

CRAVATH, SWAINE & MOORE

11216

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212 HANOVER 2-3000

TELEX  
RCA 233663  
WUD 125547  
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RICHARD S. SIMMONS  
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THOMAS D. BARR  
MELVIN L. BEDRICK  
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CHRISTINE BESHAR  
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RICHARD M. HARRIS  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. WELLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAULSBERRY  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
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RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN

RECORDATION NO. 11216 Filed 1425  
DEC 19 1979-1 55 PM

INTERSTATE COMMERCE COMMISSION

*Country of Origin: Czech Republic*

RECORDATION NO. 11216/B Filed 1425  
DEC 19 1979-1 55 PM

INTERSTATE COMMERCE COMMISSION

No. 9-353A057

Date ~~DEC 19 1979~~  
Fee \$ 100.00

ICC Washington, D. C.

MHC, Inc. (ConAgra, Inc.)

Lease Financing Dated as of December 1, 1979  
10% Conditional Sale Indebtedness Due 2000

RECORDATION NO. 11216 Filed 1425

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INTERSTATE COMMERCE COMMISSION

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INTERSTATE COMMERCE COMMISSION

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CABLE ADDRESSES  
CRAVATH, N. Y.  
CRAVATH, PARIS  
CRAVATH, LONDON E. C. 2

December 19, 1979

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 December 1, 1979, between Railway Marketing Corporation and Exchange National Bank of Chicago, as Trustee;

(b) Agreement and Assignment dated as of December 1, 1979, between Railway Marketing Corporation and La Salle National Bank, as Agent; and

2. (a) Lease of Railroad Equipment dated as of December 1, 1979, between MHC, Inc., ConAgra, Inc., and Exchange National Bank of Chicago, as Trustee;

(b) Assignment of Lease and Agreement dated as of December 1, 1979, between Exchange National Bank of Chicago, as Trustee, and La Salle National Bank, as Agent.

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

(1) Agent-Vendor:

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

(2) Trustee:

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

(3) Vendor:

Railway Marketing Corporation  
450 Park Avenue  
New York, New York 10022

(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 cross-index them under the names of the Agent-  
Vendor, the Trustee, the Vendor, the Lessee and the Guarantor.

The equipment covered by the aforementioned docu-  
ments consists of the following:

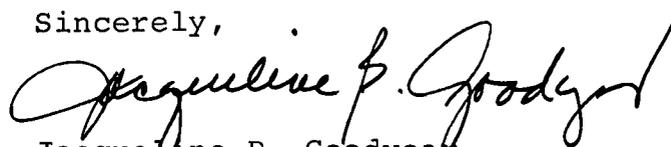
200 100-ton, 4,750 cubic foot covered hopper grain  
cars, AAR Mechanical Designation LO, bearing identifying  
numbers of the Lessee CAGX 300 through CAGX 499, both  
inclusive.

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

Encls.

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INTERSTATE COMMERCE COMMISSION

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[CS&M Ref. 4876-016]

AGREEMENT AND ASSIGNMENT

Dated as of December 1, 1979

between

RAILWAY MARKETING CORPORATION

and

LA SALLE NATIONAL BANK,  
as Agent.

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AGREEMENT AND ASSIGNMENT dated as of December 1, 1979, between RAILWAY MARKETING CORPORATION, a Delaware corporation ("RMC"), and LA SALLE NATIONAL BANK, a national banking association, as agent ("Agent") under a Participation Agreement dated as of the date hereof ("Participation Agreement").

RMC and EXCHANGE NATIONAL BANK OF CHICAGO, acting as trustee ("Trustee") under a Trust Agreement dated as of the date hereof ("Trust Agreement") with BANKERS TRUST COMPANY ("Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA") covering the conditional sale by RMC to the Trustee of the railroad equipment described in Annex B to the CSA ("Equipment") to be manufactured by TRINITY INDUSTRIES, INC. ("Builder").

The Trustee, MHC, INC. ("Lessee"), and CONAGRA, INC. ("Guarantor"), 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 hereby agree as follows:

SECTION 1. RMC hereby transfers and assigns to the Agent, its successors and assigns:

(a) all the right, title and interest of RMC 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 RMC of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of RMC 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 RMC) and (except as aforesaid) in and to any and all amounts which may be or become due

or owing to RMC 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 RMC's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against RMC 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 RMC to deliver the Equipment in accordance with the CSA or with respect to the warranties and agreements referred to in Article 14 of the CSA or relieve the Trustee from its obligations to RMC contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that all obligations of the Builder and of RMC with respect to the Equipment shall be and remain enforceable by the Trustee and its successors and assigns against and only against the Builder or RMC, as the case may be. RMC 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 RMC, hereby irrevocably constituted, to demand, sue for, collect and receive 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. RMC will cause the Builder to construct the Equipment in full accordance with the CSA. Upon delivery of the Equipment by the Builder to RMC, RMC will immediately deliver the Equipment to the Trustee in accordance with the provisions of the CSA and, notwithstanding this Assignment, will fully perform each of the covenants and conditions of the CSA set forth to be performed by RMC. RMC further agrees that it will warrant to the Trustee and the Agent that at the time of delivery by it of each unit of Equipment 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 and the rights of the Lessee under the Lease; and RMC further agrees that it will defend the title 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. RMC will not deliver any of the 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 (RMC and its counsel being entitled to rely on advice from special counsel for the Agent that such filing has occurred).

SECTION 3. RMC agrees with the Agent that in any suit, proceeding or action brought by the Agent under the CSA for any installment of indebtedness or interest thereon in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, RMC 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 RMC of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee, the Lessee or the Guarantor by RMC. RMC's obligation so to indemnify, protect and hold harmless the Agent 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 RMC of the asserted defense, setoff, counterclaim or recoupment and the Agent's giving RMC the right, at RMC'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 the Builder and in cases of designs, processes or combinations specified by the Lessee or the Guarantor and

not developed or purported to be developed by the Builder, RMC 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 of the Equipment of any design, process, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Agent will give prompt notice to RMC of any claim actually known to the Agent which is based upon any such alleged infringement and will give to RMC the right, at RMC's expense, to compromise, settle or defend against such claim. RMC agrees that any amounts payable to it by the Trustee, the Lessee or the Guarantor with respect to the 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 such Equipment or any unit thereof.

SECTION 4. The Agent (as provided in Section 4.2 of the CSA) shall pay to RMC on each Closing Date an amount equal to the portion of the Purchase Price of the Equipment then being settled for as shown on the Invoice (as defined in the CSA) therefor 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 the Trustee), on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to 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 ("RMC Bill of Sale") from RMC to the Agent, transferring to the Agent the security interest of RMC in such units, warranting to the Agent and to the Trustee that, at the time of delivery of such units to the Trustee under the CSA, RMC 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, the Agent under this Assignment and the Lessee under the Lease, and covenanting to defend the

title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units to the Trustee by RMC under the CSA;

(b) a bill or bills of sale ("Builder Bill of Sale") from the Builder to RMC transferring to RMC and its successors and assigns all right, title and interest of the Builder in such units, warranting to RMC and its successors and assigns, to the Trustee and to the Agent that, at the time of delivery to RMC of such units under the CSA, the Builder 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 and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder to RMC;

(c) 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;

(d) the Invoice for such units and, if the price of any unit is greater than the price per unit 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;

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

(f) an opinion of counsel for the Builder, dated as of such Closing Date, addressed to the Agent, RMC and the Trustee, to the effect that the Builder Bill of Sale has been duly authorized, executed and delivered by the Builder and is valid and effective to vest in RMC all right, title and interest of the Builder in such

units, free from all claims, liens, security interests and other encumbrances at the time of delivery to RMC arising from, through or under the Builder;

(g) a receipt from RMC 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 RMC with respect to such units, unless such payment is made by the Agent with funds furnished to it for that purpose by the Trustee;

(h) a certificate of an officer of the Lessee and of an officer of the Guarantor to the effect that (i) the respective representations and warranties of the Lessee and of the Guarantor contained in the Participation Agreement are true on and as of such Closing Date, with the same effect as though made on such Date, (ii) the respective party is not currently in default under its Documents (as defined in the Participation Agreement) and no condition exists nor has any event occurred which with the giving of notice or the lapse of time or both would constitute such a default and (iii) there has been no material adverse change in the respective party's condition, financial or otherwise, since May 27, 1979 (except as set forth in the Guarantor's Quarterly Report referred to in Paragraph 3(n) of the Participation Agreement);

(i) if the price of any unit is greater than the price per unit set forth in Annex B to the CSA, a certificate of an independent appraiser to the effect that the Purchase Price as set forth in the Invoice for such units is not in excess of the fair market value thereof on such date; and

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

The obligation of the Agent hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Agent having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available 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 RMC, 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. The Agent may assign any or 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, to the extent of such assignment and 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. RMC hereby:

(a) represents and warrants to the Agent, the Trustee and their 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; that, assuming due authorization, execution and delivery thereof by the other parties thereto, the CSA and this Assignment are legal, valid and binding instruments, enforceable against RMC in accordance with their respective terms and that each is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Agent, make, 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 transferred to the Agent or intended to be so; and

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

SECTION 7. 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. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, 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 above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

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

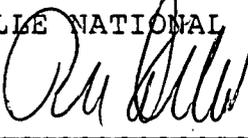
RAILWAY MARKETING CORPORATION,

by 

[Corporate Seal]

Attest: 

LA SALLE NATIONAL BANK, as Agent,

by 

[Seal]

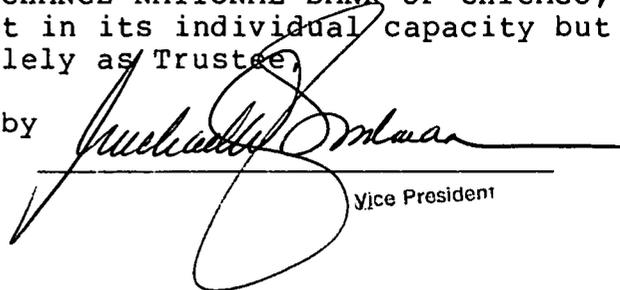
Attest: 

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

EXCHANGE NATIONAL BANK OF CHICAGO hereby acknowledges receipt of due notice of the assignment made by the foregoing Agreement and Assignment as of December 1, 1979.

EXCHANGE NATIONAL BANK OF CHICAGO,  
not in its individual capacity but  
solely as Trustee,

by



A handwritten signature in cursive script is written over a horizontal line. The signature is partially obscured by a large, circular scribble or flourish that extends below the line.

Vice President

STATE OF <sup>N.Y.</sup> ~~FLORIDA~~, )  
 ) ss.:  
COUNTY OF , )

On this 12 day of December 1979, before me personally appeared Leonard Weisman, to me personally known, who, being by me duly sworn, says that he/she is President of RAILWAY MARKETING 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/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

*Rebecca Maizer*

Notary Public  
Notary Public, State of New York  
No. 31-4505978  
Qualified in New York County  
Commission Expires March 30, 1981

[Notarial Seal]  
My Commission expires

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

On this 17th day of December 1979, before me personally appeared H. K. WEBER, to me personally known, who, being by me duly sworn, says that he/she is 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/she 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