

NOVEMBER 8 1973

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RECORDATION NO. \_\_\_\_\_ FILED & RECORDED

EQUIPMENT LEASE

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Dated as of October 15, 1973, INTERSTATE COMMERCE COMMISSION

AMONG

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee under a Trust Agreement  
dated as of October 15, 1973,  
as Lessor

AND

NORTH AMERICAN CAR CORPORATION,  
as Lessee

(N.A.C. Trust No. 73-1)

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Attachments to Lease

- Schedule A - Description of Equipment
- Schedule B - Certificate of Acceptance under  
Equipment Lease
- Schedule C - Schedule of Casualty Value

THIS EQUIPMENT LEASE dated as of October 15, 1973 between EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee (the "Lessee") under a Trust Agreement dated as of October 15, 1973 (the "Trust Agreement") with COMMERCIAL CREDIT CAPITAL CORPORATION, a Delaware corporation (the "Trustor") and NORTH AMERICAN CAR CORPORATION, a Delaware corporation (the "Lessee");

W I T N E S S E T H:

WHEREAS, the Lessor and the Lessee have entered into an Acquisition Agreement dated the date hereof (the "Acquisition Agreement") with GENERAL ELECTRIC COMPANY (the "Manufacturer") providing for the acquisition by the Lessor of the railroad equipment (collectively the "Equipment" and individually as "Item of Equipment") described in Schedule A, attached hereto and made a part hereof; and

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement, dated the date hereof (the "Conditional Sale Agreement"), with the Manufacturer, providing for the manufacture, sale and delivery to the Lessor of the Items of Equipment described in Schedule A; and

WHEREAS, by instrument of Agreement and Assignment dated the date hereof, the Manufacturer has assigned or will assign its right, security title and interest under the Conditional Sale Agreement to The First Pennsylvania Banking and Trust Company, as Assignee (the "Assignee"); and

WHEREAS, the Lessee desires to lease all of the Items of Equipment or such lesser number as are delivered to and accepted under the Conditional Sale Agreement on or prior to the outside delivery date set forth in said Schedule, at the rentals and for the terms 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 Equipment to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Manufacturer and its assigns under the Conditional Sale Agreement.

## SECTION 1. DELIVERY AND ACCEPTANCE OF EQUIPMENT

The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an authorized representative of the Lessee (who may be an authorized representative of any sub-lessee pursuant to Section 17.4 hereof) to inspect the same, and if such Item of Equipment is found to conform to the specifications therefor, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and to the Manufacturer thereof a certificate of acceptance (hereinafter called "Certificate of Acceptance") substantially in the form attached hereto as Schedule B, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rentals for Equipment. The Lessee agrees to pay the Lessor for each Item of Equipment sixty (60) quarterly installments of Fixed Rental each payable in arrears in the amount provided for such Item of Equipment in Schedule A hereto.

2.2. Fixed Rental Payment Dates. The first installment of Fixed Rental shall be due and payable on such date not later than March 31, 1974 which is three calendar months after the Closing Date referred to in Section 3.5 of the Conditional Sale Agreement. The second through the sixtieth installments of Fixed Rental for each Item of Equipment shall be due and payable quarterly commencing three calendar months after the first Fixed Rental payment date for such Item.

2.3. Place of Rent Payment. Subject to Section 16 hereof, all payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by wire transfer of Federal funds at its address set forth in Section 21.1 hereof, or at such other place as the Lessor or its assigns shall specify in writing.

2.4. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against Manufacturer or against the Assignee, or against any entity having a beneficial interest in the obligations to be performed under the Conditional Sale Agreement; 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 or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 hereof, shall terminate, subject to Section 20 hereof, on the date for payment of the sixtieth (60th) installment of Fixed Rental, provided for in Section 2.1 hereof.

### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Retention of Title. The Lessor is acquiring full legal title to the Equipment as Vendee under the Conditional Sale Agreement (but only upon compliance with all the terms and conditions thereof) and, it is understood that Lessee shall acquire no right, title or interest to the Equipment except hereunder notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2 Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased as Lessor by EXCHANGE NATIONAL BANK OF CHICAGO, as Trustee under Trust Agreement with COMMERCIAL CREDIT CAPITAL CORPORATION, as Trustor, and subject to a Security Interest recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use or sublease the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2. Tax Indemnification. It is the intent and agreement of the parties to this lease that for Federal income tax purposes the Trust will constitute a "Grantor Trust" with the Trustor as the Owner of the trust and that the Trustor shall be entitled to such deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended, to the date hereof or subsequently (hereinafter called the Code), to an Owner and original user of property, including (without limitation) the investment tax credit of seven percent (7%) computed on the acquisition cost of the Equipment in accordance with the provisions of Section 38 and Sections 46 through Section 50 of the Code, and depreciation under any of the methods enumerated in Section 167(b) of the Code and using the appropriate asset guideline life in accordance with Section 167(m) of the Code with the variations allowed by applicable regulations (commonly referred to as the Asset Depreciation Range Guidelines). It is understood and agreed to by the parties to this lease that this Section 6.2 is for the benefit of the Owner of the trust, Commercial Credit Capital Corporation (hereinafter called the "Trustor") and that the Lessor as agent of the Trustor, and as Trustee under the "Grantor Trust" is, vested with all the right, power and authority to enforce this Section 6.2.

Trustor of any tax, penalty or interest resulting from any action taken to sustain any claims hereunder, and the furnishing to Trustor of any reasonable security as may be requested. At all times the Trustor reserves the right to direct Counsel not to take or to cease taking all legal or other appropriate action deemed reasonable by Counsel in order to sustain any bonafide claim herein, hereby, such action by Trustor will relieve Lessee of its obligations under this Section 6.2 in respect to the particular claim(s) not so contested.

The Lessee's agreement to pay any sums which may become payable pursuant to this Section 6.2 shall survive the expiration or other termination of this Lease.

6.3. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or 15 as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2. Tax Indemnification. The Lessee acknowledges that the Trustor, as Trustor of the Grantor Trust which is the Lessor shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the Closing Date (hereinafter called the "Code"), to an owner of the property including (without limitation) the seven percent investment tax credit computed on the purchase price of each Item of Equipment pursuant to Section 38 and related Sections of the Code in connection with the acquisition and continued ownership of the Equipment for a period of seven years or longer ("Investment Credit") and depreciation of the purchase price of each Item of Equipment under any of the methods enumerated in Section 167(b) of the Code using the Asset Guideline Class 00.25 (Railroad Cars and Locomotives) (12 year ADR) as prescribed in Revenue Procedure 72.10 and in accordance with Section 167(m) of the Code with the variations allowed by applicable regulations, commonly referred to as Asset Depreciation Range Guidelines ("ADR Deduction"). It is understood and agreed that this Section 6.2 is for the benefit of Trustor and that Lessor, as Agent of the Trustor, and as Trustee under the Grantor Trust, as well as Trustor, is vested with the right, power and authority to enforce this Section 6.2. As of the date of the signing of this Lease, it is contemplated that the Lessor will join in the filing of a consolidated federal income tax return. Since the effect of this Section 6.2 will vary depending on the manner in which the federal tax report is prepared by Trustor, this Section 6.2 will become operative whether Trustor files a separate return or is a member of an affiliated group filing a consolidated income tax return.

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

The Lessee represents and warrants that (i) none of the Items of Equipment constitutes property the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the ownership of the Items of Equipment is transferred by the Manufacturer, each Item of Equipment will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time ownership of the Items of Equipment is transferred by the Manufacturer, each Item of Equipment 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 Trustor or Lessor and (iii) the Lessee will not at any time during the term of this Lease, use, or fail to use any unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

If at any time (i) the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Trustor, all or any portion of the Investment Credit with respect to any Item of Equipment, or (ii) there shall have been enacted any amendment to the Internal Revenue Code of 1954, as amended, prior to the Closing Date, which could operate to reduce or eliminate the Investment Credit with respect to any Item of Equipment, the Lessee shall, to the extent any assessment against the Trustor is made by the Internal Revenue Service and paid by the Trustor with respect to the Investment Credit claimed, lost, or disallowed, or not available to be claimed, promptly upon written notice pay to the Trustor as liquidated damages (for the loss of a bargain and not as a penalty) an amount equal to the sum of:

(a) the quotient of (i) the difference between 7% of the Trustor's qualified investment in the Item of Equipment (or the total Investment Credit previously allowed the Trustor with respect to such Item of Equipment) and the Investment Credit with respect to the Item of Equipment which is allowed to the Trustor (before taking into account any limitation on the amount of such credit based upon the Trustor's Federal Income Tax liability or the tax liability of the affiliated group of which Trustor is a member or the Federal Income Tax liability of the Trustor should Trustor file a separate income tax return) plus the amount of any federal tax penalties attributable to any act or omission of the Lessee required to be paid by the Trustor divided by (ii) that percentage which is the difference between (1) 100% and (2) the sum of (x) the highest effective federal income tax and/or excess profits tax rate generally applicable to domestic corporations (including therein the effect of any applicable surtax, surcharge and/or any federal tax

related to any tax on net income or excess profits) for the taxable year of the Trustor in which the payment of liquidated damages are herein required (hereinafter referred to as the "federal tax rate") plus (y) the highest effective generally applicable rate of tax imposed by the State of Maryland on corporate net income and/or excess profits for the taxable year of the Trustor in which the payment of liquidated damages is herein required multiplied by that percentage which is the difference between 100% and the federal tax rate for such year, plus

(b) the amount of any tax deficiency interest which is required to be paid by the Trustor and is attributable to the period prior to the Lessee's payment to the Trustor of the liquidated damages.

If at any time (i) the Trustor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Trustor, all or any portion of the ADR Deduction with respect to any Item of Equipment, or (ii) there shall have been enacted any amendment to the Internal Revenue Code of 1954 as amended, prior to the Closing Date which would operate to reduce or eliminate the ADR Deduction with respect to any Item of Equipment, or (iii) at any time during the original term of this Lease the Trustor is required by the Internal Revenue Service to substitute a longer useful life for tax depreciation purposes than Asset Guideline Class 00.25 (12 year ADR), then the rental rate applicable to such Item of Equipment set forth in Section 2 of this Lease (including any necessary adjustment, increase or decrease, as applicable, to the Casualty Loss Values as provided for under Section 11.3 of this Lease) shall, on and after the next succeeding rental date after written notice to the Lessee by the Trustor of the occurrence of any such event, be increased by such amount for such Item of Equipment which, in the reasonable opinion of the Trustor, will cause the Trustor's net rate of return over the term of the Lease in respect of such Item of Equipment to equal the net rate of return that would have been available if such event had not occurred and the Lessee shall forthwith pay to the Trustor the amount of any interest which may be assessed by the United States against the Trustor attributable to the occurrence of such event and which has been paid by the Trustor. If all or any portion of the ADR Deduction shall be permanently lost or disallowed or not available to be claimed, then, in order to carry out the intent of this Section 6.2 there shall be made all necessary retroactive adjustments in the rentals and casualty values theretofore paid, which adjustments as relates to the ADR Deductions permanently lost, disallowed or not available to be claimed, shall be paid by the Lessee to Lessor or Trustor by means of one lump-sum payment.

If the Trustor shall have lost or shall not have, or shall have lost the right to claim, or if there shall have been disallowed to the Trustor all or any portion of the Investment Credit or ADR Deduction with respect to Items of Equipment as a direct result of the occurrence of any of the following events:

(i) a Casualty Occurrence with respect to such Item of Equipment, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 11.3 hereof;

(ii) a transfer by the Trustor or Lessor of legal title or equitable interest therein to such Item of Equipment, the disposition by the Lessor or Trustor of any interest in such Item of Equipment or the reduction by the Lessor or Trustor of their interest in the rentals from such Item of Equipment under the Lease (except the subjection of such Item of Equipment to the Conditional Sale Agreement or the payment of rentals and other amounts hereunder to the Vendor as specified in Section 3 hereof), unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment of the Conditional Sale Agreement prior to an Event of Default hereunder without the prior written consent of the Lessee hereunder;

(iv) the failure of the Trustor to properly claim the tax benefits in its Federal Income Tax Return;

(v) the failure of the Trustor to take timely action in contesting a claim made by the Internal Revenue Service with respect to the disallowance of such tax benefits, if the failure to take such action in a timely manner shall have precluded the right of the Lessee to contest such claim, or a failure to take action to contest any such claim after a timely request to conduct such contest has been given by the Lessee to the Trustor (provided that the Lessee shall upon demand of the Trustor pay to the Trustor the expenses of any such contest as a condition of prosecuting the same); or the release, waiver, compromise or settlement of any action or proceeding taken in accordance with this clause (v) by the Trustor without the prior written consent of the Lessee,

(vi) any change in the tax law subsequent to the Closing Date;

(vii) the failure of the consolidated federal income tax return of the affiliated group of which Trustor is a member, or Trustor's tax return in the event Trustor files a separate income tax return, to reflect sufficient liability for tax against which to credit such investment credit or sufficient income to benefit from the ADR Deduction, as applicable;

then, the lessee shall not be required to pay any liquidated damages under this Section 6.2 and the rental rate shall not be so adjusted under this Section 6.2 as relates to that Investment Credit and/or ADR Deductions so lost, disallowed, or not available to be claimed as a result of any of the above seven enumerated events.

In the event a claim shall be made by the Internal Revenue Service through the issuance of a Revenue Agent's Report or Issue Memorandum with respect to the disallowance of the Trustor's Investment Credit or ADR Deduction in respect of any Item of Equipment the Trustor agrees to take such action in connection with contesting such claim as the Lessee shall reasonably request from time to time provided, that: (i) within 30 days after notice by the Trustor to the Lessee of such claim, the Lessee shall make request that such claim be contested; (ii) the Trustor, at its sole option, may forego any and all administrative appeals, proceedings, hearings, and conferences with the Internal Revenue Service in respect of such claim and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United States District Court and/or the United States Court of Claims, as the Trustor shall elect, or contest such claim in the Tax Court of the United States, considering however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed; (iii) prior to taking such action, the Lessee shall have furnished the Trustor with an opinion of independent tax counsel satisfactory to the Trustor to the effect that a meritorious defense exists to such claim; and (iv) the Lessee shall have indemnified the Trustor in a manner satisfactory to Trustor for any liability or loss which the Trustor may incur as the result of contesting such claim and shall have agreed to pay the Trustor on demand all costs and expenses which the Trustor may incur in connection with contesting such claim, including, without limitation (a) reasonable attorneys' and accountants' fees a sum which after deduction of all taxes required to be paid by the Trustor in respect of the receipt thereof which shall equal disbursements and (b) the amount of any interest or penalty which may ultimately be payable to the United States Government as the result of contesting such claim, and the Lessee shall have furnished reasonable security for such indemnification as may be requested. In the case of any such claim by the Internal Revenue Service referred to above, the Trustor agrees promptly to notify the Lessee in writing of such claim and agrees not to make any payments with respect to the tax claimed for at least 30 days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Trustor, and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim. At all times the Trustor reserves the right to direct its tax counsel not to take or to cease taking all legal or other appropriate action deemed reasonable by such counsel in order to sustain all or any part of any bona fide claim herein, whereby, such action by Trustor will relieve Lessee of its obligation under this Section 6.2 in respect to the paid claim(s) or that part of the paid claim(s) not so contested.

If the Trustor's right to claim such portion of the Investment Credit and/or ADR Deduction with respect to an Item of Equipment wherein the Lessee has made any lump-sum payment relating to the loss, disallowance or unavailability to Trustor of such Investment Credit or ADR Deduction, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Trustor shall release, waive, compromise or settle any claim without the written consent of the Lessee and Lessor (either event hereinafter called a "Final Settlement") then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the Trustor shall reimburse Lessee in an amount equal to:

(a) the liquidated damages (other than the amount representing the interest assessed against and paid by the Trustor, which has not been reimbursed to Trustor by Lessee) paid by the Lessee which are attributable to the Investment Credit or ADR Deduction allowed as a result of such Final Settlement; plus,

(b) interest from the date the liquidated damages are paid to the Trustor at the rate of six percent (6%) per annum on the Investment Credit or ADR Deduction allowed as a result of such Final Settlement.

If the Trustor's right to claim all or any part of the full ADR Deduction with respect to an Item of Equipment, which was not claimed or was disallowed, shall be established by the final judgment or decree of the court or administrative agency having jurisdiction thereof, or if the Trustor shall release, waive, compromise or settle any claim without the written consent of the Lessee (both events hereinafter called a "Final Settlement"), then, on the next succeeding rental payment date thereafter, or after such judgment or decree shall have become final, as the case may be, the rental rate in respect of such Item of Equipment shall be adjusted by such amount for such Item of Equipment which, in the reasonable opinion of the Trustor, will cause the Trustor's net rate of return over the remaining term of the Lease in respect of such Item of Equipment computed in accordance with the fifth paragraph of this Section to be equal to the net rate of return that would have been available if adjusted initially by taking into account such final settlement when computing the net rate of return in accordance with the fifth paragraph of this Section, and the Trustor shall forthwith upon demand of the Lessee reimburse Lessee in an amount equal to the excess, if any, of (i) the sum of (A) the difference between the increased rental paid by the Lessee with respect to such Item of Equipment pursuant to the fifth paragraph of this Section and the rental rate applicable to such

Item of Equipment computed in accordance with this paragraph and (B) any interest paid by the Lessee to the Trustor pursuant to the fifth paragraph of this Section over (ii) the difference between (a) an amount equal to interest at the rate of 8-1/2% per annum on the amount of any federal income tax paid by the Trustor on account of the disallowance or inability to claim ADR Deduction on such Item and (b) the amount of any interest to which the Trustor would be entitled in connection with the refund of any tax paid on account of such disallowance or inability to claim; provided, however, that if the amount calculated in accordance with clause (ii) exceeds the amount calculated in accordance with clause (i), the Lessee shall pay such excess to the Trustor promptly on demand.

The Lessee's and the Trustor's agreement to pay any sums which may become payable pursuant to this Section 6.2 shall survive the expiration or other termination of this Lease.

6.3. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or 15 as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements.

#### SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and

repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessories to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

#### SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease, the Conditional Sale Agreement and the first assignment thereof to be duly filed, recorded or deposited in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the Assignee and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, the Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action.

10.2. Payment of Taxes. The Lessee, or the Lessor at the Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (excluding any tax measured by the Lessor's net income and any gross receipts or gross income taxes in substitution for or by way of relief from the payment of taxes measured by such net income, provided that the Lessee agrees to pay that portion of any such tax on or measured by rentals payable hereunder or the net income therefrom which is in direct substitution for, or which relieves the Lessee from, a tax which the Lessee would otherwise be obligated to pay under the terms of this Section), together with any penalties or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be assessed against or in the name of the Lessor or the Lessee; provided, however, that the Lessee shall not be required to pay or discharge any such tax or assessment (i) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment; however, the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge, or (ii) as to assessments against or in the name of anyone other than the Lessee, until 20 days after written notice thereof shall have been given to the Lessee.

SECTION 11. INSURANCE, PAYMENT FOR CASUALTY OCCURRENCE OR EQUIPMENT UNSERVICEABLE FOR USE.

11.1. Insurance. The Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies against risks customarily insured against by other railroad companies on similar equipment. Such insurance may provide that losses shall be adjusted with the Lessee and shall provide that the proceeds thereof shall be payable to the Lessor, the Assignee, and the Lessee as their interests shall appear. All proceeds of insurance received by the Lessor and the Assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and the Assignee that any damage to any item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and the Assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which by its terms does not exceed the Term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor in regard thereto.

11.3. Payment for Casualty Loss. When the aggregate Casualty Value (as herein defined) of Items of Equipment having suffered a Casualty Occurrence (exclusive of Items of Equipment having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Lessor pursuant to this Section 11) shall exceed \$60,000, the Lessee, on the next succeeding rental payment date, shall pay to the Lessor the rental installment due on such rental payment date for such Items of Equipment plus a sum equal to the Casualty Value of such Item or Items of Equipment as of the date of such payment; provided that notwithstanding the foregoing the Lessee shall on the last rental payment date of each calendar year pay to the Lessor a sum equal to the Casualty Value of any Item or Items of Equipment which have suffered a casualty occurrence during such calendar year or any prior year for which no payment has previously been made to the Lessor pursuant to this Section 11.3.

11.4. Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment and the rental installment due on such payment date, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item or Items of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item or Items of Equipment.

11.6. Casualty Value. The "Casualty Value" of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the original cost to the Lessor of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 1 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor, the Trustor and the Lessor's assigns an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor, the Trustor and the Assignee each shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or the Trustor or, as the case may be, the Assignee the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90 day period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee, provided however that if the Lessee exercises its option to withdraw and rescind an election to purchase the Equipment pursuant to Section 20.1 hereof or to renew the lease term pursuant to Section 20.2 hereof, such storage period shall be for a period not exceeding 180 days. All movement and storage of each such Item 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 any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment 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 to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 hereof or in Section 11 hereof and such default shall continue for five days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within 40 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession; or

(c) Default shall be made 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 40 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Lessee becomes insolvent or bankrupt or admits in writing its inability to pay its debts as they may mature, or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a trustee or receiver for Lessee or for the major part of its property, or Lessee shall make any voluntary assignment or transfer of Lessee's interest as Lessee hereunder in a manner or to a person not permitted by the terms hereof;

(e) A trustee or receiver is appointed for Lessee, or for the major part of its property and is not discharged within 60 days after such appointment;

(f) Bankruptcy, reorganization, arrangements, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted by or against Lessee, and if instituted against Lessee are allowed against Lessee or are consented to or are not dismissed with 90 days after such institution;

14.2. Remedies. If any Event of Default has occurred and is continuing, 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 right of the Lessee to the use of the Equipment shall absolutely cease and terminate 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 Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts 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 a fraction of which the numerator is such accrued number of days in such full rental period 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 Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such present worth to be computed in each case on a basis of a 4.60% per annum discount, compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, other than for the payment of rental.

14.3. Cumulative Remedies. 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 any of 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 of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4 Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any 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.

14.5. Termination by Assignee of Conditional Sale Agreement. Anything in this Lease to the contrary notwithstanding, if the Assignee of the Conditional Sale Agreement shall, upon the occurrence of an Event of Default as defined therein, state in a written notice to the Lessor and Lessee that this Lease terminates, this Lease shall, immediately upon receipt by Lessee of such notice, terminate as to all the Items of Equipment and the rights of the Lessee hereunder shall at all times and in all respects be subject and subordinate to the rights and remedies of the Assignee under the Conditional Sale Agreement.

#### SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or the Assignee shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment on the Lessee's tracks or if no such storage place is available, in such reasonable storage place as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's tracks for a period not exceeding 180 days at the risk of the Lessee; and

(c) Transport the Equipment, at any time within such 180 days' period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment 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 assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

#### SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder have been assigned to the Assignee pursuant to Section 25 of the Conditional Sale Agreement, and all rent and other sums due and to become due hereunder shall be paid to the Assignee at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention: Corporate Trust Department, or at such other place as the Assignee shall specify in writing. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or re-coupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the

Assignee, the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the Assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Assignee) which by the terms of this Lease and are permitted or provided to be exercised by the Lessor.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment, except as provided in Section 17.4 hereof. 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 Equipment, except to the extent permitted by the provisions of Sections 17.2 and 17.4 hereof.

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee will not assign any Item of Equipment to service including the regular operation and maintenance thereof outside the United States of America. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation affiliated with the Lessee or to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety.

17.4. Sublease to the Chicago, Rock Island and Pacific Railroad Company. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to sublease the Equipment to any company or railroad, including without limitation the Chicago, Rock Island and Pacific Railroad Company, a Delaware corporation (the "Railroad"). The leasehold estate of the Railroad, as sublessee of the Equipment, may be subject to the lien of the General Mortgage of the Railroad dated January 1, 1950 (the "Mortgage") to Joseph C. Williams and The First National Bank of Chicago, as Trustees, as supplemented or amended. No such Mortgage, lien, charge, encumbrance or sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain those of a principal and not a surety.

SECTION 18. OPINION OF LESSEE'S COUNSEL.

Concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will deliver to the Lessor ten counterparts of the written opinion of counsel for the Lessee addressed to the Lessor and to the Assignee, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease, the Acquisition Agreement of even date herewith among the Lessor, the Lessee and the Manufacturer and the Finance Agreement of even date herewith among the Lessee, the Assignee and certain institutional investors have each been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

(d) This Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment in the United States of America;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance by the Lessee of said Acquisition Agreement, said Finance Agreement or this Lease;

(f) The execution and delivery by the Lessee of said Acquisition Agreement, said Finance Agreement and this Lease do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except as contemplated and permitted hereby; and

(g) As to any other matter which the Lessor shall reasonably request.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to 10% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. OPTIONS TO PURCHASE AND RENEW.

20.1. Option to Purchase. Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all but not less than all of the Equipment then leased hereunder at the expiration of the original term or any extension thereof at a price equal to the "fair market value" (as defined). The Lessee shall give the Lessor written notice 240 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds there current against

delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of the Equipment or any other matters.

(b) The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise the purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within 30 days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company. The fair market value as finally determined shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 9% per annum. At any date not less than 180 days prior to the expiration of the original term or any extension thereof, the Lessee may at its option withdraw and rescind its election to exercise the purchase option provided for in this Section without further liability to the Lessor.

(c) Unless the Lessee has given the Lessor 240 days notice as required in connection with exercise of the foregoing option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 13 hereof.

(d) 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 at the end of the original term of this Lease all but not fewer than all the Items then subject to this Lease for a purchase price equal to 15% of such Items. The Lessee shall so purchase all such Items only after a reasonable effort has been made on the part of the Lessor and/or Lessee, acting as agent for the Lessor, to sell all but not fewer than all Items of Equipment at a fair market value in excess of such purchase price.

Notwithstanding any election of the Lessee to purchase, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase unless the purchase price has been agreed upon by the parties pursuant to this Section 20.1, in which event such purchase price shall govern.

20.2. Option to Renew. Provided that the Lessee is not in default, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extended this Lease as to all, but not less than all, of the Equipment then leased hereunder for five additional renewal terms of two years each upon and subject to the terms and conditions herein contained for the original term of this Lease, excepting only that the quarterly Fixed Rental payable for and during such renewal terms shall be an amount equal to the "fair rental value" (as defined) of such Equipment. Each such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice not less than 240 nor more than 310 days prior to the end of the original term or the then current renewal term of its election to exercise any renewal option provided for by this Section 20.2.

(b) The "fair rental value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair rental value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise any renewal option, the fair rental value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair rental value is not so determined within 30 days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company. At any date not less than 180 days prior to the expiration of the original term or any extension thereof, the Lessee may at its option withdraw and rescind its election to exercise the renewal option provided for in this Section without further liability to the Lessor.

## SECTION 21. MISCELLANEOUS.

21.1. 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 certified mails, first class postage prepaid, addressed as follows:

If to the Lessor: Exchange National Bank of Chicago  
130 South LaSalle Street  
Chicago, Illinois  
Attention: Harold Z. Novak  
Senior Vice President and  
Trust Officer

with a copy of any such notice to:

Commercial Credit Capital Corporation  
301 North Charles Street  
Baltimore, Maryland  
Attention: President

If to the Lessee: North American Car Corporation  
222 South Riverside  
Chicago, Illinois 60606  
Attention: Vice President - Finance

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

21.2 Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

21.3. Law Governing. This Lease shall be construed in accordance with the laws of Illinois; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

21.4. Limitations of Liability. It is expressly understood and agreed by and between the Lessor, the Trustor and the Lessee and their respective successors and assigns, that this Lease is executed by Exchange National Bank, not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Exchange National Bank hereby warrants that it possesses full power and authority to enter into and perform this Lease); and it is expressly understood and agreed that, except in the case of gross negligence or wilful misconduct of the Lessor or the Trustor, nothing herein contained shall be construed as creating any liability on the Lessor or the Trustor, individually or personally, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly

waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee; and that so far as Lessor or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and their corporate seals to be hereto affixed as of the day and year first above written.

(Corporate Seal)

ATTEST:



Assistant Trust Officer

(Corporate Seal)

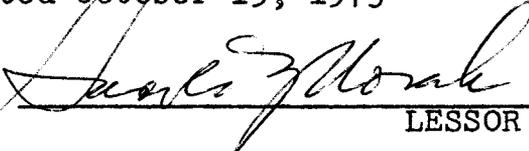
ATTEST:



Secretary

EXCHANGE NATIONAL BANK OF CHICAGO,  
as Trustee under a Trust Agreement  
dated October 15, 1973

By

 Senior Vice Presi  
LESSOR

NORTH AMERICAN CAR CORPORATION

By

  
Its Executive V.P.

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 13 day of NOVEMBER, 1973, before me personally appeared HAROLD Z. NOVAK, to me personally known, who being by me duly sworn, says that he is a Senior Vice President of Exchange National Bank, 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.

(Seal)

Kathleen M. Nugent  
Notary Public

My Commission Expires:

Oct. 1, 1976

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 13<sup>th</sup> day of Nov., 1973, before me personally appeared Robert B. Dypenbauer, to me personally known, who being by me duly sworn, says that he is a Executive V.P. 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.

(Seal)

Thomas J. Kelly  
Notary Public

My Commission Expires: 4/11/76

SCHEDULE A  
(to Equipment Lease)

MANUFACTURER: General Electric Company

PLANT OF MANUFACTURER: Erie, Pennsylvania

DESCRIPTION OF EQUIPMENT: Eighteen 3000 H. P. Model U30C Diesel Electric Locomotives, bearing Road Numbers R. I. 4582 to R. I. 4599, both inclusive

BASE PRICE: \$326,345 per Item (\$5,874,220 for eighteen Items)

DELIVER TO: Chicago, Rock Island and Pacific Railroad Company

PLACE OF DELIVERY: Erie, Pennsylvania

ESTIMATED DELIVERY DATES: October - December, 1973

OUTSIDE DELIVERY DATE: December 24, 1973

FIXED RENTAL PAYMENTS: Sixty (60) quarterly rental payments in arrears each equal to 2.30485% of the price of each Item of Equipment

Lessee: North American Car Corporation

Assignee of Manufacturer: The First Pennsylvania Banking and Trust Company

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

To: Exchange National Bank, as Trustee under  
Trust Agreement dated October 15, 1973,  
as Vendee and Primary Lessor ("Vendee-Lessor")  
  
North American Car Corporation, as Lessee ("Lessee")  
  
General Electric Company ("Manufacturer")

I, a duly appointed inspector and authorized representative of CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY ("Sublessee") and of the above named Vendee-Lessor and Lessee, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee under the Equipment Lease dated as of October 15, 1973 between the Vendee-Lessor and the Lessee, on behalf of the Vendee-Lessor under the Conditional Sale Agreement dated as of October 15, 1973 among General Electric Company (the "Manufacturer"), the Vendee-Lessor and the Lessee, and on behalf of the Sublessee under the Equipment Lease dated as of October 15, 1973 between the Lessee, as lessor, and the Sublessee, as lessee, of the following Items of Equipment ("Equipment"):

TYPE OF EQUIPMENT:

MANUFACTURER: GENERAL ELECTRIC COMPANY

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF ITEMS:

NUMBERED: R. I. #

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Item of Equipment the following legend in letters not less than one inch in height:

"Leased as Lessor by Exchange National Bank,  
as Trustee under Trust Agreement with Com-  
mercial Credit Capital Corporation, as Trustor,  
and subject to a Security Interest Recorded  
with the I.C.C."

(N.A.C. Trust No. 73-1)

SCHEDULE B  
(to Equipment Lease)

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for warranties it has made with respect to the Equipment.

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Inspector and Authorized  
Representative of Sublessee,  
Vendee-Lessor and Lessee

NORTH AMERICAN CAR CORPORATION

SCHEDULE OF CASUALTY VALUE

The Casualty Value of an Item of Equipment payable on any rental payment date shall mean an amount equal to the per cent of total cost to the Lessor of such Item, including all taxes and delivery charges, set forth opposite such Rental Payment Date in the following schedule:

<u>Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Total Cost Payable As Casualty Value</u>
March 27, 1974	109.25
June 27, 1974	109.20
September 27, 1974	109.18
December 27, 1974	109.14
March 27, 1975	109.04
June 27, 1975	108.80
September 27, 1975	108.66
December 27, 1975	108.39
March 27, 1976	108.06
June 27, 1976	107.67
September 27, 1976	107.23
December 27, 1976	102.25
March 27, 1977	101.70
June 27, 1977	101.09
September 27, 1977	100.44
December 27, 1977	99.73
March 27, 1978	98.97
June 27, 1978	98.16
September 27, 1978	97.30
December 27, 1978	91.90
March 27, 1979	90.94
June 27, 1979	89.93
September 27, 1979	88.88
December 27, 1979	87.77
March 27, 1980	86.63
June 27, 1980	85.43
September 27, 1980	84.19
December 27, 1980	78.42

SCHEDULE C  
(to the Equipment Lease)

Rental Payment Date on  
which Casualty Value is  
Paid (Payment in Addition  
to Rent Payment)

Percentage of  
Total Cost  
Payable As  
Casualty Value

March 27, 1981	77.10
June 27, 1981	75.73
September 27, 1981	74.32
December 27, 1981	72.87
March 27, 1982	71.39
June 27, 1982	69.86
September 27, 1982	68.29
December 27, 1982	66.70
March 27, 1983	65.13
June 27, 1983	63.30
September 27, 1983	61.41
December 27, 1983	59.49
March 27, 1984	57.51
June 27, 1984	55.34
September 27, 1984	53.11
December 27, 1984	50.83
March 27, 1985	48.51
June 27, 1985	46.13
September 27, 1985	43.70
December 27, 1985	41.22
March 27, 1986	38.68
June 27, 1986	36.09
September 27, 1986	33.44
December 27, 1986	30.73
March 27, 1987	27.96
June 27, 1987	25.13
September 27, 1987	22.24
December 27, 1987	19.45
March 27, 1988	17.22
June 27, 1988	15.50
September 27, 1988	15.25
December 27, 1988	15.00