

No Certs

REGISTRATION NO. 7704-B

DEC 16 1974 10:25 AM

~~UNIVERSAL BUSINESS COMMISSION~~

ASSIGNMENT OF LEASE AND AGREEMENT dated as of July 15, 1974 (hereinafter called this Assignment), by and between EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee (such Trustee, together with its successors and assigns, being hereinafter called the Lessor or the Vendee), under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Beneficiary) and FIRST PENNSYLVANIA BANK N. A., as Agent under a Finance Agreement dated the date hereof (hereinafter called the Agent).

WHEREAS, the Vendee and NORTH AMERICAN CAR CORPORATION (hereinafter called the Lessee) are entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Document), with PULLMAN INCORPORATED (Pullman-Standard division) and NORTH AMERICAN CAR CORPORATION, in its capacity as builder, providing for the sale to the Vendee of the units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS the Lessor and the Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the leasing by the Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Agent to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Document), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Agent;

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

1. Subject to the provisions of Paragraph 11 hereof, the Lessor hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including,

without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Agent in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Lessor under the Security Document, subject to the limitations contained in the last paragraph of Article 4 of the Security Document, and any balance shall be paid immediately to and retained by the Lessor. If the Agent shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Agent shall notify the Lessor at the address set forth in the Lease.

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

3. To protect the security afforded by this Assignment, the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease

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

(b) At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Agent for such costs, expenses and fees.

4. Subject to the provisions of paragraph 11 hereof, the Lessor does hereby constitute the Agent the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the Lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce

compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Lessee's and the Lessor's obligations under the Security Document, this Assignment and all rights herein assigned to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Lessor.

6. On each Closing Date (as defined in the Security Document) the Lessor will furnish the Agent with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Agent in order to confirm or further assure the interests of the Agent hereunder.

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

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Agent at its address set forth in Article 21 of the Security Document, or at such other address as the Agent shall designate.

11. The Agent hereby agrees with the Lessor that the Agent will not, so long as an event of default under the Security Document has not

occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Agent by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

12. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Exchange National Bank of Chicago are each and every one of them made and intended not as personal representations, undertakings and agreements by said Bank, 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 used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by said Bank solely in the exercise of the powers expressly conferred upon said Bank as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Bank, or the Beneficiary or on account of any representation, undertaking or agreement of said Bank or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Agent and by all persons claiming by, through or under the Agent; *provided, however*, that the Agent or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing herein contained shall limit, restrict or impair the rights of the Agent to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against said Bank (provided that neither said Bank in its fiduciary or individual capacity nor the Beneficiary shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of said Bank or the Beneficiary) or, subject to the terms and conditions of the Lease, to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Lessee under the Lease and the Security Document.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 13 day of DECEMBER, 1974 before me personally appeared MICHAEL D. GOODMAN to me personally known, who, being by me duly sworn, says that he is Vice President of EXCHANGE NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank 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 bank.

Kathleen M. Nugent
Notary Public
Oct. 1, 1976

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 12 day of December, 1974, before me personally appeared *A. M. Keayer*, to me personally known, who, being by me duly sworn, says that he is Vice President of FIRST PENNSYLVANIA BANK N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national bank and that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Elizabeth J. Schelha
Notary Public

[NOTARIAL SEAL]

My Commission expires

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires March 1, 1976

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of July 15, 1974.

NORTH AMERICAN CAR CORPORATION,

Louis H. Hansen
by
Vice President

