

Filing III



NORTH AMERICAN CAR CORPORATION
33 West Monroe
Chicago, IL U.S.A. 60603
Telephone 312.853.5000
Telex #255222

1-260A025
No. UEC 30 1981
Date
Fee \$ 110.00
ICC Washington, D. C.

December 29, 1981

13394
RECORDATION NO. Filed 1450

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

DEC 30 1981 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

Dear Secretary:

I have enclosed an original and several counterparts of the document described below, to be recorded pursuant to section 11303 of title 49 of the U.S. Code.

This document is a Conditional Sale Contract, a primary document, dated December 29, 1981.

The names and addresses of the parties to the documents are as follows:

Vendor: North American Car Corporation, 33 West Monroe Street, Chicago, Illinois 60603.

Vendee: Excel Transnational, Inc., Oak Brook Office Pavillion, 2601 West 22nd Street, Oak Brook, Illinois 60521.

A description of the equipment covered by the Conditional Sale Contract is contained in Exhibit A to that Conditional Sale Contract.

A fee of \$50.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to the messenger presenting this document for recordation.

A short summary of the document to appear in the index follows:

Conditional Sale Contract between North American Car Corporation, vendor, 33 West Monroe Street, Chicago, Illinois 60603, and Excel Transnational, Inc., Oak Brook Office Pavillion, 2601 West 22nd Street, Oak Brook, Illinois 60521, and covering the equipment referred to above.

Very truly yours,

Edward H. Soderstrom II
Assistant Secretary

Mindy Lins
Quadruped

12/30/81

Interstate Commerce Commission

Washington, D.C. 20423

12/30/81

OFFICE OF THE SECRETARY

Edward H. Soderstrom 11
Assist. Secretary
North American Car Corp.
33 West Monroe
Chicago, Illinois 60603

Dear Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/30/81 at 11:25am, and assigned re-
recording number (s). 13394 & 13394-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

Filing III

CONDITIONAL SALE CONTRACT

RECORDATION NO. **13394** Filed 1425

Purchaser's Name EXCEL TRANSNATIONAL, INC.

) DEC 30 1981 - 11 25 AM

Address Oak Brook Office Pavilion Suite 8
2601 West 22nd Street

) INTERSTATE COMMERCE COMMISSION

City Oak Brook County of DuPage State IL

)

To NORTH AMERICAN CAR CORPORATION
(Railcar Division)

)

December 29, 1981

)

33 West Monroe, Suite 2400, Chicago, IL 60603)

)

)

The undersigned (hereinafter referred to as Purchaser) whose name and address are given above, hereby agrees on the terms and conditions described herein to purchase the equipment described below:

Quantity	Serial Number	Description	Purchase Price
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30 Covered Hopper Railcars identified on Exhibit A hereto for a purchase price of \$18,000 per car (or an aggregate purchase price of \$540,000)

The purchaser agrees to pay the Seller the total purchase price as follows:

(a) \$400 per car (or an aggregate of \$12,000) payable to the Seller upon the execution of this Conditional Sale Contract;

(b) \$600 per car (or an aggregate of \$18,000) payable to the Seller in cash on June 30, 1982;

(c) \$5,235 per car (or an aggregate of \$157,050), together with interest at the rate of 15% per annum from and after the date of this Conditional Sale Contract, payable to the Seller in 28 equal monthly installments of \$220 (principal and interest), payable on the first day of each month commencing January 1, 1982 (provided, that additional interest on any overdue installment shall not commence, and any such installment shall not be deemed to be in default for purposes of any other provision of this Contract, until 90 days after the due date thereof), and

(d) \$11,765 per car (or an aggregate of \$352,950), together with interest at the rate of 15% per annum from and after the date of this Conditional Sale Contract, payable in full on April 30, 1984 in a single

payment (principal and interest) of \$16,600 per car; provided that recourse of the Seller for payment of the portion of the purchase price described in this subparagraph (d) (but not for payment of the portions of the purchase price described in paragraphs (a) through (c) above) shall be limited to the Cars purchased hereunder, such recourse being limited as to any Car to the portion of the aggregate purchase price represented by such Car.

Title to said equipment and any replacements, additions and accessions thereto shall remain in Seller or Seller's assigns, irrespective of any retaking and redelivery thereof to Purchaser, until the indebtedness due hereunder is fully and timely paid in lawful money of the United States in compliance with the foregoing and until all other obligations hereunder are fully performed, at which time only shall ownership pass to Purchaser. Said equipment shall remain chattels and personal property at all times and shall not become part of any realty or freehold.

Purchaser's principal place of business is as given above, and Purchaser agrees to notify Seller by registered mail at Seller's address given below at least ten days before changing the location of its principal place of business. Purchaser further agrees to execute any documents, including a new agreement containing terms substantially similar to this agreement, if Seller deems it necessary in order to protect its rights and priority after such removal. Purchaser agrees that the equipment will not be used for any unlawful purpose.

If at any time Purchaser should become insolvent, or make or attempt or agree to make any general assignment for the benefit of creditors or if any bankruptcy proceedings are at any time commenced either by or against Purchaser, or if Purchaser disposes of or encumbers any or all of said equipment or attempts to do so, or if for any reason or cause any or all of said equipment is attached or subjected to lien of any kind, or Purchaser should fail to make any of the payments herein provided or fail to perform any or all of the other provisions hereof, either in the manner or within the time herein specified, or both, then in any one or more or all of such cases, and without any demand or notice whatsoever to Purchaser, and without any writing or other formality, or particular act or conduct being required of Seller, at any time or at all, other than those specifically required by law and which under the law cannot be waived by Purchaser, Seller may in its sole discretion and at its option: Declare all unpaid amounts immediately due and payable and sue therefor without passing title to the equipment and without waiving Seller's title to the equipment or Seller's right to retake the equipment or to exercise any other remedy reserved to Seller hereunder or provided by law; or retake immediate possession of said equipment, remove the same to Seller's address shown above, or to such other place as Seller may deem most safe and convenient, and resell the same at such place or wherever else is deemed most convenient at one or more private or public sales at such time or times, and in such manner and under such conditions as Seller may deem advisable, with or without the said equipment being present (at which sale Seller or Seller's

assigns may be purchaser and which sale may be for cash and/or credit and/or goods); and after deducting all lawful expenses (including but not limited to expenses of retaking, repairing, holding and reselling said equipment, together with reasonable attorneys' fees and court costs incurred therein, and the actual amount of any sales commission incurred by Seller in connection with such sale not to exceed 10% of the sale price, or such of these as are permitted by law), credit the net proceeds thereof to the unpaid balance due under this agreement, and Purchaser agrees to pay Seller or Seller's assigns any difference or deficiency remaining due hereunder after such sale is completed and the net proceeds so applied, provided, however, that if the net proceeds of such sale exceed the unpaid balance under this agreement, such excess shall be paid to Purchaser; or retake immediate possession of said equipment, in which event, at Seller's option (and still without any notice, declaration, formality or other particular act or conduct being required of Seller other than those specifically required by law and which under the law cannot be waived by Purchaser), all of Purchaser's right, title and equity in, to and under said equipment and this agreement shall cease and terminate, and Seller shall forthwith be released from all obligations to transfer title or possession of said equipment to Purchaser, and all sums theretofore paid by Purchaser hereunder shall be and remain Seller's property, not as a penalty but as part compensation for Purchaser's prior use of said equipment and for the depreciation thereof. In addition to the remedies specifically provided for under this agreement, Seller may at its option take advantage of any additional remedies available under the applicable laws and statutes, provided always that Seller shall abide by and follow all remedies or procedures which are made mandatory by applicable laws and statutes. Pursuant to the foregoing Purchaser hereby promises, covenants, agrees, warrants and represents: That Purchaser shall yield and surrender possession of said equipment to Seller or Seller's assigns promptly upon demand; and that any such retaking of possession of said equipment by Seller or Seller's assigns may be done or effected, with or without legal process, wherever the same may be found and without any liability to Seller, Seller's agents, employees or assigns for trespass, from which liability Purchaser hereby expressly agrees to hold Seller, Seller's agents, employees and assigns forever free and harmless; and Seller may take possession of any article or articles in said equipment and Purchaser agrees to give Seller notice by registered mail within 24 hours after Seller retakes possession of said equipment of any claim or interest in the articles, and failure to do so shall constitute a waiver and a bar to any subsequent claim for the return of any of said articles, and Seller may hold and dispose of said articles in the same manner as the equipment, and Purchaser waives, on his own behalf and agrees to indemnify and save harmless the Seller against any claims for damages by reason of the taking, storage or sale of any such article or articles; and that in the event of any delinquency in the payment of any one or more installments hereunder, interest on each past due installment shall accrue after its due date at the highest rate permitted by law, or, if not permitted by law, Purchaser shall pay Seller or Seller's assignee delinquency and collection charges at the highest lawful rate; and that in the event of any such delinquency, Purchaser shall pay Seller or Seller's assignee

all reasonable collection expenses incurred or paid by Seller or Seller's assignee, including attorneys' fees, if referred to an attorney not a salaried employee of the holder of this contract for collection, and court costs, if permitted by law. If any action or litigation or proceeding is at any time brought by Seller against Purchaser, or by Purchaser against Seller, in which any of the rights, interests, liabilities and obligations of Seller or Purchaser, or both Seller and Purchaser, under this agreement shall in any way be or become an issue, and if Seller shall prevail in whole or in part therein, then Purchaser shall pay to Seller on demand Seller's reasonable attorneys' fees, costs and reasonable additional expenses incurred therein, if permitted by law, and in every case in which Seller recovers judgment therein, such attorneys' fees, costs and expenses may be made and become a part of such judgment. If at any time Seller shall deem it necessary, in order to protect its rights and/or priority under or by virtue of this agreement, to institute or intervene in any litigation or proceeding, or if Seller shall be made a party to any litigation or proceeding in any way involving this agreement, the said equipment, or Seller's or Purchaser's respective rights hereunder or if Seller shall be required, or deem it necessary in order to protect its rights hereunder, to respond or answer to, compromise, settle or negotiate for the settlement or compromise of any claim or demand by any person which is or may become a lien upon all or any part of said equipment, including claims for taxes or other public charges by any state or bona fide political entity, then Purchaser agrees to promptly pay and reimburse Seller for all costs thereof, together with reasonable charges and expenses, including attorneys' fees, if permitted by law, incurred or paid by Seller or imposed upon Seller as a result thereof or in connection therewith.

This agreement is not assignable by Purchaser except by and with the written consent of Seller and/or Seller's assigns, and all of the terms and conditions herein contained shall apply to and bind Purchaser's heirs, executors, administrators, successors, assigns and legal representatives, and shall inure to the benefit of Seller's successors and assigns. Seller's acceptance of any installment or payment after it or the full amount hereof may have become due and payable hereunder or, except as provided therein, the granting of renewals or extensions shall not be deemed to alter or affect Purchaser's obligations or Seller's rights hereunder. Waiver or condonation of any breach or default shall not constitute a waiver of any other or subsequent breach or default. Purchaser admits notice of Seller's intended assignment of this agreement and agrees to settle all claims against Seller, directly with Seller, Seller hereby agreeing to remain responsible therefor.

It is understood and agreed that Purchaser may be required to give its promissory note or notes or trade acceptances for the installment payments due hereunder, but that such notes or trade acceptances shall merely be evidence of Purchaser's contractual obligations hereunder and shall not be given by Purchaser nor accepted by Seller as payment thereof or any part thereof or in lieu of any part of Purchaser's contractual obligation hereunder or as a waiver of any of the express terms hereof.

Any monies hereafter paid to Seller by Purchaser or on Purchaser's behalf may be applied by Seller to the installment or obligations hereunder earliest in date of maturity or longest overdue, or upon any other obligation or obligations (secured or unsecured) then due to Seller from Purchaser upon or in connection with any other separate and distinct transaction, or transactions, in Seller's sole discretion and without the necessity of notice, election, or proof, and Purchaser hereby expressly waives any right Purchaser may have, insofar as permitted by law, to make or manifest any binding direction upon or to Seller as to the manner of application of such payment of such monies other than as herein provided.

Any notice provided for in this agreement or by law, to be given to Purchaser, addressed to Purchaser's last known address, shall be conclusively deemed to have been given and received by Purchaser on the date the same was mailed.

It is understood that Seller or Seller's assigns shall not be bound by any oral agreements, guarantees, representations or warranties, past, present or future, representing said equipment or Purchaser's obligations hereunder, not contained in this agreement which Purchaser has read and understands, and that future modifications hereof may be made only in writing signed by Seller. Seller may correct patent errors herein. Purchaser represents that no credit except that set forth herein has been made or is to be made.

The risk of loss of said equipment shall be on the Purchaser. The loss, injury or destruction of the equipment shall not release Purchaser from any of Purchaser's obligations hereunder. Purchaser agrees to assume all responsibility and all liability arising from the possession, use or operation of the equipment either for negligence or otherwise, by whomsoever used or operated and agrees to indemnify and save Seller harmless from all claims of all persons and entities, arising out of or in any manner connected with the possession, use or operation of the equipment described above.

Purchaser expressly waives all exemptions and Homestead laws.

Time is of the essence of this agreement. Purchaser, if more than one person or entity, agrees that the obligation to perform each of the conditions and provisions of this agreement shall be joint and several.

It is agreed that each condition and provision contained in this agreement shall be divisible and separate from all other conditions and provisions, and if any conditions or provisions are prohibited by law, it is the express intention of the parties hereto that such conditions or provisions shall be inoperative without impairing or invalidating any other condition or provision.

This agreement may be executed, acknowledged and delivered in any number of counterparts each of which shall be deemed to be an original.

All rights of the Seller in, to and under this agreement and in and to the equipment shall pass to and may be exercised by any assignee thereof. The Purchaser agrees that if the Seller gives notice to the Purchaser (a) of an intended assignment of said rights and thereafter such an assignment is made or (b) of such assignment having been made, then, in either event, the liability of the Purchaser to the assignee shall be immediate and absolute, and the Purchaser will not set up any claim against the Seller as a defense, counterclaim or set-off to any action brought by any such assignee for the unpaid balance owed hereunder or for possession of the Cars.

It is understood and agreed that the sale of the equipment is on an "AS IS" and "WHERE IS" basis, and Seller neither assumes or authorizes any person to assume for it any liability of any kind whatsoever in connection with such sale. It is further understood and agreed that Seller shall not be liable for any indirect or consequential damages of any kind whatsoever.

It is understood and agreed that this agreement shall not become effective until this document is properly filed with the Interstate Commerce Commission pursuant to 12 U.S.C. § 11303.

IN WITNESS WHEREOF, Purchaser has caused this agreement to be signed by its duly authorized officers as of the date first above written.

ACCEPTED:

NORTH AMERICAN CAR CORPORATION

By James F. Compton
Vice President

[Corporate Seal]

Attest:

[Signature]
Title: Assistant Secretary

EXCEL TRANSNATIONAL, INC.

By [Signature]
Chairman of the Board

[Corporate Seal]

Attest:

[Signature]
Title: Secretary

STATE OF Illinois)
) SS.
COUNTY OF Cook)

On this 29th day of December, 1981, before me personally appeared James F. Compton, to me personally known who being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.


Notary Public

[Notarial Seal]

My Commission Expires: February 13, 1983

RIDER 7 - 30 CARS

All reporting mark initials are "SFLC"

<u>MARKS</u>	<u>SERIAL NUMBER</u>	<u>MARKS</u>	<u>SERIAL NUMBER</u>
801119	52846	801337	54521
801121	52892	801338	54522
801318	49623	801399	54586
801324	54505	801400	54587
801325	54506	801401	54588
801327	54508	801402	54589
801328	54510	801403	54590
801329	54511	801404	54591
801330	54512	801405	54592
801331	54513	801406	54593
801332	54514	801407	54594
801333	54515	801408	54595
801334	54516	801409	54596
801335	54518	801410	54597
801336	54519	801412	54599