>	<u>Type</u>	<u>Specifications</u>	<u>Quantity</u>	<u>Lessee's Car Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	Class LO, 100 ton, 4,750 cubic foot capacity Covered Hopper Car	Manufacturer's Specification No. ²⁹⁸⁶ 2966 dated November 23, 1971. Lessee's purchase order 3M-310-A-1, dated March 26, 1973 * as modified	200	MILW100853 to 101052	\$17,839.00	\$3,567,800.00	August, 1973 Youngstown, Ohio
Pullman Incorporated (Pullman Standard Division)	Class LO, 100 ton, 4,750 cubic foot capacity Covered Hopper Car	Manufacturer's Specification No. 3110 dated October 4, 1972. Lessee's purchase order 3M-318-A-1, dated April 10, 1973 * as modified.	100	NAHX46700 to 46799	\$17,910.00	\$1,791,000.00	October, 1973 Youngstown, Ohio
Thrall Car Manufacturing Company	Class LU, 70 ton, 50'6" All Door Car	Manufacturer's Specification BX-70-50-106. Lessee's purchase order 3M-425-A-1 dated July 30, 1973	25	LUNX4995 to 5019	\$26,206.00	\$ 655,150.00	November to December, 1973 Hammond, Indiana
Butler Manufacturing Company and North American Car Corporation	Class LO, 100 ton, 3,000 cubic foot capacity P D Hopper Car	Manufacturer's Specification No. C-382556. Lessee's purchase order 3M-304-A-1, dated March 6, 1973 and 3M-408-A-1 dated April 10, 1973	12	NAHX93023 to 93034	\$23,200.00	\$ 278,400.00	September to December, 1973 Hammond, Indiana
			20	NAHX93035 to 93054	\$24,280.00	\$ 485,600.00	
North American Car Corporation	Class LO, 100 ton, 4,750 cubic foot capacity Covered Hopper Car	Based on Pullman Standard specification No. 2966, dated November 23, 1971	135	ALL NAHX 53671 to 53698 53719 to 53820 53868 to 53872	\$18,000.00	\$2,430,000.00	August to December, 1973 Hammond, Indiana
			<u>492</u>			<u>\$9,207,950.00</u>	

Lessee's car numbers and unit base prices are subject to change as may be evidenced by a supplement hereto.

SCHEDULE B

CERTIFICATE OF ACCEPTANCE

To: _____
 American Road Equity Corporation

I, _____ a Vice President of NORTH AMERICAN CAR CORPORATION (hereinafter called the "Lessee"), for purposes of the Manufacturing Agreement dated as of August 1, 1973, between the Lessee and _____, and the Lease of Railroad Equipment dated as of August 1, 1973, between the Lessee and AMERICAN ROAD EQUITY CORPORATION (hereinafter called the "Lessor"), do hereby certify that I am the duly appointed inspector and authorized representative of the Lessor and the Lessee and that on behalf of the Lessor, pursuant to said Manufacturing Agreement, and on behalf of the Lessee, pursuant to said Lease, I have inspected, received, approved and accepted delivery of the following units of railroad equipment:

Type of Equipment:

Number of Units:

Numbered:

Date Accepted:

Place Accepted:

I do hereby further certify that the foregoing cars are in good order and condition and conform to the specifications applicable thereto, and to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the foregoing type.

In addition, I do hereby further certify that there was plainly, distinctly, permanently and conspicuously marked by stencilling on each side of each unit at the time of its acceptance in a conspicuous place, in letters not less than one inch in height, the following legend:

"LEASED FROM AMERICAN ROAD EQUITY CORPORATION, OWNER, UNDER A LEASE FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c."

The execution of this certificate will in no way relieve or decrease the responsibility of the manufacturer of the railroad equipment described above to produce and deliver in accordance with the terms of said Manufacturing Agreement.

IN WITNESS WHEREOF, I have hereunto signed my name this
 day of _____, 1973.

Vice President