

6277  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded

AUG 10 1971 - 10 50 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT  
Dated as of August 2, 1971

among

ACF INDUSTRIES, INCORPORATED,

FIRST WESTERN BANK AND TRUST COMPANY,  
as trustee

and

NORFOLK SOUTHERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT  
Dated as of August 2, 1971

Between

ACF INDUSTRIES, INCORPORATED

and

FIRST TRUST COMPANY OF ST. PAUL

RECEIVED  
AUG 10 10 40 AM '71  
I. C. C.  
FEE OPERATION BR.

---

---

CONDITIONAL SALE AGREEMENT

among

ACF INDUSTRIES, INCORPORATED

VENDOR

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee

VENDEE

and

NORFOLK SOUTHERN RAILWAY COMPANY

GUARANTOR

Dated as of August 2, 1971

---

---

CONDITIONAL SALE AGREEMENT, dated as of August 2, 1971, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (herein called the "Vendor" or "Manufacturer", as more particularly set forth in Article 24 hereof), FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Trustee (herein called the "Trustee") under the Trust Agreement referred to below, and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (herein called the "Guarantor" and sometimes the "Lessee"),

WHEREAS the Trustee and The First National Bank of Saint Paul, a national bank (herein called "FNB"), in its own capacity and as Fiscal Agent have entered into a certain trust agreement dated as of August 2, 1971 (the "Trust Agreement") wherein the Trustee was directed by FNB and agreed among other things to enter into this Agreement and the Lease hereinafter referred to and to hold, subject to the interests of the Vendor hereunder, all its right, title and interest in and to said Lease and to hold and distribute, for the benefit of FNB, all payments or proceeds received under said Lease as the result of the lease or sale or other disposition of any unit of railroad equipment leased thereunder and all other proceeds of property at any time received by the Trustee all in accordance with

the terms of the Trust Agreement; and

WHEREAS the Manufacturer and the Guarantor have entered into a certain construction and purchase contract, dated March 17, 1971 (herein called the "Purchase Contract") in connection with the railroad cars described in Annex A attached hereto (herein individually called a "Unit" and collectively the "Units") wherein it was contemplated that the Guarantor would arrange for the financing of the purchase price of the Units; and

WHEREAS pursuant to said arrangements the parties hereto are entering into this Agreement and the Trustee and the Lessee are concurrently herewith entering into a lease agreement, dated the date hereof and substantially in the form of Annex B attached hereto (the "Lease"), pursuant to which the Trustee will lease the Units to the Lessee, and

WHEREAS in order to induce the Trustee to enter into the Lease, the Guarantor is willing to guarantee to the Vendor the due and punctual performance of certain sums payable by, and the due and punctual performance of all the other obligations of, the Trustee under this Agreement and has joined in this Agreement for the purpose of setting forth the

terms and conditions of such guaranty and making certain further agreements as hereafter set forth;

NOW THEREFORE in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

Article 1. CONSTRUCTION AND SALE. Pursuant to this Agreement, the Manufacturer will construct the Units at its plant at St. Louis, Missouri and will sell and deliver the Units to the Trustee and the Trustee will purchase from the Manufacturer and accept delivery of and pay for the Units as hereinafter provided. Each Unit will be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the Manufacturer, the Trustee and the Lessee (which specifications and modifications, if any, are herein called the "Specifications"). The design, quality, and component parts of the Units will conform to all Department of Transportation, Interstate Commerce Commission and Federal Railroad Administration requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted by the Manufacturer as being applicable to railroad equipment of

the character of the Units as of the date of this Agreement and each Unit will be new railroad equipment.

Article 2. INSPECTION AND DELIVERY. The Manufacturer will deliver the Units to the Trustee FOT St. Louis, Missouri and in accordance with the delivery schedule set forth in Annex A hereto and will cause the Units to be sent, freight charges, if any, prepaid by the Manufacturer for the account of the Trustee, to Guarantor's track in Norfolk, Virginia; provided, however, that no delivery of any Unit shall be made until this Agreement, the Lease and the Agreement and Assignment hereinafter referred to and such other documents as the Vendor shall specify have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer's obligation as to time of delivery is subject, however, to rescheduling of shop space and delays due to strikes, differences with workmen, labor trouble, acts of God, governmental acts and regulations, war or war conditions, riots or civil commotion, sabotage, fires, floods, explosions or other accidents, or to delays of carriers or of subcontractors or in receipt of materials, or to delays occasioned by or arising in connection with the construction of other cars or products for its other customers which are contracted to be constructed at

its St. Louis, Missouri plant prior to the construction of the Units or to any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Manufacturer's reasonable control.

Notwithstanding the preceding provisions of this Article 2, Units not delivered and settled for pursuant to Article 3 hereof on or before December 14, 1971 (unless otherwise consented to by the Trustee, the Guarantor and the Vendor by appropriate written agreement) shall be excluded from this Agreement and not included in the term "Units" as used in this Agreement and this Agreement shall be deemed limited to the Units therefore delivered and settled for hereunder. In the event any such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded equipment by the Guarantor for cash on delivery of such Units either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall determine.

During construction and prior to delivery, the Units shall be subject to inspection and approval

by inspectors or other authorized representatives of the Trustee (who may be employees of the Lessee) and the Lessee, and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. The Manufacturer agrees (i) to inspect all materials entering into the construction of the Units and (ii) to furnish the Trustee and the Lessee with copies of the usual mill test reports with regard to steel. Upon completion of each Unit and prior to the Settlement Date with respect to any Group (as both such items are hereinafter in Article 3 hereof defined) of Units, each Unit shall be promptly examined at, St. Louis, Missouri, the place heretofore specified for delivery thereof on behalf of the Trustee and the Lessee by inspectors or other authorized representatives appointed jointly by the Trustee (who may appoint employees of the Lessee) and the Lessee and if such Unit or Units conform to the Specifications and the requirements of Article I hereof, such inspectors or representatives shall execute and deliver to the Vendor, in such number of counterparts or copies as may be reasonably requested, a certificate of delivery and acceptance, substantially in the form of Exhibit A hereto (herein called a "Certificate of Acceptance"), stating that such Unit or Units have been inspected

on behalf of the Trustee, conform to the Specifications and the requirements of Article I hereof, are marked in accordance with Article 9 hereof and are accepted under this agreement on behalf of the Trustee, provided, however, the Manufacturer shall not thereby be relieved of its warranty contained in Article 12 hereof. The Trustee hereby authorized and empowers the Lessee or any of its authorized representatives to take on behalf of the Trustee all action referred to in this paragraph with respect to inspection of the Units and the execution and delivery of the Certificates of Acceptance.

On delivery of each such Unit hereunder at the place specified for delivery and upon acceptance thereof by the Trustee, the Trustee will assume with respect thereto the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit; provided, however, that the Manufacturer shall not thereby be relieved of its warranty set forth or referred to in Article 12 hereof.

Article 3. PURCHASE PRICE AND PAYMENT. The base price per Unit is set forth in Annex A hereto. The base price is subject to such increase or decrease as is provided for in the proviso clause of Article 22 hereof or as shall be agreed to by the Manufacturer, the

Trustee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased plus the amount of freight prepaid by the Manufacturer in accordance with Article 2 hereof. If on any Settlement Date the aggregate of the Purchase Prices for which settlement has theretofore been, and is then being, made under this Agreement would, but for the provisions of this sentence, exceed \$2,325,000 (or such higher amount as the Trustee may at its option agree), the Manufacturer (and any assignee of the Manufacturer), the Trustee and the Guarantor will, unless otherwise agreed upon in writing by the Trustee, enter into an agreement excluding from this Agreement such Unit or Units specified by the Trustee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Prices to not more than \$2,325,000 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such Unit or Units so excluded from this Agreement from the Manufacturer for cash on the date such Unit or Units would otherwise have been settled for under this Agreement either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall determine.

The Units shall be settled for in not more than two groups delivered to and accepted by the

Trustee (each such group being herein called a "Group"), unless the Trustee, the Guarantor and the Manufacturer otherwise agree. The term "Settlement Date" with respect to any Group shall mean such date, (not earlier than September 15, 1971 and not later than December 14, 1971), occurring not less than seven business days following presentation by the Manufacturer to the Trustee of the invoice and the Certificate or Certificates of Acceptance for such Group and written notice thereof from the Manufacturer to the Guarantor, as shall be fixed by the Manufacturer by written notice delivered to the Trustee and the Vendor at least three business days prior to the Settlement Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Minnesota, North Carolina or California are authorized by law to be closed.

The Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby agrees to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Prices of the Units, as follows:

- (a) On the Settlement Date with respect to each Group (i) an amount equal to 20% of the

aggregate Purchase Price of such Group plus (ii) the amount by which 80% of the aggregate Purchase Price of all Units covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor exceeds the sum of \$1,860,000 and any amount or amounts previously paid or payable with respect to the Purchase Prices pursuant to this clause (ii); and

(b) In 59 consecutive quarter annual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of all the Units in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate amount payable pursuant to this subparagraph (b) being herein called the "Conditional Sale Indebtedness").

The first installment of the Conditional Sale Indebtedness shall be payable on December 15, 1971, and subsequent instalments shall be payable quarterly thereafter on each March 15, June 15, September 15 and December 15 to and including June 15, 1986 (or if any such date is not a business day on the next succeeding business

day), each such date being hereinafter called a Payment Date. The unpaid balance of that portion of the Conditional Sale Indebtedness in respect of a Group shall bear interest from the Settlement Date on which such portion of the Conditional Sale Indebtedness was incurred at the rate of 9% per annum and such interest shall be payable, to the extent accrued, on each March 15, June 15, September 15 and December 15, commencing December 15, 1971. The principal amount of the Conditional Sale Indebtedness payable on each of the 59 quarterly Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 59 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. Any payment of an amount less than the amount of the instalment to be made shall be applied first to that portion of the instalment which represents interest. The Trustee will cause to be furnished to the Vendor and the Guarantor promptly after each Settlement Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve

30-day months.

The Trustee will pay interest at the rate of 9-3/4% per annum or such lesser amount as shall be legally enforceable upon all amounts (other than interest) remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and in immediately available funds. Except as provided in Article 6 hereof, the Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due; provided, however, that at any time after the Trustee (or the Vendor pursuant to Article 16 hereof) shall have terminated the Lease pursuant to § 9 thereof, the Trustee shall have the right, without premium or penalty, to terminate all of the Vendor's rights and the Trustee's obligations under this Agreement by tendering full payment of the then outstanding aggregate principal amount of the Conditional Sale Indebtedness and with all other amounts then owing by the Trustee to the Vendor hereunder, together with accrued but unpaid interest thereon to the date of

such payment or prepayment, whereupon absolute right to the possession of, title to and property in all of the Units shall pass to and vest in the Trustee, subject to the rights, if any, of the Lessee under the lease.

The parties hereto contemplate (subject to the exceptions set forth in the first paragraph of this Article 3) that the Trustee will furnish that portion of the aggregate Purchase Price for each Group of Units as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment, between the Manufacturer and First Trust Company of Saint Paul, as Agent (such Agreement and Assignment being herein called the "Agreement and Assignment" and such First Trust Company of Saint Paul sometimes being herein called the "Assignee" or the "Vendor" as indicated in Article 24 hereof).

It is agreed that the obligation of the Trustee to pay to the Manufacturer any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group is specifically subject to the conditions precedent

that the Assignee shall have paid or caused to have been paid to the Manufacturer the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3 and in Section 5 of the Agreement and Assignment and the other conditions precedent set forth in Section 5 of the Agreement and Assignment shall have been satisfied.

Notwithstanding any other provisions of this Agreement or any assignment of this Agreement by the Manufacturer, it is understood and agreed by the Vendor that the liability of the Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payment to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and payments pursuant to Article 18 hereof, shall not exceed an amount equal to the Income and Proceeds from the Units (as hereinafter in this paragraph defined), and such payments shall be made by the Trustee only to the extent that it shall have actually received sufficient Income or Proceeds from the Units to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Trustee shall have no personal liability to make any payments under this Agreement. In addition, the Vendor agrees and understands that the

Trustee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease or any document relative thereto (except to the extent of the Trustee's execution thereof) by or against the Lessee or of any of the Lessee's obligations thereunder, and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Units and to the Vendor's rights under the Lease against the Lessee and the Units. As used herein the term "Income and Proceeds from the Units" shall mean, if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Trustee at any time after such event and during the continuance thereof:

(a) all amounts of rental and amounts in respect of Casualty Occurrences paid for or with respect to the Units pursuant to the Lease, any amounts paid as interest thereon pursuant to § 16 of the Lease and any

amounts paid on account of § 5 thereof or any other Section of the Lease, and (b) any and all payments or proceeds received by the Trustee for or with respect to the Units as the result of the sale, lease or other disposition thereof, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and other amounts payable hereunder by the Trustee hereunder and interest thereon becoming due and payable on the date such amounts received by the Trustee are required to be paid to it pursuant to the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Trustee shall derogate from the right of the Vendor to proceed against the Units or the Guarantor as provided for herein for the full unpaid Purchase Prices of the Units and interest thereon and any other obligations guaranteed by the Guarantor hereunder. The Vendor agrees, however, that in the event it shall obtain judgment against the Trustee for an amount in excess of the amounts payable by the Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount. The Trustee

agrees to instruct the Lessee to make rental payments to it under the Lease in care of the Vendor and hereby irrevocably instructs the Vendor to apply such payments to satisfy the obligations of the Trustee then due or accruing on the next Payment Date hereunder and to pay any balance to the Trustee.

Article 4. TAXES. All payments to be made by the Trustee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes (other than income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], excess profits and similar taxes, except any such tax which is in substitution for or relieves the Trustee from the payment of taxes which it would be otherwise liable to pay or reimburse as herein provided) assessments, or license fees and any charges, fines or penalties in connection therewith, hereafter levied or imposed upon or with respect to this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, or which may be imposed upon the Units or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof (herein called "Impositions"), all

of which Impositions the Trustee assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness. The Trustee will also keep at all times all the Units and every part thereof free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any Unit or part thereof; provided, however, that the Trustee shall be under no obligation to pay any Imposition so long as it is contesting such Imposition in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Units or otherwise under this Agreement. The Vendor may pay any such Impositions and, if any such Imposition shall have been paid by the Vendor, the Trustee shall reimburse the Vendor upon presentation of an invoice therefor and prior to such reimbursement any amounts so paid by the Vendor shall be secured by and under this Agreement.

In the event that during the continuance of this Agreement, the Trustee becomes liable for the payment or reimbursement of any Impositions pursuant to this Article 4, such liability shall continue, notwithstanding the termination of this Agreement for any reason, until all such Impositions are paid or reimbursed by the Trustee.

Article 5. TITLE TO THE UNITS. The Vendor shall and hereby does retain the full legal title to and property in the Units until the Trustee shall have made all of the payments required hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Units to and the possession and use thereof by the Trustee or the Lessee as herein provided. Any and all additions to the Units and any and all replacements of the Units and of parts thereof and additions thereto shall constitute accessions to the Units and shall be subject to all the terms and conditions of this Agreement and included in the term "Units" as used in this Agreement.

Except as otherwise provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness and all other amounts payable hereunder, together with interest as herein provided, and all the obligations herein contained of the Trustee and the Guarantor shall have been duly performed to the satisfaction of the Vendor, absolute right to the possession of, title to and property in the Units shall pass to and vest in the Trustee without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at

the expense of the Trustee and without liability to the Vendor, appropriate instrument(s), confirming such passage to the Trustee of all of the Vendor's right, title and interest in the Units, in recordable form in order that the Trustee may make clear upon the public records the title of the Trustee to the Units.

The Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver any bill or bills of sale or other instrument or to file any certificate of payment or other instrument in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver any instrument(s) within a reasonable time after written demand of the Trustee pursuant to this Article or Article 6 hereof.

Article 6. PAYMENT FOR CASUALTY OCCURRENCE.

In the event of the actual or constructive loss of any Unit or in the event that any Unit shall otherwise be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called "Casualty Occurrences"), the Trustee shall

within five days after it has received written notice of a Casualty Occurrence notify the Vendor thereof. If the Trustee receives notice thereof under the Lease, such notice to the Vendor shall be dated as of the date such notice is given to the Trustee under the Lease. On the earlier of June 15, 1986 or the next succeeding Payment Date after the date of such notice (or in the event such Payment Date is other than June 15, 1986 and shall occur within five days after the date of such notice, on the following Payment Date), the Trustee shall pay to the Vendor a sum equal to the Stipulated Loss Value (as hereinafter defined) of the Unit suffering a Casualty Occurrence as of the date of such Payment Date and shall file with the Vendor a certificate setting forth the Stipulated Loss Value of such Unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay first, accrued but unpaid interest on the Conditional Sale Indebtedness and second, the Conditional Sale Indebtedness, and the Trustee will promptly cause to be furnished to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in Article 3 hereof so that the number of payments shall not be reduced but the amount of each payment shall be proportionately reduced.

Upon payment by the Trustee to the Vendor of the Stipulated Loss Value of any Unit having suffered a Casualty Occurrence, right to the possession of, title to and property in such Unit shall pass to and vest in the Trustee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee and without liability to the Vendor, appropriate instrument(s) confirming such passage to the Trustee of all of the Vendor's right, title and interest in such Unit, in recordable form, in order that the Trustee may make clear upon the public records the title of the Trustee to such Unit.

The Stipulated Loss Value of each Unit shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Stipulated Loss Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6) plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 3 hereof shall be deemed to be a payment on each Unit in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of all the Units.

Article 7. OBLIGATIONS OF GUARANTOR. The Guarantor, for value received and as an inducement to the Vendor to enter into this Agreement, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the aggregate Purchase Price of the Units payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Trustee and the due and punctual payment of any and all sums payable by the Trustee under this Agreement (except for the obligations of the Trustee to make payments of the sums payable by the Trustee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed, the Guarantor agrees punctually to pay or perform the same, irrespective of any enforcement against the Trustee of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise

respect to the Units and shall not be exercisable until the Vendor shall have been paid all sums payable under this Agreement (including the payment of the entire unpaid Conditional Sale Indebtedness and interest thereon).

Article 8. POSSESSION AND USE; MAINTENANCE AND REPAIRS. The Trustee, so long as no event of default as specified in Article 15 hereof shall have occurred and be continuing, shall be entitled to the possession of the Units and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Trustee may lease the Units to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; provided, however, that (the Lessee hereby so acknowledging) the Lessee shall be entitled to possession and use of the Units if and only if the Lessee shall not be in default under the Lease or under this Agreement and that if such default shall have occurred and be continuing, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Trustee hereby agrees that it will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall have notified the Vendor and the Guarantor in writing at least two business days in advance

of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the lessee or served by the Lessee upon it in connection therewith.

The Trustee agrees that during the period that any portion of the Conditional Sale Indebtedness or any of the amounts due hereunder remains outstanding and unpaid, the Trustee will not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Trustee agrees that it will not permit the Units to be used other than upon the lines of railroad owned or operated by the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, or upon other railroads in the usual interchange of traffic if such interchange is customary at the time, but only upon and subject to all the terms and conditions of this Agreement. The Trustee may also lease the Units to any other railroad company, with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinated and made junior in rank to the rights and

remedies of the Vendor under this Agreement. A copy of such lease shall be furnished to the Vendor.

The Trustee agrees that, at its own cost and expense, it will maintain and keep each Unit, or cause each Unit to be maintained and kept, in good order and repair.

Article 9. COMPLIANCE WITH LAWS AND RULES AND IDENTIFICATION MARKS. During the term of this Agreement, the Trustee will at all times comply, and will cause any lessee of the Units to comply, in all respects with all laws of the jurisdictions in which the Units may be operated with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require any alteration of the Units or to any equipment or appliance on such Units, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply therewith, the Trustee will cause any lessee thereof to conform therewith, at its expense, and will cause the same to be maintained in proper condition and operated in full compliance with such laws and rules; provided, however,

that the Trustee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

The Trustee will cause each Unit leased and accepted hereunder to be kept numbered with its identifying number as set forth in Annex A hereto and will keep and maintain plainly, distinctly and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the name of the Vendor, followed by the word owner, or the appropriate words designated by the Vendor, with appropriate changes and additions thereto as from time to time may be required by law in order to protect the title of the Vendor thereto and the rights of the Vendor under this Agreement. The Trustee will cause such markings to be replaced on each Unit as promptly as possible and will replace or cause to be replaced any such names and word or words which may be removed, defaced or destroyed. The Trustee will not permit the identifying numbers of any Unit to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the

Vendor and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as otherwise provided above and in Article 14 hereof, the Trustee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Trustee may cause the Units to be lettered with the name, initials or insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or similar type for convenience of identification of their interests.

Article 10. REPORTS AND INSPECTIONS. On or before March 31 in each year, commencing with the year 1973, the Trustee shall furnish to the Vendor an accurate statement signed by an officer of the Lessee (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units leased hereunder, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Vendor may reasonably request and (b) stating that, in the case

of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Articles 9 or 14 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Units and the Trustee's and Lessee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

Article 11. PROHIBITION AGAINST LIENS. The Trustee will pay any and all sums claimed by any party from, through or under the Trustee or the Lessee or their successors or assigns which has resulted in or if unpaid, might become, a lien, charge, security interest or other encumbrance upon any Unit, equal to the Vendors' title thereto or property therein and cause any such lien, charge, security interest or encumbrance to be discharged but shall not be required to pay any such sums or cause the discharge of any such liens, charges, security interests or encumbrances so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Unit or otherwise under this Agreement. The Vendor in its discretion may pay amounts from time to time in discharge of liens, charges or security interests upon the

Units and the Trustee will reimburse the Vendor on demand for any amounts so paid by the Vendor and any amounts not theretofore so reimbursed shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

Article 12. INDEMNITIES AND WARRANTIES.

The Trustee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit or Units.

The Trustee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Units, or out of the use and operation thereof during the period when such title thereto remains in the Vendor; provided,

however, that this indemnity shall not benefit the Manufacturer in respect of such events occurring after the assignment by the Manufacturer of its interests in this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness and all other amounts payable hereunder and the transfer of the Units, as provided in Article 5 hereof or otherwise, or the termination of this Agreement in any manner whatsoever.

The Manufacturer warrants that the Units will be built in accordance with the Specifications and warrants that the Units will be new railroad equipment and free from defects in material (except as to specialties incorporated therein specified or supplied by the Lessee and not manufactured by the Manufacturer) or workmanship under normal use and service, the Manufacturer's obligation under this paragraph being limited in the case of defects to making good at its plant any part or parts of any Unit which shall, within one year after the delivery of such Unit to the Trustee hereunder, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE MANUFACTURER, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 1, 2, 3, 12 AND 13 HEREOF, AND THE MANUFACTURER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF THE UNITS EXCEPT AS AFORESAID.

The Manufacturer further agrees with the Trustee that neither the inspection as provided in Article 2 hereof, nor any examination, nor the acceptance of any Units as provided in Article 2 hereof shall be deemed a waiver or a modification by the Trustee of any of its rights under this Article 12.

It is understood and agreed that in no event shall the Manufacturer be liable for indirect or consequential damages of any kind.

Article 13. PATENT INDEMNITIES. Except in cases of designs specified by the Trustee or the Lessee and not developed or purported to be developed by the Manufacturer and articles and materials specified by the Trustee or the Lessee and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless

the Trustee and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee and the Guarantor or its assigns because of the use in or about the construction or operation of the Units of any design, article or material infringing or claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have, against the originator of any design specified by the Trustee or the Lessee and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Trustee or the Lessee and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Units, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Manufacturer further agrees to execute and deliver to the Guarantor all and

every such further assurance as may be reasonably requested by the Guarantor, more fully to effectuate the assignment, transfer and delivery of every such claim, right or cause of action. The Trustee and the Guarantor will give notice to the Manufacturer of any claim known to the Trustee or the guarantor, as the case may be, from which liability may be charged against the Manufacturer hereunder.

It is further agreed that the defense of any claim referred to in this Article 13 shall be undertaken by the Manufacturer and the Trustee and the Guarantor shall cooperate in such defense to the extent reasonably requested.

Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction or discharge of this Agreement or the termination of this Agreement in any manner.

Article 14. ASSIGNMENTS. The Trustee will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 8 hereof, transfer the right to possession of any Unit without first obtaining the written consent of the Vendor.

All or any of the rights, benefits and

advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Trustee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and deliver the Units in accordance with this Agreement or to respond to any of its warranties and indemnities under Articles 12 and 13 hereof, or relieve the Trustee or the Guarantor of any of their respective obligations to the Manufacturer under Articles 2, 3, and 13 hereof and this Article 14 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Trustee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and

to the Units and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Trustee and the Guarantor of the notification of any such assignment, all payments thereafter to be made by the Trustee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Trustee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Trustee and the Guarantor expressly represent and agree, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be

assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Units or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Trustee or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Trustee or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Units and of some of or all the Vendor's rights under this Agreement with respect thereto, the Trustee will, whenever requested by the assignee, cause the markings on each Unit to be changed so as to indicate the title of such assignee to such Unit, such markings to be such as shall be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Units

shall be operated by the Trustee. The cost of such markings in the event of an assignment of not less than all the Units at the time covered by this Agreement shall be borne by the Trustee and, in the event of any assignment of less than all of the Units, such cost shall be borne by such assignee.

The Trustee and the Guarantor will (a) in connection with each settlement for a Group of Units subsequent to such assignment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Settlement Date with respect to such Group, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of copies or counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Manufacturer, the Guarantor hereby guarantees to the Manufacturer that all payments provided to be made to the Manufacturer on each Settlement Date will in fact be made to the Manufacturer on such Settlement

Date, and that, whether or not this Agreement shall have been assigned, if the Manufacturer shall not receive on each Settlement Date an amount equal to the aggregate Purchase Price of the Units to be settled for on such Settlement Date, the Manufacturer will promptly notify the Trustee and the Guarantor of such event and, if such amount shall not have been previously paid, the Guarantor will, upon the request of the Manufacturer, enter into an appropriate written agreement with the Manufacturer excluding from this Agreement those Units for which the Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Settlement Date, purchase such Units for cash (either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale, equipment trust or such other appropriate method of financing as the Guarantor shall determine) at a price equal to the Purchase Price of such Units together with interest thereon, from the Settlement Date to the date of payment by the Guarantor, at a rate equal to the prime rate of interest of leading New York City banks in effect at 11:00 a.m. on such Settlement Date.

Article 15. DEFAULTS. In the event that any one or more of the following events of default shall occur:

(a) The Trustee or the Guarantor shall fail to pay in full any sum payable by the Trustee when payment thereof shall be due hereunder, assuming for the purposes of this paragraph (a) that the provisions of the last paragraph of Article 3 hereby are not in effect, and such default shall continue for 15 days after written notice from the Vendor to the Trustee and the Guarantor; or

(b) The Trustee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing to the Trustee and the Guarantor performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement on their part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted, or as amended from time to time, shall be filed, any other proceedings shall be commenced, by or against the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of

debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment, temporary or otherwise, of the indebtedness and other amounts payable hereunder), and, unless such petition or proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay or other ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Guarantor or for the property of the Guarantor in connection with any such proceedings or other persons in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers or such other persons and are to be paid, and in fact are being paid, by such in accordance with the terms of this Agreement, within 30 days after such appointment, if any, or 60 days after such proceedings

shall have been commenced, whichever shall be earlier;

(d) The Trustee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit 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 any such Unit within 30 days after written notice from the Vendor to the Trustee and the Guarantor demanding such cancellation or recovery of possession;

(e) An Event of Default shall have occurred under the Lease or the Lease shall be amended, terminated or cancelled, except in accordance with the terms thereof, or its terms waived or modified, without the prior written consent of the Vendor;

(f) A law or administrative rule or regulation applicable to the Trustee or the Guarantor shall be promulgated which, in the opinion of the Vendor, would result in the Conditional Sale Indebtedness being illegal or would prevent or delay the Trustee or the

Guarantor from making any payments hereunder or under the Lease, as the case may be, as and when they become due;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee under the Lease referred to in Article 8 hereof, cause the Lease immediately upon such notice to terminate (and the Trustee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease), and/or (ii) declare (hereafter called a "Declaration of Default") the entire Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the Conditional Sale Indebtedness and other amounts due hereunder shall bear interest from the date of such declaration at the rate of 9 3/4% per annum or at such lesser rate as may be legally enforceable and the Vendor shall thereupon be entitled to recover judgment for the entire Conditional Sale Indebtedness so payable and for any other amounts then due hereunder, with interest as aforesaid, and to collect such judgment out of any property

of the Trustee (subject to the provisions of the last paragraph of Article 3 hereof) or any property of the Guarantor wherever situated. The Trustee and the Guarantor hereby agree to give prompt notice in writing to the Vendor of any default under this Agreement known to the Trustee or the Guarantor, respectively, the Trustee's obligation under this sentence being limited, however, in so far as such default relates to the Guarantor, to furnishing copies of any written notice it receives in respect of such default.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default and notice of termination of the Lease by notice to the Trustee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default and/or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Trustee and the Guarantor that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

or any lessee for the delivery of such Units to the Vendor, the Trustee shall, at its own expense, forthwith make demand upon the Guarantor or such lessee to cause such Units to be moved forthwith and in the usual manner to such point or points as shall be reasonably designated by the Vendor and shall there deliver such Units or cause them to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep all or any of the Units on any of the lines of railroad or premises of the Guarantor or any such lessee until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees, and the Trustee agrees to make demand upon any other such lessee, to furnish, without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. The agreement to deliver the Units as hereinbefore provided or at the option of the Vendor to so provide said facilities is of the essence of this Agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Trustee, the Guarantor and/or any other lessee requiring specific performance thereof; provided,

shall have been declared immediately due and payable. In the event that the Vendor should elect to retain all or any of the Units, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Trustee in the Units will thereupon terminate and all payments made by the Trustee or the Guarantor may be retained by the Vendor as compensation for the use of same; provided, however, that if the Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness and all other payments due under this Agreement together with interest thereon accrued and unpaid, then in such event absolute right to the possession of, title to and property in such Units shall pass to and vest in the Trustee; and provided, further, however, that if the Trustee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain such Units, then the Vendor may not so retain such Units, but shall sell, lease or otherwise dispose of them or continue to hold them pending sale, lease or

other disposition as hereinafter provided or as may otherwise be permitted by law. The Vendor shall apply the proceeds of such sale, lease or other disposition as hereinafter in this Article 16 provided.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof, at its election and upon reasonable notice to the Trustee, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Units, or any thereof, free from any and all claims of the Trustee, or of any other party (including the Guarantor) claiming by, through or under the Trustee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if prior to such sale or prior to the making of a contract for such sale, the Trustee should tender full payment of the entire Conditional Sale Indebtedness and all other amounts due under this Agreement, together with interest thereon accrued and unpaid, as well as expenses of the Vendor in re-taking, holding and preparing such Units for disposition and arrangement for sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in

of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Trustee hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor undertaken hereunder and in connection

therewith, second to the payment of accrued and unpaid interest on the Conditional Sale Indebtedness, third to the payment of the unpaid Conditional Sale Indebtedness and fourth to interest payable on any other sums payable hereunder and fifth to such sums. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall pay (to the extent only of its liability in accordance with Article 3 hereof) the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay the full deficiency (only to the extent as aforesaid), the Vendor may bring suit therefor, and shall be entitled to recover a judgment therefor against the Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee.

The Trustee, subject to the provisions of last paragraph of Article 3 hereof, will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and

the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

Article 17. WAIVER. Except as otherwise provided in this Agreement, the Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Units, or any of them, and, any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

Article 18. RECORDING. The Guarantor will, at the expense of the Trustee, (i) prior to the delivery and acceptance hereunder of any Unit, cause this Agreement, and any supplements hereto relating to such Unit and (ii) prior to the settlement hereunder for any Unit cause the first assignment by the Manufacturer and any supplements thereto relating to such Unit, in each case to be filed, recorded or deposited and refiled, re-recorded or redeposited, with the Interstate Commerce Commission and otherwise as may be required by law or

reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Units and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Guarantor will promptly cause to be furnished to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Guarantor with respect thereto, satisfactory to the Vendor.

Article 19. EXTENSION NOT A WAIVER. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Guarantor shall not otherwise alter or affect the Vendor's rights or the obligations of the Trustee or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

Article 20. NOTICE. Any notice hereunder to the party designated below shall be deemed to be properly served if delivered or mailed to it at the

following specified addresses:

(a) to the Trustee, 235 Montgomery Street,  
San Francisco, California 94104, Attention:  
Edgar H. Canfield, Vice President and Trust Offi-  
cer;

(b) to the Manufacturer, 750 Third Avenue,  
New York, New York 10017, Attention: The Secretary;

(c) to the Guarantor, P. O. Box 2210, Raleigh,  
North Carolina 27602, Attention: The Secretary;

(d) to any assignee of the Vendor, at  
such address as may have been furnished in  
writing, by such assignee;

or at such other address as may have been furnished in  
writing by such party to the other parties to this  
Agreement.

Article 21. ARTICLE HEADINGS. All article  
headings are inserted for convenience only and shall  
not affect any construction or interpretation of this  
Agreement.

Article 22. EFFECT AND MODIFICATION OF  
AGREEMENT. This agreement, and the other documents re-  
lating hereto referred to herein, exclusively and com-  
pletely state the rights and agreements of the Vendor,  
the Guarantor and the Trustee with respect to the Units  
and supersede all other agreements, oral or written,

with respect to the Units, provided, however, that the terms of the Purchase Contract set forth under the heading "Price Adjustment" set forth in Exhibit B thereto shall remain in effect to the extent and only to the extent that the price adjustments set forth therein have been made on or prior to the Settlement Date of each Unit and is reflected in the Purchase Price thereof. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Guarantor and the Trustee.

Article 23. LAW GOVERNING. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York applicable to contracts entered into and performed in said State; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited and any rights arising out of the marking of the Units.

Article 24. DEFINITIONS. The term "Vendor", wherever used in this Agreement, means, before any assignment of any of its rights hereunder, ACF Industries, Incorporated, and any successor or successors for the time being to its manufacturing business and properties, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, ACF Industries, Incorporated, and any successor or successors for the time being to its manufacturing business and properties.

Article 25. SEVERABILITY. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction to the extent permitted by applicable law. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by

the Trustee and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

Article 26. EXECUTION. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of August 2, 1971, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer, the Trustee and the Guarantor pursuant to due corporate authority, have each caused this instrument to be executed in its corporate name by its officers thereunto duly authorized, and its corporate seal to be hereunto affixed, duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[Corporate Seal]

BY *W. W. Wilson*  
Vice President

ATTEST:

*[Signature]*  
ASSISTANT Secretary

FIRST WESTERN BANK AND TRUST  
COMPANY, as Trustee

[Corporate Seal]

By *Elyse J. Thompson*  
Vice President  
and Trust Officer

ATTEST:

*Howard B. McArthur*  
Asst Secretary

NORFOLK SOUTHERN RAILWAY COMPANY

[Corporate Seal]

By *Henry D. ...*  
President

ATTEST:

*C. D. Wagner*  
Secretary

STATE OF NEW YORK:

SS.:

COUNTY OF NEW YORK:

On this 28<sup>th</sup> day of July, 1971, before me personally appeared **W. W. WILSON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, 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.

*Catherine Lenehan*

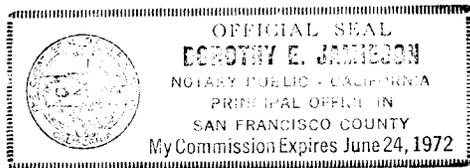
Notary Public

[Notarial Seal]

CATHERINE LENEHAN  
Notary Public, State of New York  
No. 31-2308550  
Qualified in New Ycrk County  
Commission Expires March 30, 1973

STATE OF CALIFORNIA :  
: SS.:  
COUNTY OF SAN FRANCISCO:

On this *4<sup>th</sup>* day of *August* 1971, before me personally appeared EDGAR H. CASTLE, to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of FIRST WESTERN BANK AND TRUST COMPANY, 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.



*Dorothy E. Jamieson*  
Notary Public

[Notarial Seal]



ANNEX A

<u>Type</u>	<u>Quantity</u>	<u>Specifications</u>	<u>Road Numbers (both inclu.)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Time of Delivery</u>	<u>Place of Delivery</u>
50-foot, 70-ton roller bearing box cars	150	ACF Industries, Incorporated Specification No. 11-06190 dated April 8, 1971	NS2100 through NS2249	\$15,500	\$2,325,000	Deliveries to be made so that Units arrive at tracks of Norfolk Southern Railway Company, Norfolk, Virginia from August 20, 1971 to October 15, 1971	FOT, St. Louis, Missouri

---

---

LEASE OF RAILROAD EQUIPMENT

between

NORFOLK SOUTHERN RAILWAY COMPANY

LESSEE

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee

LESSOR

Dated as of August 2, 1971

---

---

LEASE OF RAILROAD EQUIPMENT, dated as of August 2, 1971, between FIRST WESTERN BANK AND TRUST COMPANY, a California banking corporation, as Trustee (herein called the "Lessor") under that certain Trust Agreement dated August 2, 1971 (herein called the "Trust Agreement") among The First National Bank of Saint Paul in its own capacity (herein called the "Bank") and as fiscal agent and said Trustee, and NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation (herein called the "Lessee").

WHEREAS the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of August 2, 1971 (herein called the Conditional Sale Agreement), with ACF INDUSTRIES, INCORPORATED (herein called the "Manufacturer"), wherein the Manufacturer has agreed to manufacture, sell and deliver to the Lessor the railroad equipment described in Annex A hereto; and

WHEREAS the Manufacturer is assigning its interests in the Conditional Sale Agreement to FIRST TRUST COMPANY OF SAINT PAUL, as Agent (herein, together with its successors and assigns, referred

to as the "Vendor"); and

WHEREAS the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered, accepted and settled for under the Conditional Sale Agreement on or prior to December 14, 1971 (herein called the "Units") 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 Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Conditional Sale Agreement, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§1. Delivery and Acceptance of Units.

The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement.

Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (herein called the "Certificate of Delivery") stating that such Unit or Units have been accepted by the Lessee and conform to the requirements of Article 1 of the Conditional Sale Agreement; whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee agrees that any Unit as to which a Certificate of Acceptance, as said term is defined in the Conditional Sale Agreement, has been executed and delivered to the Vendor pursuant to Article 2 of the Conditional Sale Agreement shall, by such execution and delivery, without further act, irrevocably constitute delivery to, and acceptance by, the Lessee of such Unit for all purposes of this Lease to the same extent as if a Certificate of Delivery had been executed and delivered with respect to such Unit.

§2. Rentals. The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease (a) on each Settlement Date (as defined in the Conditional Sale Agreement), an amount equal to 2.55084% of the Purchase Price (as defined in the Conditional Sale Agreement) of each Unit settled for on that Settlement Date; and (b) 59 additional consecutive quarterly payments, payable on March 14, June 14, September 14 and December 14 in each year, commencing December 14, 1971, each in an amount equal to 2.55084% of the Purchase Price of each Unit subject to the Lease; provided, however, that if any of the payment dates referred to above is not a business day (as herein in §20 defined), the payment shall be payable on the next succeeding business day.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease (including but not limited to the payments required under § 6 hereof) in immediately available funds for the account of the Lessor, care of the Vendor, First National Bank Building, St. Paul, Minnesota, attention of James A. Ehrenberg, Assistant Secretary (or to any assignee of the Vendor pursuant

to Section 6 of the Agreement and Assignment between the Manufacturer and the Vendor, dated as of August 2, 1971 (the "Assignment"), pursuant to which the Conditional Sale Agreement is being assigned to the Vendor) or otherwise to the order of the Vendor as the Vendor shall instruct the Lessee in writing. The Lessor has irrevocably instructed the Vendor to apply such payments to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due thereunder and to pay any balance to the Lessor.

This Lease is a net Lease and the Lessee's obligation to pay rent shall be absolute and unconditional under all circumstances. The Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims, counterclaims, defenses or other rights of the Lessee against the Lessor under this Lease or under the Conditional Sale Agreement

or the Manufacturer or the Vendor or any other person; 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 actual or constructive loss of possession or loss of use of, obsolescence, or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceedings against the Lessee, 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 (including any offset or claim which may be made by the Lessee or on its behalf)

in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 3. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the fifteenth day of the third month following the month in which the final quarterly payment of rent is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under

this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Conditional Sale Agreement, are subject to the rights of the Vendor under the Conditional Sale Agreement. If an event of default should occur under the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein unless the Lessee is not in default under this Lease or under the Conditional Sale Agreement. If a Declaration of Default (as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement due to an event of default occasioned by an act or omission of the Lessor hereunder, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated, either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. Identification Marks. The Lessee will cause each Unit to be kept numbered with its

identifying number as set forth in Annex A hereto and will keep and maintain, plainly, distinctly and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

"FIRST TRUST COMPANY OF SAINT PAUL,  
AGENT, OWNER"

or other appropriate words designated by the Lessor, 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 or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and/or words 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 identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been

filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

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

§ 5. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], excess profits and similar taxes,

except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith, hereafter levied or imposed upon or with respect to this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, or which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof (herein called "Impositions") all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also keep at all times all and every part of each Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit or part thereof; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal

proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Lessor and the Vendor, adversely affect the title, property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 4 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 4.

In the event any reports with respect to Impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

§ 6. Payment for Casualty Occurrences.

In the event of the actual or constructive loss of any Unit or in the event that any Unit shall otherwise be or become worn out, lost, stolen, destroyed or irreparably damaged or obsolete or economically unserviceable, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (or in the event such rental payment date, other than June 14, 1986,

The "Casualty Value" of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date in respect of such Unit:

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	102.24802	31	71.63351
2	102.24802	32	69.95476
3	102.26976	33	68.25732
4	102.19632	34	66.54101
5	102.02604	35	64.80577
6	101.75721	36	63.05140
7	101.38843	37	61.27771
8	100.91796	38	59.48447
9	100.34402	39	57.67165
10	99.66480	40	55.83903
11	98.87879	41	53.98639
12	98.01562	42	52.11353
13	97.09137	43	50.22038
14	96.10543	44	48.30674
15	95.05733	45	46.37236
16	93.94645	46	44.41704
17	92.77213	47	42.44070
18	91.53375	48	40.44311
19	90.23081	49	38.42406
20	88.86267	50	36.38329
21	87.42864	51	34.32074
22	85.92808	52	32.23618
23	84.41040	53	30.12935
24	82.87544	54	28.00002
25	81.32300	55	25.84810
26	79.75290	56	23.67335
27	78.16512	57	21.47551
28	76.55947	58	19.25433
29	74.95375	59	17.00971
30	73.29377	60 and thereafter	15.00000

description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by § 4 hereof and Articles 9 or 14 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units and the use and operation thereof during the continuance of this Lease.

§ 8. Disclaimer of Warranties; Compliance with laws and Rules; Maintenance; and Indemnification.  
THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDI-

TION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF OR ANY OTHER REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE UNITS; it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably 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 of and for the account of the Lessor and/or the Lessee, as their interests may appear, whatsoever claims and rights the Lessor may have under the provisions of Articles 12 and 13 of the Conditional Sale Agreement. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; provided, however, that the Lessee may, in good faith, contest the

validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor, the Vendor and the Bank against any charge, demand or claim made against the Lessor or the Vendor, and against any cost, expense, loss or liability (including but not limited to counsel

fees and expenses, patent liabilities, or royalty payments in connection therewith, penalties and interest) which the Lessor, the Vendor or the Bank may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor, the Vendor and the Bank against any charge, claim, demand, damage, injury, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person except as otherwise expressly provided in §§ 10 and 12 of this Lease. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports

(other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. Default. If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for ten days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of any Unit;

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 or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any material representation made by or on behalf of the Lessee herein or hereunder or in a certificate or other instrument delivered

pursuant hereto or to the Conditional Sale Agreement or the Assignment shall prove to have been false or incorrect in any material respect on the date as of which it was made;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed, or any other proceedings shall be commenced, by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments, temporary or otherwise, of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale Agreement shall not have been duly assumed in writing,

pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings or other persons in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers or such other persons and are to be paid, and in fact are being paid, by them in accordance with the terms of this Agreement, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier;

then, in any such case, 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 rights of the Lessee to the use of the Units 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 Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purpose whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or 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 multiplying the rental for such full rental period by a fraction of which the numerator is such number of days, 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 Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder pursuant to §§ 2, 14 or otherwise from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value, if any, of the rentals which the Lessor reasonably estimates to be obtainable by the Lessor for the use of the Unit during such period, such present value to be computed in each case on a basis of an 8% 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 attorneys' 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. In the event that Lessor shall bring suit and be entitled to judgment hereunder, then said expenses, including said attorneys' fees, shall be included in such judgment.

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 the remedies herein provided, to the extent that such waiver is permitted by law.

The failure of the Lessor to exercise the rights granted it hereunder upon the 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.

§10. Return of Units Upon Default. If this Lease shall terminate pursuant to §9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be

at the expense and risk of the Lessee and 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 Units. During any 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 Unit, 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. Upon the return of any Unit, the Lessee agrees that there will be removed from such Unit any name or other identification of the Lessee thereon and that such Unit will be in the same condition as when delivered to the Lessee hereunder, ordinary wear and tear

excepted, and free and clear of all liens, encumbrances or rights of others whatsoever except the Conditional Sale agreement and liens or encumbrances resulting from claims against the Lessor not related to the ownership of such Unit.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§11. Assignment; Possession and Use.

This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor.

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 Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly pay any and all sums claimed by any party from, through or under the Lessee or Lessor which has resulted in, or if unpaid, might become, a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Units) imposed on or with respect to any Unit, any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein and cause any such lien, charge, security interest or other encumbrance to be discharged. The Lessee shall not, without 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 Units, except to the extent permitted by the pro-

visions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if such interchange is customary at the time, but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement, and the Lessee hereby agrees that it will not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any

of the Units. The Lessee may also sublease the Units to any other railroad company with the prior written consent of the Trustee and the Vendor, provided that the rights of such lessee are made expressly subordinate and junior to the rights and remedies of the Vendor under the Conditional Sale Agreement. A copy of such lease shall be furnished to the Trustee and the Vendor.

Nothing in this §11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety provided, however, that such assignee or transferee will not, upon the effectiveness of the assignment or transfer hereof by operation of law, be in default under any provisions of this Lease

and no such assignment or transfer shall be made if, after giving effect thereto, any Unit would not be deemed to be "qualified railroad rolling stock" within the meaning of Section 184(d) of the Internal Revenue Code, as amended.

All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease, it shall apply and refer to each assignee of the Lessor.

§12. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee as directed by the Lessor; the movement and storage of

the Units to be at the expense and risk 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 Unit, 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 Units as hereinabove 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 Units. Upon the return of any Unit, the Lessee agrees that there will be removed from such Unit any name or other identification of the Lessee thereon and that

such Unit will be in the same condition as when delivered to the Lessee hereunder, ordinary wear and tear excepted, and free and clear of all liens, encumbrances or rights of others whatsoever except liens or encumbrances resulting from claims against the Lessor not related to the ownership of such Unit.

§13. Opinion of Counsel. On each Settlement date (as defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing, under the laws of the State of Virginia, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a valid, legal and binding agreement of the Lessee, enforceable in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act, and such filing and recording will protect the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or

hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Units if they do not adversely affect the Lessor's rights hereunder or its right, title and interest in the Units; and

G. no litigation or administrative proceedings are pending, or to the knowledge of the Lessee, threatened which would materially and adversely affect the ability of the Lessee to meet its obligations hereunder.

On the Settlement Date, the Lessor will deliver to the Lessee an opinion of counsel for the Lessor, addressed to the Lessee, in scope and substance satisfactory to the Lessee to the effect set forth in subparagraph (vi) of subsection 5(a) of the Assignment.

§14. Federal Income Tax Ruling and Indemnities. Lessor or Bank will cause Arthur Anderson & Co. to submit to the Commissioner of Internal Revenue (herein called the "Commissioner") a Request for Income Tax Ruling (herein called the "Request"). The Request will ask the Commissioner for rulings, based upon

examination of the Conditional Sale Agreement, this Lease Agreement and the other documentation contemplated thereby and any supplementary information required to be furnished that, (A) this Lease Agreement is a lease for purposes of the Internal Revenue Code of 1954, as amended; (B) the Lessor is the owner of the Units and holds title thereto for benefit of the Bank as its interest is specified in the Trust Agreement; (C) the Trust Agreement creates a "grantor trust" within the meaning of Sections 671-677 of the Internal Revenue Code of 1954, as amended, and does not create an association taxable as a corporation; (D) the Bank is entitled, pursuant to Section 163 of said Code, to deduct from its income, on a current basis, the payments made by the Lessor on the deferred balance of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) which is expressly designated as interest in the Conditional Sale Agreement; and (E) if the Lessor elects, pursuant to Section 184 of said Code, to amortize the cost of the Units over a five-year period, the Bank will be entitled to deduct from its income, on a current basis, the resultant amortization of such Units (herein called "Rapid Amortization"). Lessee agrees to promptly sign such joinders and such other instruments reasonably requested by the Lessor or

the Bank in order to facilitate the preparation and submission of the Request.

The Lessee hereby agrees to indemnify and hold the Bank and the Lessor harmless from and against all losses, costs and damages which the Bank or the Lessor may suffer in consequence of the cost of any Unit not being qualified for Rapid Amortization, by paying to the Lessor, as additional rent hereunder, an amount which, after deduction of all taxes required to be paid by the Lessor or the Bank in respect of the receipt thereof under the laws of any governmental or taxing authority in the United States, shall be equal in the opinion of the Lessor to said Lessor's costs and damages as a result thereof, including the amount of any interest (including any addition to tax) and penalties which may be payable by the Lessor or the Bank in connection therewith.

The indemnification provided for herein shall continue in full force and effect notwithstanding the expiration or other termination of this Lease.

§15. Recording; Expenses. Prior to the delivery acceptance hereunder of any Unit, the Lessee will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with

Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and depositing and refiling, rerecording and redepositing required under Article 18 of the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge deliver, file register, record and deposit (and will refile, reregister, rerecord or red deposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the Assignment; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. All of the foregoing shall be at the Lessor's expense.

The Lessor will pay the costs and expenses involved in the preparation of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§16. Interest on Overdue Rentals. Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9-3/4% per annum, or such lesser amount as shall be legally enforceable, of the overdue rentals for the period of time during which they are overdue.

§17. 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, at First National  
Bank Building, St. Paul, Minnesota 55101,  
attention of Edgar H. Canfield, Vice President  
and Trust Officer

if to the Lessee, at P. O. Box 2210  
Raleigh, North Carolina 27602, attention of  
the Secretary;

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

§18. Severability; Effect and Modification  
of Lease. Any provision of this Lease which is  
prohibited or unenforceable in any jurisdiction,  
shall be, as to such jurisdiction, ineffective  
to the extent of such prohibition or unenforceability  
without invalidating the remaining provisions  
hereof, and any such prohibition or unenforceability  
in any jurisdiction shall not invalidate or render  
unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states  
the rights of the Lessor and the Lessee with  
respect to the Units and supersedes all other  
agreements, oral or written, with respect to the  
Units. No variation or modification of this Lease  
and no waiver of any of its provisions or conditions  
shall be valid unless in writing and signed by  
duly authorized officers of the Lessor and the Lessee.

§19. Execution. This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of August 2, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§20. Law Governing. Definition. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York applicable to contracts entered into and performed in said State; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, recorded or deposited and any rights arising out of the marking of the Units. As used herein the term

"business days" means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Minnesota, North Carolina or California are authorized by law to be closed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee

By \_\_\_\_\_  
Vice President and Trust Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

NORFOLK SOUTHERN  
RAILWAY COMPANY

by \_\_\_\_\_  
President

[Corporate Seal]

Attest:

\_\_\_\_\_  
(Secretary)

STATE OF CALIFORNIA :  
 COUNTY OF SAN FRANCISCO: SS

On this                    day of                    , 1971,  
 before me personally appeared                    ,  
 to me personally known, who, being by me duly sworn, says  
 that he is a Vice President and Trust Officer of FIRST  
 WESTERN BANK AND TRUST COMPANY, 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 fore-  
 going instrument was the free act and deed of said corporation.

\_\_\_\_\_  
 Notary Public

[Notarial Seal]

STATE OF NORTH CAROLINA:  
 COUNTY OF WAKE                    : SS

On this                    day of                    , 1971,  
 before me personally appeared Henry Oetjen, to me personally

known, who, being by me duly sworn, says that he is President of NORFOLK SOUTHERN RAILWAY COMPANY, 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.

---

Notary Public

[Notarial Seal]

ANNEX A

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Place of Delivery</u>
50-foot, 70-ton roller bearing box cars	ACF Industries, Incorporated Specification No. 11-06190 dated April 8, 1971	150	NS 2100 through NS 2249	FOT St. Louis, Missouri

CERTIFICATE OF ACCEPTANCE AND DELIVERY

, 1971

TO: ACF INDUSTRIES, INCORPORATED

FIRST WESTERN BANK AND TRUST COMPANY, as Trustee

The undersigned, the duly appointed inspector and authorized representative of FIRST WESTERN BANK AND TRUST COMPANY, as Trustee (the "Trustee") and NORFOLK SOUTHERN RAILWAY COMPANY (the "Lessee"), for the purposes of the Conditional Sale Agreement, dated as of August 2, 1971, among ACF INDUSTRIES, INCORPORATED, the Trustee and the Lessee and the Lease of Railroad Equipment, dated as of August 2, 1971, between the Trustee and the Lessee, DOES HEREBY CERTIFY that the following units of railroad equipment:

<u>Type</u>	<u>Quantity</u>	<u>Road Numbers</u>
50-foot, 70-ton roller bearing box cars		

have been inspected by the undersigned on behalf of the Trustee and the Lessee under said Conditional Sale Agreement and said Lease of Railroad Equipment, respectively, and such units conform to the Specifications and requirements set forth in Article 1 of said Conditional Sale Agreement, are marked in accordance with Article 9 of said Conditional Sale Agreement, are in good order and are accepted by the undersigned on behalf of the Trustee under said Conditional Sale Agreement and the Lessee under said Lease of Railroad Equipment.

---

Inspector and Authorized Representative of  
FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee

and  
NORFOLK SOUTHERN RAILWAY COMPANY

---

---

AGREEMENT AND ASSIGNMENT

Dated as of August 2, 1971

between

ACF INDUSTRIES, INCORPORATED

and

FIRST TRUST COMPANY OF SAINT PAUL,  
as Agent

---

---

AGREEMENT AND ASSIGNMENT dated as of August 2, 1971, between ACF INDUSTRIES, INCORPORATED (herein called the ("Manufacturer") and FIRST TRUST COMPANY OF SAINT PAUL, acting as Agent (herein called the "Assignee") under a certain Finance Agreement dated as of August 2, 1971 among the Assignee, NORFOLK SOUTHERN RAILWAY COMPANY (herein called the "Guarantor") and the parties named in Schedule A thereto (herein called the "Finance Agreement"),

WHEREAS the Manufacturer, FIRST WESTERN BANK AND TRUST COMPANY, as Trustee (herein called the "Trustee") under that certain Trust Agreement dated as of August 2, 1971 among the Trustee and THE FIRST NATIONAL BANK OF SAINT PAUL in its own capacity and as Fiscal Agent and the Guarantor have entered into a Conditional Sale Agreement dated as of August 2, 1971 (herein called the "Conditional Sale Agreement"), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Trustee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being herein called the "Equipment");

NOW THEREFORE in consideration of the mutual promises, covenants and agreements herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to the Equipment;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the amounts required to be paid pursuant to the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 14 thereof and reimbursement for taxes or other impositions paid

or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of any unit of the Equipment and interest thereon, and in and to any other sums becoming due from the Trustee or the Guarantor under the Conditional Sale Agreement other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement; without any recourse, however, against the Manufacturer for or on account of the failure of the Trustee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to

deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 12 and 13 of the Conditional Sale Agreement or relieve the Trustee or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 4, 7, 12, 13, and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Trustee or the Guarantor with respect to the Equipment shall be and remain enforceable by the Trustee or the Guarantor and their respective successors and assigns against and only against the Manufacturer and the Manufacturer will indemnify the Assignee for any costs and expenses incurred by it on account of any actions or proceedings brought against it by the Trustee or the Guarantor on account thereof. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby

authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Trustee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Trustee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Trustee that at the time of delivery of each

unit of the Equipment to the Trustee under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, free of all claims, liens, security interests and other encumbrances of any nature by, through or under the Manufacturer except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Trustee to pay the Purchase Price of such unit and any other amounts, together with interest thereon, in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims by, through or under the Manufacturer originating prior to said delivery of such unit by the Manufacturer to the Trustee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Trustee thereunder. The Manufacturer will not deliver any unit of the Equipment to the Trustee under the Conditional Sale

Agreement until the Conditional Sale Agreement, the Lease and this Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the aggregate Purchase Price of the Equipment or any other payment due under the Conditional Sale Agreement, or interest thereon, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim whatsoever of the Trustee or the Guarantor or their respective assigns arising out of the breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 12 and 13 of the Conditional Sale Agreement, or by reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Trustee or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described

and will move or take other appropriate action to strike, on the basis of the Trustee's and Guarantor's agreements contained in Article 14 of the Conditional Sale Agreement, any defense, setoff or counterclaim asserted by the Trustee or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as to specialties incorporated in the Equipment and specified by the Trustee or the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construc-

tion or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other similar right.

The Manufacturer agrees that any amount payable to it by the Trustee or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim, lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Trustee, in letters not less than one inch in height, the following legend:

"FIRST TRUST COMPANY OF SAINT PAUL,  
AGENT, OWNER"

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale

Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Settlement Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in the Conditional Sale Agreement) of Equipment, shall pay to the Manufacturer an amount equal to that portion of the aggregate Purchase Price of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that the following conditions precedent shall have been complied with:

(a) There shall have been delivered to the Assignee (with a signed counterpart to the Trustee), the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(i) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of title to the units of the Equipment in the Group and warranting to the Assignee and to the Trustee that at the time of delivery to the Trustee under the Conditional Sale Agreement

the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature by, through or under the Manufacturer except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(ii) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery meeting the requirements of § 1 of the Lease;

(iii) Certificate of an officer of the Guarantor to the effect that (A) prior to the date of delivery and acceptance of the Equipment in the Group under the Conditional Sale Agreement and the Lease, none of said Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor, (B) on the date thereof no event of default under the Conditional Sale Agreement, or event which would constitute such an event of default with the giving of notice or the passage of time, or both, has occurred and is continuing, and (C)

the balance sheet of the Guarantor as of December 31, 1970 and the related earnings statement for the period then ended correctly set forth the Guarantor's financial condition as of such date and the result of its operations for such period and since such date there has been no adverse change in such condition or operations.

(iv) Invoice addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Trustee and the Guarantor as to the correctness of the prices of such units as set forth in said invoice;

(v) Opinion dated such Settlement Date of Messrs. Shearman & Sterling, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, stating that (A) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is binding on the Guarantor, (B) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (C) the Lease has been duly authorized, executed and delivered by the parties thereto and is a valid and binding instrument enforceable in accordance with its terms,

(D) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument,

(E) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment

(F) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Trustee under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Trustee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (G) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement, the Lease or this Assignment, or if any approval is necessary it has been obtained,

(H) the Conditional Sale Agreement, the Lease and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee with respect

to the Equipment in any state of the United States of America, and (I) registration of the Conditional Sale Agreement, this Assignment, the Finance Agreement or the certificates of in-

terest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933 as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall cover such other matters as the Assignee or the Investors may reasonably request;

(vi) Opinion dated such Settlement Date of counsel for the Trustee, addressed to the Assignee to the effect that (A) the Trust Agreement has been duly authorized, executed and delivered by each of the parties thereto and constitutes a valid, binding and effective agreement and declaration of trust in accordance with the terms thereof, and the trust intended to be created by the Trust Agreement has been duly created and is validly existing, and (B) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other party or parties thereto, are valid and binding instruments enforceable in accordance with their terms;

(vii) Opinion dated such Settlement Date of counsel for the Guarantor, addressed to the Assignee and the Trustee, (A) to the effect set forth in clauses A through G of § 13 of the Lease, (B) to the effect set forth in clauses (F), (G) and (H) of subparagraph (v) above, and (C) the Conditional Sale Agreement and the Finance Agreement have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(viii) Opinion dated such Settlement Date of counsel for the Manufacturer addressed to the Assignee and the Trustee, to the effect set forth in clauses (D), (E) and (F) of subparagraph (v) above and stating that (A) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (B) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(ix) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement on account of such Group shall be made by the Assignee with funds furnished to it for that purpose by the Trustee, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this subsection 5(a), counsel may qualify any opinion to the effect that (x) any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and (y) such opinion does not pass upon questions involving interest on interest. In giving the opinions specified in subparagraphs (v) and (vii) of this subsection 5(a), counsel may in fact rely as to the title to the units at the time of delivery to the Trustee upon the opinion of counsel for the Manufacturer. In giving the opinion specified in subparagraph (v) of this subsection 5(a), Messrs. Shearman & Sterling may in fact rely, as to any matters governed by the law of any jurisdiction other

than New York or the United States, on the opinion of counsel for the Manufacturer, the Guarantor or the Trustee as to such matters. In giving the opinion specified in subparagraph (viii) of this subsection 5(a), counsel for the Manufacturer may assume the due authorization, execution and delivery of documents by parties other than the Manufacturer and may in fact rely, as to any matters governed by the law of any jurisdiction other than the States of New York and New Jersey or the United States, on the opinion of counsel for the Assignee or the Guarantor as to such matters..

(b) The Assignee shall have received pursuant to the Finance Agreement, all the funds to be furnished to the Assignee by the Investors named in the Finance Agreement and the Trustee shall have paid the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Manufacturer agrees for the benefit of the Trustee that, irrespective of anything contained in the Conditional Sale Agreement to the contrary notwithstanding, the Trustee shall have no obligation to make any payment provided for in subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement unless on each Settlement Date (i) all of the

conditions of this Section 5 (except the conditions specified in subparagraph (ix) of subsection 5(a) and the second portion of the first paragraph of Section 5(b) relating to such Settlement Date have been satisfied in a manner satisfactory to the Trustee and it shall have received a copy of each document referred to in subsection 5(a) to be delivered on such Settlement Date, (ii) simultaneously with such payment by the Trustee the Assignee shall make the payment to the Manufacturer required by the terms of this Section 5 to be made by the Assignee on such Settlement Date, (iii) the Trustee shall have received an opinion of Messrs. Briggs & Morgan, to the effect that the Trustee is entitled to amortize the cost of the Equipment over a five-year-period pursuant to Section 184 of the Internal Revenue Code of 1954, as amended, and (iv) no amendment, modification, or addition shall have been made in or to said Code, or the regulations thereunder which, in the opinion of the Trustee, would preclude the Trustee from being entitled to amortize the cost of the Equipment as provided in Section 184

of said Code.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment (and all related rights, titles and interest in, to and under the Conditional Sale Agreement) with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Trustee or the Guarantor 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 14 of the Conditional Sale Agreement enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Trustee and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer all assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York applicable to contracts made and performed in said State; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of August 2, 1971, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED

[Corporate Seal]

by *H. H. Wilson*  
Vice President

Attest:

*[Signature]*  
A557 Secretary

FIRST TRUST COMPANY OF SAINT PAUL  
as Agent,

[Corporate Seal]

by *J. B. Reuter*  
Vice President

Attest:

*[Signature]*  
Assistant Secretary

STATE OF NEW YORK :  
COUNTY OF NEW YORK: ss.:

On this 28<sup>th</sup> day of July, 1971, before me personally appeared **W. W. WILSON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES INCORPORATED, 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.

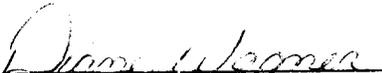
*Catherine Lenehan*  
Notary Public

[Notarial Seal]

CATHERINE LENEHAN  
Notary Public, State of New York  
No. 31-2308550  
Qualified in New York County  
Commission Expires March 30, 1973

STATE OF MINNESOTA:  
COUNTY OF RAMSEY : ss.:

On this *29<sup>th</sup>* day of *July*, 1971, before me personally appeared *G. B. Reckten*, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST TRUST COMPANY OF SAINT PAUL, 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.

  
Notary Public

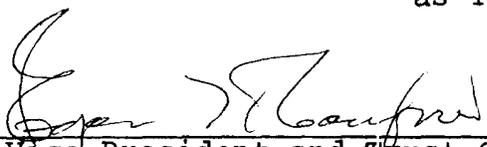
[Notarial Seal]

DIANE WAGNER  
Notary Public, Ramsey County, Minn.  
My Commission Expires Oct. 5, 1977

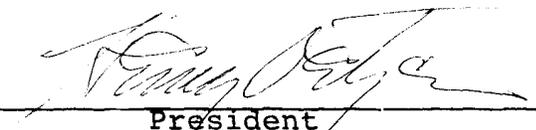
ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 2, 1971.

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee

by   
Vice President and Trust Officer

NORFOLK SOUTHERN RAILWAY COMPANY

by   
President