

876277A
RECORDATION NO. _____ Filed & Recorded
AUG 10 1971 - 10 50 AM
INTERSTATE COMMERCE COMMISSION

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

RECEIVED
AUG 10 10 48 AM '71
I.C.C.
FEE OPERATION BR.

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 un-serviceable, 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,

shall occur within five days after such notice, on the following rental payment date) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. In the event any Unit suffers a Casualty Occurrence, the Lessee shall also pay to the Lessor the salvage value of such Unit which will be based upon its net scrap value, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of not less than \$5.00 per gross ton for dismantling of such Unit. Upon payment of the Casualty Value and, if applicable, the salvage value for such Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of the Lease as to such Unit shall terminate, title to such Unit shall pass to and vest in the Lessee, without necessity of further act and without any representation or warranty whatsoever on the part of the Lessor, and the Lessee shall assume all responsibility in respect of the ownership of such Unit.

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

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

In the event the Lessor or the Lessee shall receive any payment from any governmental authority by reason of any Casualty Occurrence to a Unit resulting from any taking or requisitioning of such Unit, the Lessee shall be entitled to such payment to the extent the same does not exceed the Casualty Value of such Unit duly paid by the Lessee and the Lessor shall be entitled to any remaining portion of such payment.

§7. Annual Reports. On or before March 31 in each year, commencing with the year 1973, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, signed by an officer of the Lessee, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount,

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.

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 redeposit 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
Staurdays, 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

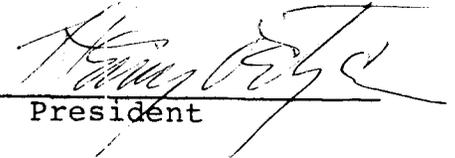
By *Edward W. Stanford*
Vice President and Trust Officer

[Corporate Seal]

Attest:

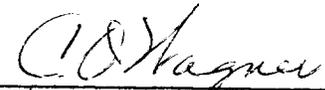
Howard B. Meehan
Not Secretary

NORFOLK SOUTHERN
RAILWAY COMPANY

by 
President

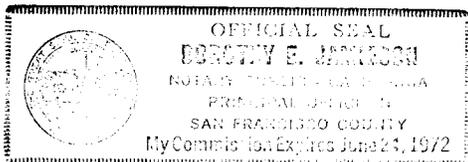
[Corporate Seal]

Attest:


(Secretary)

STATE OF CALIFORNIA :
 COUNTY OF SAN FRANCISCO: SS

On this 4th day of August, 1971,
 before me personally appeared MICHAEL D. CAMFIELD,
 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.



[Notarial Seal]

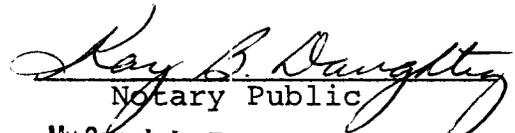
Dorothy E. Jackson
 Notary Public

STATE OF NORTH CAROLINA:
 COUNTY OF WAKE : SS

On this 9th day of Aug., 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.

[Notarial Seal]


Notary Public
My Commission Expires March 29, 1975

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