

CHATTEL MORTGAGE,
ASSIGNMENT AND
SECURITY AGREEMENT

10276-A
RECORDATION NO. _____ Filed 1425

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INTERSTATE COMMERCE COMMISSION

ATLANTIC & WESTERN FINANCIAL CORPORATION, a Delaware corporation, (hereinafter called the "Company"), in consideration of the granting by the MARINE MIDLAND BANK (hereinafter called the "Bank") of a credit facility up to, but not exceeding, in the aggregate principal amount at any one time outstanding the lesser of (a) \$3,000,000, or (b) 80% of the Borrowing Base (as defined in a certain Loan Agreement dated as of January 8, 1979 between the Company and the Bank [the "Loan Agreement"]), and in order to secure the payment of the principal of and interest on the Notes (as defined in the Loan Agreement) and to secure the payment of all other debts, liabilities and obligations of the Company to the Bank of every kind and nature, due or to become due, liquidated or unliquidated, and the performance and observance of all the covenants and conditions in the Loan Agreement, does hereby sell, convey, warrant, mortgage, assign, pledge, grant a security interest in and lien upon, and hypothecate to the Bank, its successors and assigns, the following described properties, rights, interests and privileges (all of such properties, rights, interests and privileges hereby mortgaged, assigned and pledged or intended so to be are hereinafter collectively referred to as the "Collateral"):

(a) Railroad equipment consisting of twenty five (25) freight cars (said freight cars and equipment are more specifically described in Exhibit A

attached hereto) and together with all accessories, equipment, parts and appurtenances attached to any of the railroad equipment, whether now owned or hereafter acquired, and all substitutions, renewals and replacements of, and additions, improvements to, any and all of said railroad equipment (the "Equipment");

(b) All right, title and interest of the Company, as Lessor in any Leases or Conditional Vendor under Conditional Sales Agreements, to any and all rents and other sums due and to become due pursuant to the said Leases or Conditional Sales Agreements, including any and all extensions and renewals thereof, insofar as the same cover or relate to the Equipment; it being the intent and purpose hereof that the assignments and transfer to the Bank of said rents and other sums to become due under the Leases or Conditional Sales Agreements, shall be effective and operative immediately and shall continue in full force and effect and the Bank shall have the right to collect and receive said rents and other sums and to apply same in payment of the Notes hereinbefore mentioned, notwithstanding this assignment or any subsequent assignment, all obligations of the Company under the Leases or Conditional Sales Agreements in respect of the Equipment subject thereto shall

be enforceable against the Company only and not against the Bank;

The Company represents and warrants: (i) Company has title to the Collateral free and clear of all liens and encumbrances; (ii) no financing statement covering any of the Collateral is on file in any public office, except as may have previously been granted to the Bank; and (iii) its certificate of incorporation does not prohibit the security interest granted herein and the execution of this Chattel Mortgage, Assignment and Security Agreement will not violate any law or any agreement to which it is a party.

The Company covenants and agrees that it (i) will keep the Equipment or cause the Equipment to be kept in good working order, repair and running condition, and will replace any worn, broken or defective parts; (ii) will promptly pay all taxes validly levied or assessed against the Equipment and will keep the Equipment free and clear of all liens, attachments and encumbrances except a lien, attachment or encumbrance in favor of the Bank and such other liens, attachments and encumbrances as may be set forth on Exhibit B annexed hereto; (iii) will allow the Bank and its representatives free access to the Equipment at all reasonable times for the purpose of inspection; (iv) will promptly notify the Bank in writing of any loss to the Equipment; (v) will indemnify the Bank against all claims, liabilities, expenses, costs, losses and charges and expense including any counsel fees, in any manner imposed upon or accru-

ing against the Bank or its assigns including claims for royalties arising because of the use in or about the construction 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 right, arising out of or connected with the ownership or use of the Equipment; (vi) will reimburse the Bank upon demand for all expenses incurred in connection with perfecting the security interest granted herein or the satisfaction thereof; (vii) will not abandon the Equipment except upon loss theft or destruction ; (viii) will not sell, assign, lease, mortgage or otherwise dispose of any interest in the Equipment; (ix) will not use or permit the Equipment to be used for any unlawful purpose or in violation of any Federal, state or municipal law, statute or ordinance; and (x) will faithfully perform its obligations under the Leases or Conditional Sales Agreements relating to the Equipment.

The Company hereby assigns to the Bank any and all moneys (including, but not limited to, proceeds of insurance, return or unearned premiums) which may become due under any policy or agreement insuring the Equipment against any loss due to destruction, and directs the insurance company issuing such policy or other party to make payment thereof directly to the Bank. The Bank may, at its option, apply any insurance or other moneys so received to the cost of repairs to the Equipment and/or to payment of any of the Notes or other expenses of the Bank, in any order the Bank may determine, whether or not due, and shall remit any surplus to the Company. The Company

irrevocably appoints the Bank as the Company's attorney-in-fact, with full power of substitution, to receive all such moneys, to execute proof of claim, to endorse drafts, checks and other instruments for the payment of money payable to the Company in payment of such insurance moneys, to adjust and compromise any claim, to execute releases, to cancel any insurance policy covering the Equipment when such policy is not required to protect Company's or the Bank's interest and to do all other acts and things that may be necessary or required to carry into effect the power herein granted.

Simultaneously with the execution and delivery of this Chattel Mortgage, Assignment and Security Agreement, there shall be delivered to the Bank:

(a) A certificate or certificates signed by an authorized representative of the Company, stating that the Equipment has been inspected; that the Equipment is in good order and condition; that the Equipment conforms to all applicable Interstate Commerce Commission requirements and specifications and all standards recommended by the Association of American Railroads; and that the Equipment is subject to the terms of the Leases or Conditional Sales Agreements and the term thereof;

(b) Certificates of the Company, or an authorized representative of the Company, and of the Lessee or Conditional Vendee to the effect that the

Leases or Conditional Sales Agreements are in full force and effect and no default exists under the terms thereof, and no event has occurred which, with the passage of time, would constitute a default under the terms thereof;

(c) A favorable opinion of counsel for the Company, stating that (i) the Leases or Conditional Sales Agreements have been duly authorized, executed and delivered and are valid and binding instruments enforceable in accordance with their terms; (ii) the Bank is vested with all the right, title and interest of the Company in and to the Leases or Conditional Sales Agreements purported to be assigned to the Bank by this Chattel Mortgage, Assignment and Security Agreement; (iii) the Leases or Conditional Sales Agreements and this Chattel Mortgage, Assignment and Security Agreement are in recordable form for filing with the Interstate Commerce Commission in accordance with Section 20(c) of the Interstate Commission Act and when recorded, will validly vest in the Bank a perfected security interest in the Equipment, free of all claims, liens, encumbrances and other security interests and no other filing or recordation is necessary to protect the rights of the Bank in any state of the United States of America or the District of Columbia; and

(iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Chattel Mortgage, Assignment and Security Agreement.

The Company agrees that whenever a default shall be existing, the Bank shall have the following rights and remedies to the extent permitted by applicable law: (a) to enter such place or places where any of the Equipment may be located and take and carry away the same by any of its representatives, with or without legal process, to Company's place of storage; (b) to sell the Equipment at public or private sale, whether or not the Equipment is present at such sale and whether or not the Equipment is in the constructive possession of the Bank or the person conducting the sale, in one or more sales, as an entirety or in parcels, for the best price that the Bank can obtain and upon such terms as the Bank may deem desirable; (c) to be the purchaser at any such sale; (d) to require the Company to pay all expenses of such sale, taking, keeping and storage of the Equipment, including reasonable attorneys fees; (e) to apply the proceeds of such sale to all expenses in connection with the taking and sale of the Equipment, and any balance of such proceeds toward the payment of the Notes in such order of application as the Bank may from time to time elect; (f) to require the Company to assemble the Equipment upon the Bank's demand, at the Company's expense and make it available to the Bank at a place designated by

the Bank which is reasonably convenient to both parties; and (g) to exercise any one or more rights or remedies accorded by the Uniform Commercial Code or the Interstate Commerce Act and the Rules and Regulations thereunder. If the proceeds of any such sale are insufficient to pay the expenses, as aforesaid, and the Notes, the Company agrees to pay any deficiency to the Bank upon demand and if such proceeds are more than sufficient to pay such expenses and the Notes, the Bank agrees to pay the surplus to the Company.

If at the time of repossession any of the Equipment, the Equipment contains other personal property not included in the Equipment, the Bank may take such personal property into custody and store it at the risk and expense of the Company. The Company agrees to notify the Bank within 48 hours after repossession of the Equipment of any such other personal property claimed and that failure to do so will release the Bank or representatives from any liability for loss or damage thereto.

At the request of the Bank, the Company will join with the Bank in filing this Chattel Mortgage, Assignment, and Security Agreement. The Company hereby authorizes the Bank to file a financing statement signed only by the Bank in all places where necessary to perfect the Bank's security interest in the Collateral. Without limiting the foregoing, the Company agrees

that whenever a Lease or Conditional Sales Agreement requires the Company to sign a financing statement for filing purposes, the Company hereby appoints the Bank or any of the Bank's representatives as the Company's attorney and agent, with full power of substitution, to sign or endorse the Company's name on any such financing statement or other document and authorizes the Bank to file such a financing statement in all places where necessary to perfect the Bank's security interest in the Collateral; and the Company hereby ratifies all acts of said attorney and said substitute and agrees to hold the Bank and said attorney harmless from any acts of commission or omission or any error or judgment or mistake of fact or law pertaining thereto.

This Chattel Mortgage, Assignment and Security Agreement is in addition to, and not in limitation of, any other right and remedy the Bank may have by virtue of any other instrument or agreement heretofore, contemporaneously herewith or hereafter executed by the Company or by law or otherwise including but not limited to the Loan Agreement. If any provision of this Chattel Mortgage, Assignment and Security Agreement is contrary to applicable law, such provision shall be deemed ineffective without invalidating the remaining provisions hereof. If and to the extent that applicable law confers any right or imposes any duty inconsistent with or in addition to any of the provisions hereof the affected provision shall be considered amended to conform thereto. The Bank shall

not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder. A waiver by the Bank of any right or remedy hereunder on any one occasion, shall not be construed as a bar to or waiver of any such right or remedy which the Bank would have had on any future occasion nor shall the Bank be liable for exercising or failing to exercise any such right or remedy. It is expressly understood and agreed that whenever the service of any notice to the Company is required hereby or is otherwise required, such notice may be sent to the Company by ordinary mail to the address shown in the Loan Agreement, and if so mailed, such notice shall be deemed sufficient notice thereof.

This Chattel Mortgage, Assignment and Security Agreement shall be construed in accordance with the laws of the State of New York.

This Chattel Mortgage, Assignment and Security Agreement shall be binding upon and shall inure to the benefit of the Company, the Bank and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed all as of the 27 day of March, 1979.

ATTEST:

O. Trounba, III

ATTEST:

[Signature]
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ATLANTIC & WESTERN
FINANCIAL CORPORATION

By: C. M. Reeves, Jr.
Title: Vice-President

MARINE MIDLAND BANK

By: [Signature]
Title: Asst. V.P.

STATE OF NORTH CAROLINA)
 : ss.:
COUNTY OF LEE)

On the 27th day of March , 1979 , before me personally came Charles M. Reeves, Jr. to me personally known, who being by me duly sworn, says that he is the Vice-President of the ATLANTIC & WESTERN FINANCIAL CORPORATION, that the seal affixed to the foregoing instrument is the 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.

Pauline M. Collins
Notary Public

My Commission Expires:
December 10, 1979

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

On the 30TH day of MARCH , 1979 , before me personally came John D. McCormick , to me personally known, who being by me duly sworn, says that he is a Sr. Vice-President of MARINE MIDLAND BANK, that the seal affixed to the foregoing instrument is the seal of the Bank, that said instrument was signed and sealed on behalf of said Bank 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 said Bank.

Robert Levine
Notary Public

ROBERT LEVINE
NOTARY PUBLIC, State of New York
No. 41-7517720
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1980

EXHIBIT A

Twenty-five (25) 70 ton XF boxcars, 50 feet 6 inches long, with 10 foot sliding doors.

Interior equipment - none

Special lining - white epoxy paint

Permitted loading use - food products, noncorrosives

Recording numbers and marks - ATW 1,000-1,024