

CRAVATH, SWAINE & MOORE

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RECORDATION NO. 12066 Filed & Recorded

AUG 4 1980 -1 55 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 12066-4 Filed & Recorded

AUG 4 1980 -1 55 PM

INTERSTATE COMMERCE COMMISSION

No. 1003
Date AUG 4 1980

Fee \$ 100.00

ICC Washington, D. C.

RECORDATION NO. 12066 Filed & Recorded

AUG 4 1980 -1 55 PM

INTERSTATE COMMERCE COMMISSION

Lease Financing Dated as of June 1, 1980
15% Conditional Sale Indebtedness Due 2000

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, enclosed for filing and recordation on behalf of MHC, Inc., are counterparts of the following documents:

- 1. (a) Conditional Sale Agreement dated as of June 1, 1980, between North American Car Corporation and Exchange National Bank of Chicago, as Trustee;
- (b) Agreement and Assignment dated as of June 1, 1980, between North American Car Corporation and La Salle National Bank, as Agent;
- 2. (a) Lease of Railroad Equipment dated as of June 1, 1980, between MHC, Inc., ConAgra, Inc. and Exchange National Bank of Chicago, as Trustee; and
- (b) Assignment of Lease and Agreement dated as of June 1, 1980, between Exchange National Bank of Chicago, as Trustee and La Salle National Bank, as Agent.

The names and addresses of the parties to the

New Number

- A

- B

- C

ConAgra ET Mergenovich

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aforementioned Agreements are as follows:

(1) Builder-Vendor-NAC:

North American Car Corporation
222 South Riverside Plaza
Chicago, Illinois 60606

(2) Vendee-Trustee:

Exchange National Bank of Chicago
130 South LaSalle Street
Chicago, Illinois 60690

(3) Agent:

La Salle National Bank
135 South LaSalle Street
Chicago, Illinois 60690

(4) Lessee:

MHC, Inc.
200 Kiewit Plaza
Omaha, Nebraska 68131

(5) Guarantor:

ConAgra, Inc.
200 Kiewit Plaza
Omaha, Nebraska 68131

Please file and record the documents referred to above and index them under the names of the Builder-Vendor-NAC, the Vendee-Trustee, the Agent, the Lessee and the Guarantor.

The equipment covered by the aforementioned documents consists of the following:

5,000 PD covered hopper cars, AAR Mechanical Designation LO 5000, bearing identifying numbers of the Lessee CAGX 50000 through CAGX 50049, both inclusive.

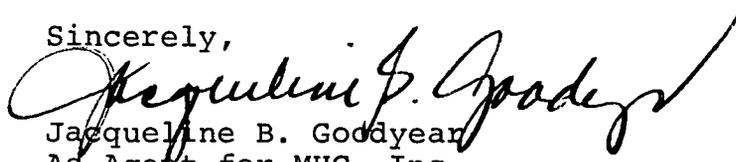
Also enclosed is a check for \$100 payable to the Interstate Commerce Commission, representing the fee

for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents, retain one copy of the documents for your files and forward the remaining counterparts to me.

Thank you for your assistance.

Sincerely,



Jacqueline B. Goodyear
As Agent for MHC, Inc.

Ms. Agatha L. Mergenovich,
Interstate Commerce Commission,
Washington, D.C. 20423

Encl.

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RECORDATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 4876-025]

AGREEMENT AND ASSIGNMENT

Dated as of June 1, 1980

Between

NORTH AMERICAN CAR CORPORATION

and

LA SALLE NATIONAL BANK,
as Agent.

AGREEMENT AND ASSIGNMENT dated as of June 1, 1980, between NORTH AMERICAN CAR CORPORATION, a Delaware corporation ("NAC"), and LA SALLE NATIONAL BANK, a national banking association, as agent ("Agent") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

NAC and EXCHANGE NATIONAL BANK OF CHICAGO, acting as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with OMNABANC LEASING COMPANY ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the conditional sale and delivery by NAC to the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment").

MHC, INC. ("Lessee"), CONAGRA, INC. ("Guarantor"), and the Trustee have entered into a Lease of Railroad Equipment dated as of the date hereof ("Lease") providing for the lease of the Equipment to the Lessee, and the Trustee and the Agent have entered into an Assignment of Lease and Agreement dated as of the date hereof ("Lease Assignment") providing for the assignment of the Lease to the Agent.

In consideration of the agreements hereinafter set forth, the parties hereto agree as follows:

SECTION 1. Assignment by NAC. NAC hereby assigns to the Agent, its successors and assigns:

(a) all the right, title and interest of NAC in and to each unit of Equipment when and as severally delivered to and accepted by the Trustee, subject to payment by the Agent to NAC of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of NAC in and to the CSA (except the right to deliver the Equipment and the right to receive the payments specified in Section 4.3(a) thereof and reimbursement for taxes paid or incurred by NAC) and (except as aforesaid) in and to any and all amounts which may be or become due or owing to NAC under the CSA on account of the

indebtedness in respect of the Purchase Price (as defined in Section 4.1 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee under the CSA, other than those hereinabove excluded; and

(c) except as limited by subsection (b) of this Section, all NAC's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against NAC for or on account of the failure of the Trustee to make any of the payments provided for in the CSA or otherwise to comply with any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Agent to or transfer or in any way affect or modify the obligations of NAC to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Articles 2, 14 and 20 of the CSA or relieve the Trustee from its obligations to NAC contained in Articles 3, 4, 6 and 14 of the CSA, it being agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of NAC to the Trustee with respect to the Equipment shall be and remain enforceable by the Trustee and its successors and assigns against and only against NAC. NAC hereby authorizes and empowers the Agent in the Agent's own name or in the name of the Agent's nominee or in the name of and as attorney for NAC, hereby irrevocably constituted, to demand, sue for and collect any and all sums to which the Agent is or may become entitled under this Assignment and to enforce compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Agent.

SECTION 2. Delivery of Equipment. NAC agrees that it will construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Trustee in accordance with the provisions of the CSA and, notwithstanding this Assignment, will perform and fully comply with each of the covenants and conditions of the CSA set forth to be performed and complied with by it. NAC further agrees to warrant to the Agent and the Trustee that at the time of delivery of each unit of Equipment by it under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was

free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the CSA, the Agent under this Agreement and the Lessee under the Lease (and any rights arising under such rights); and further agrees that it will defend the title so conveyed to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by it under the CSA; all subject, however, to the provisions of the CSA. NAC will not deliver any unit of Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (NAC being entitled to rely on advice from special counsel for the Agent that such filing has occurred).

SECTION 3. Indemnification by NAC. NAC agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of CSA Indebtedness (as defined in the CSA) or interest thereon or to enforce any provision of the CSA, NAC will indemnify, protect and hold harmless the Agent from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee, the Lessee or the Guarantor arising out of a breach by NAC of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or arising by reason of any other indebtedness or liability at any time owing to the Trustee, the Lessee or the Guarantor by NAC (in which case NAC shall be subrogated to the rights of the Agent against such parties). NAC's obligation so to indemnify, protect and hold harmless is conditional upon (a) the Agent's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee, the Lessee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent's prompt notification to NAC of the asserted defense, setoff, counterclaim or recoupment and the Agent's giving NAC the right, at NAC's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Trustee, the Lessee or the Guarantor and not manufactured by NAC and in cases of designs, systems,

processes, formulae or combinations specified by the Lessee or the Guarantor and not developed by NAC, NAC agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any unit of Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to NAC of any claim actually known to the Agent which is based upon any such alleged infringement and will give to NAC the right, at NAC's expense, to compromise, settle or defend against such claim. NAC agrees that any amounts payable to it by the Trustee, the Lessee or the Guarantor with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Agent, shall not be secured by any lien, charge or security interest upon any unit of Equipment.

SECTION 4. Payment on Each Closing Date. The Agent shall pay to NAC on each Closing Date an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of Section 4.3(b) of the CSA, is payable in installments, provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Agent (with a copy to NAC and the Trustee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Agent, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale ("Bill of Sale") from NAC to the Agent, transferring to the Agent the security interest of NAC in such units, warranting to the Agent and to the Trustee that, at the time of delivery of such units under the CSA, NAC had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the CSA and the Lessee and the Guarantor under the

Lease (and any rights arising under such rights), and covenanting to defend the title so conveyed to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by NAC to the Trustee under the CSA;

(b) a Certificate or Certificates of Acceptance on behalf of the Trustee and the Lessee with respect to such units as contemplated by Section 3.4 of the CSA and § 2 of the Lease;

(c) the Invoice (as defined in Section 4.1 of the CSA) for such units and, if the price per unit is greater than the price set forth in Annex B to the CSA, the Invoice shall be accompanied by or have endorsed thereon a certification by the Trustee and the Lessee as to their approval thereof;

(d) an opinion of counsel for NAC, dated as of the Closing Date, addressed to the Agent and the Trustee, to the effect that the Bill of Sale has been duly authorized, executed and delivered by NAC and is valid and effective, together with the CSA and this Assignment, to vest in the Agent the security interest of NAC in such units, free from all claims, liens, security interests and other encumbrances at the time of delivery to the Trustee arising from, through or under NAC (other than those created by the CSA and the rights of the Lessee and the Guarantor under the Lease);

(e) a receipt from NAC for any payment (other than the payment being made by the Agent pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to NAC with respect to such units, unless such payment is made by the Agent with funds furnished to it for that purpose by the Trustee; and

(f) such other certificates or opinions as the Agent may reasonably request.

The obligation of the Agent hereunder to make payment for any unit of Equipment is hereby expressly conditioned upon receipt by the Agent, pursuant to the terms of the Participation Agreement, of sufficient funds to make such payment and upon payment by the Trustee of the amount required to be paid by it pursuant to Section 4.3(a) of the CSA. In the event that the Agent shall not make any such

payment, the Agent shall reassign to NAC, without recourse to the Agent, all right, title and interest of the Agent in and to the units of Equipment with respect to which payment has not been made by the Agent.

SECTION 5. Assignment by Agent. The Agent may assign all but not less than all of its rights under the CSA, including the right to receive any payments due or to become due to it from the Trustee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 6. Warranties and Agreements by NAC.
NAC hereby

(a) represents and warrants to the Agent, the Trustee, the Owner and their respective successors and assigns that the CSA and this Assignment were duly authorized by it and lawfully executed and delivered by it for a valid consideration and that, assuming due authorization, execution and delivery by the other parties thereto, the CSA and this Assignment are legal, valid and binding instruments enforceable against it in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Agent, the Trustee, the Owner or their respective successors or assigns, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts as may be necessary and appropriate to give effect to the provisions hereinabove set forth and more perfectly to confirm the right, title and interest hereby assigned to the Agent or intended so to be; and

(c) agrees that subsequent to payment in full of the Purchase Price, upon request of the Agent or Trustee or their respective successors and assigns, it will execute and deliver any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of NAC therein or in the Equipment.

SECTION 7. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, such additional rights arising out of the filing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement may be filed or in which any unit of the Equipment shall be located and any rights arising out of the marking on the units of Equipment.

SECTION 8. Headings. Section headings have been provided for convenience only and shall not affect the interpretation of this Assignment.

SECTION 9. Execution. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Agent shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

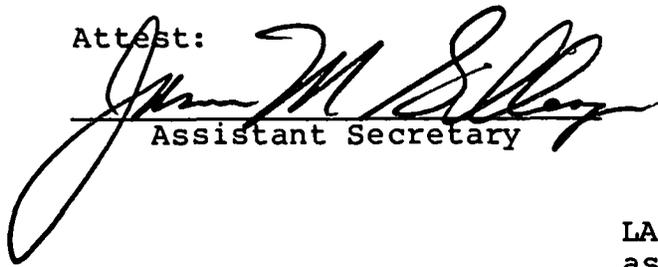
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

NORTH AMERICAN CAR CORPORATION,

by 
Vice President

[Corporate Seal]

Attest:


Assistant Secretary

LA SALLE NATIONAL BANK,
as Agent,

by 
Vice President

[Seal]

Attest:

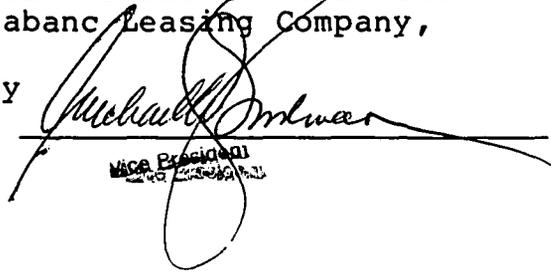

Assistant Secretary

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of and due notice of the assignment made by the foregoing Agreement and Assignment is hereby acknowledged as of June 1, 1980.

EXCHANGE NATIONAL BANK OF
CHICAGO, not in its individual
capacity but solely as Trustee
under a Trust Agreement dated
as of the date hereof with
Omnabanc Leasing Company,

by


Vice President

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this ^{1ST} day of August 1980, before me personally appeared R. D. Tidball, to me personally known, who, being by me duly sworn, says that he is a Vice President of NORTH AMERICAN CAR CORPORATION, a Delaware 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.

Janet L. Santarelli
Notary Public

[Notarial Seal]

My Commission expires October 23, 1982

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

WILLIAM C. VONDER HEIDE

On this (day of August 1980, before me personally appeared ~~ROLAND K. WEBER~~, to me personally known, who, being by me duly sworn, says that he is a Vice President of LA SALLE NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Patricia M. Kennedy
Notary Public

[Notarial Seal]

My Commission expires

My Commission Expires August 24, 1982