

THIS AGREEMENT OF LEASE AND PURCHASE, made this 1st day of October, 1973, between ACF INDUSTRIES, INCORPORATED, a corporation of New Jersey (hereinafter called ACF), SEABOARD COAST LINE RAILROAD COMPANY, a corporation of Virginia, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation of Kentucky, which two railroad companies operate, among other lines of railroad, the line known as "Clinchfield Railroad Company," leased from Carolina, Clinchfield and Ohio Railway and Carolina, Clinchfield and Ohio Railway of South Carolina (which first two named railroad companies are hereinafter individually called SCL and L&N, respectively, and collectively called the Railroads);

7185  
 REGISTRATION NO. \_\_\_\_\_ Filed & Recorded  
 OCT 18 1973 - 3 15 PM  
 INTERSTATE COMMERCE COMMISSION

REGISTRATION NO. \_\_\_\_\_ Filed & Recorded

WITNESSETH:

OCT 18 1973 - 3 15 PM

INTERSTATE COMMERCE COMMISSION

That for and in consideration of the sum of One Dollar (\$1.00) to ACF in hand paid by the Railroads, the receipt whereof is hereby acknowledged, ACF hereby leases to the Railroads and the Railroads hereby hire from ACF, subject to the terms and conditions hereinafter set forth, all or such portion of those certain twenty-five (25) 77-ton 50'6" box cars bearing Clinchfield Railroad Company road numbers 7200 through 7224, inclusive (hereinafter called the cars) as are delivered to the Railroads or their assigns prior to the termination of this Lease, as hereinafter provided, for a period commencing with respect to each car when such car is delivered hereunder and ending as to all the cars not more than one hundred eighty (180) days after the delivery of the last car hereunder:

1. Construction: ACF will construct the cars at its plant at St. Louis, Missouri, to meet Department of Transportation and Interstate Commerce Commission requirements, and to Association of American Railroads' recommended standards reasonably interpreted as being applicable to railroad equipment of the character of the cars here involved, and in accordance with ACF Specification No. 11-06813A, dated May 14, 1973, as revised September 10, 1973, which specification is incorporated by reference and made a part hereof.

2. Inspection: Inspection of the cars will be made at the aforesaid plant of ACF by an authorized representative of the Railroads.

3. Delivery: Delivery of the cars leased hereunder, with freight prepaid, to the Railroads on Clinchfield Railroad Company's tracks at Dante, Virginia, complete and ready for service, will be made during November, 1973, subject, however, to delays or defaults resulting from any and all causes beyond ACF's reasonable control, whether or not existing on the date of this Agreement, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes or other labor conditions, accidents, fire, flood, explosion, damage to plant, equipment or facilities, epidemics, quarantine restrictions, delays or defaults of subcontractors, and failure to receive necessary materials or supplies.

Acceptance by the Railroads of delivery of each car shall be on the line of railroad of the Clinchfield at Dante, Virginia, by an authorized

representative of the Railroads and evidenced by a certificate or certificates of acceptance duly executed by said authorized representative, stating that such car has been delivered to and accepted by the Railroads without reservation.

4. Rental: Upon execution by said authorized representative of the said certificate of acceptance, the Railroads agree to pay, for use and rental of each car, a daily rental computed on the basis of a 365-day year equivalent to one-half of one per cent per annum above the minimum commercial lending rate (base rate) prevailing from time to time at First National City Bank of New York of the purchase price of each car, as hereinafter set forth, to the termination of this lease. Such rentals shall accrue from and include the respective dates of delivery and acceptance; and such rentals shall be due and payable to ACF in cash upon such termination.

5. Use: During the term of this lease, the Railroads shall be entitled to possession and use of the cars upon the lines of railroad owned or operated by either or both of them, under lease or otherwise, or over which either of them has trackage rights and upon the lines of railroad of connecting and other railroad companies in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this agreement.

The Railroads shall be entitled to part temporarily with possession of, or suffer or allow to pass out of their control, any of the cars; with the understanding, however, that the Railroads shall assume all responsibility for, and indemnify and save ACF harmless from and against all loss of or damage to, the cars.

6. Title: Pending purchase of the cars and payment therefor, as herein provided, ACF shall retain full legal title to the cars, notwithstanding the delivery thereof to, and the possession and use thereof by, the Railroads, as herein provided, subject, however, to the rights of the Railroads under this lease; it being understood and agreed that any and all additions to the cars and any and all replacements of parts thereof and additions thereto shall constitute accessions to the cars and shall be subject to all the terms and conditions of this lease and included in the term "cars" as used in this lease; it being further understood and agreed, however, that during the term of this lease the Railroads shall keep the cars numbered with the identifying road numbers as hereinabove specified, which numbers shall not be changed without notification being first given in writing by the Railroads to ACF and this Agreement supplemented or amended, such supplemental agreement or amendment being duly recorded or filed, as hereinafter provided, to set forth such new number or numbers; it being further understood and agreed, however, that the Railroads shall not permit the name of any person, association or corporation to be placed on the cars as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroads may cause the cars to be lettered "Clinchfield Railroad Company", "CRR", or other appropriate words or marks for the convenience of identification of their interests or

of any affiliate therein, and shall, prior to placement of the cars in operation or the exercise of any control over any part thereof, plainly, distinctly, permanently and conspicuously stencil, and keep and maintain stenciled, on both sides of each car the words "Owned by ACF, a Bank or Trust Company under a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or the name of an assignee of ACF followed by the words "Agent, Owner", or other appropriate markings, in letters of not less than one (1) inch in height.

7. Maintenance and Repair: The Railroads agree, at their own expense, to maintain and keep the cars in good order and repair during lease, subject to the right of ACF, at its option, to inspect the condition and supervise the maintenance thereof without obligation, and in accordance with the recommendations of ACF in any case affecting the repair parts, and any other things material to and necessary for the proper maintenance and operation of the cars. The Railroads further agree that they shall not effect any change in the design, construction or specifications of the cars without the prior authority and approval of ACF during the term of this lease.

8. Loss or Destruction: In the event of loss or destruction of or irreparable damage to any of the cars from any cause whatsoever during the term of this lease, the Railroads shall promptly and fully inform ACF

in regard to such loss, destruction or damage and the Railroads shall promptly pay to ACF, in addition to the rent reserved herein and performance of all of the Railroads' obligations hereunder, a sum equal to the purchase price of each car so lost, destroyed or damaged, as hereinafter provided, which represents the agreed value for each car so lost, destroyed or damaged.

9. Taxes, Liens and Compliance with Laws: The Railroads agree to pay promptly local, state or federal taxes (other than income taxes imposed upon ACF), licenses and assessments imposed upon or in respect of the cars by reason of or in connection with shipment, delivery, possession, use, payment and sale thereof, and further agree at all times to keep the cars free and clear of all taxes, assessments, liens and encumbrances, and covenant that the cars at all times hereunder will be maintained, used and operated under and in lawful compliance with the laws, rules and regulations to which they may be subject in local, state or federal jurisdiction; it being understood and agreed, however, that the Railroads may withhold any such payment so long as they shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner and such withholding does not in the judgment of ACF affect the right, title and interest of ACF in and to any of the cars; it being further understood and agreed, however, that any sums of money

that ACF may pay by way of release, discharge, or otherwise, shall be reimbursed promptly and paid to ACF by the Railroads on demand.

10. Warranty: ACF hereby warrants that each of the cars will be built in accordance with the specifications set forth in Section 1 hereof, free from defects in materials (except as to specialties incorporated therein specified by the Railroads and not manufactured by ACF) and workmanship at the time of delivery, as hereinabove provided, and agrees to repair or replace, f.o.b. its plant at St. Louis, Missouri, any part or parts furnished by it which, by reason of defect in material or workmanship, require replacement within one (1) year after such delivery, provided, however, that the Railroads shall notify ACF of the defect immediately and afford ACF an opportunity for verification.

11. Indemnities and Guarantees: The Railroads agree to save, indemnify and keep harmless ACF from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising out of the Railroads' possession or use of the cars during the term of this lease. This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this lease or the purchase of the cars as hereinafter provided.

12. Patents: ACF agrees for itself, its successors or assigns, to save, indemnify and keep the Railroads harmless from and against any and all royalties, damages, claims, suits, judgments and costs that may

result from the use of any patented article on the cars at the time of delivery, excepting, however, any appliances, devices or materials specified or required by the Railroads and not included in the standard specifications of ACF, for which the Railroads agree to save, indemnify and keep ACF harmless from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the supply or use thereof. Each party hereto shall give prompt notice in writing to the others of the commencement of any action in respect of which such other parties may be charged with liability hereunder. The covenants of indemnity herein shall continue in full force and effect notwithstanding the termination of this lease or the purchase of the cars as hereinafter provided.

13. Assignments by ACF: All or any of the rights, benefits and duties of ACF hereunder may be assigned by it and reassigned by any assignee at any time, or from time to time; provided, however, that no such assignment shall subject any assignee to or relieve ACF, its successor or successors, from any of the obligations imposed upon it hereunder for the construction and delivery of the cars or for the guarantees, warranties or indemnities contained herein, and provided further that no such assignment shall relieve the Railroads of the obligations imposed upon them hereunder, which, according to its terms and context, is intended to survive such assignment. In the event of any such assignment,

either the assignor or the assignee shall give written notice to the Railroads, together with counterpart copies of such assignment, stating the name and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of ACF's right, title and interest subject only to such reservations, if any, as contained in such assignment. From and after the receipt by the Railroads of such notification of assignment, all payments thereafter to be made by the Railroads hereunder shall, to the extent so assigned, be made to the assignee.

In the event of any assignment by ACF of its rights to receive any payments under this lease, the rights of such assignee to such payments as may be assigned, together with any other rights hereunder which can be and are so assigned, shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever arising out of any breach of any obligation of ACF in respect of the cars or the manufacture, construction, delivery, guarantee or warranty thereof, or in respect of any indemnity contained in this lease, nor subject to any defense, set-off, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroads by ACF. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroads, their successors or assigns, against ACF, its successors and assigns (other than assignees, as such, of rights, benefits and advantages

assigned pursuant to this lease). The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Railroads to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of ACF as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to ACF of the consideration for the assignment of any of ACF's rights under this lease.

14. Assignments by the Railroads: The Railroads agree not to sell, assign, transfer or otherwise dispose of their rights hereunder nor transfer possession of the cars to any other firm, person or corporation without first obtaining the written consent of ACF to such assignment or transfer, excepting, however, the sale, assignment or transfer by the Railroads to the party or parties designated as Assignee or Assignees under a Conditional Sale Agreement or as Trustee or Trustees under a modified Philadelphia Plan Equipment Trust created for financing the acquisition of all or a part of the cars, together with other railroad equipment, of all of the rights of the Railroads hereunder in respect of such cars as the Railroads shall elect to so finance, it being understood and agreed, however, that any such assignment or transfer shall not postpone or affect the performance of any of the terms and conditions hereunder, and in the event of such assignment or transfer the Railroads will purchase the cars

or cause the same to be purchased and will pay or cause to be paid to ACF the purchase price of the cars in cash as hereinafter provided, as if no transfer or assignment had been made. The Railroads shall have the right, at their option, to finance the acquisition of all or any part of the cars in any manner desired by them other than under the aforesaid Conditional Sale Agreement and modified Philadelphia Plan Equipment Trust, subject always to the condition that any such other plan of financing will be without expense to ACF and will provide for and secure payment to ACF in cash, as herein provided, without recourse. ACF agrees to cooperate with the Railroads in the effectuation of any other such plan of financing.

15. Purchase: The Railroads agree to purchase from ACF and ACF agrees to sell to the Railroads the cars on or before the termination of this lease, upon the giving of five (5) business days' written notice by the Railroads to ACF, provided, however, title to the cars is free and clear of all liens, encumbrances or charges of any nature or description, except taxes not yet due and payable, and otherwise free from valid objections. The purchase price of each car shall be Twenty Thousand Four Hundred Thirty-two and 15/100 Dollars (\$20,432.15) f.o.b. St. Louis, Missouri, plus any prepaid freight charges incurred by ACF, upon receipt of which payment ACF agrees to deliver to the Railroads, their assignee or assignees, a bill or bills of sale with full warranty of title for the cars and such other

instruments incident thereto as the Railroads may require to be furnished by ACF; such price being subject (a) to a mutually satisfactory adjustment of mechanical details and conforming changes with specifications thereof, (b) to adjustments for any substitutions involving either additions or deductions and which may, by mutual agreement between ACF and the Railroads, be adopted and used for the construction and completion of the cars, and (c) to any other price adjustments mutually agreed upon between the Railroads and ACF.

16. Termination: This lease shall in respect of each of the cars be for a period beginning on the date of delivery of each car to the Railroads and ending one hundred eighty (180) days from the date of delivery of the last car hereunder; provided, however, that, in the event the Railroads or their assignees shall, on or prior to the expiration of such one hundred eighty (180) day period, purchase the cars or cause same to be purchased, then, upon delivery of the cars to the Railroads or their assignees as the purchaser or purchasers thereof at Dante, Virginia, or such other point of delivery to such purchaser or purchasers as may be mutually agreed upon by the parties hereto, as evidenced by a duly executed certificate or certificates of acceptance by the authorized representative of such purchaser or purchasers, this lease shall thereupon be and stand terminated.

17. Default: In the event of any failure at any time on the part of the Railroads to comply with any of the terms and conditions herein set forth, the Railroads, at the election of ACF, which election shall be evidenced by the giving of ten (10) business days' written notice by ACF to the Railroads, shall be obligated to purchase and pay for the cars within five (5) business days after the receipt of such notice, in accordance with all the terms and conditions set forth herein governing the purchase of the cars other than the date for purchase thereof. In the event of such default and the nonelection by ACF as hereinabove provided, the term of this lease shall immediately cease and terminate and ACF may, without any notice or demand, take or cause to be taken immediate possession of the cars and, in such event, all of the Railroads' rights in the cars will thereupon terminate; provided, however, that such repossession shall not be deemed a waiver of ACF's right to receive the full purchase price of the cars or of any other rights or remedies conferred upon ACF herein or by law, and provided further, however, that in the event of such repossession and subsequent payment by the Railroads of the purchase price, together with a sum equivalent to the costs and expenses, including attorneys' fees, incurred by ACF in such repossession and the making good of all defaults hereunder, ACF, at the time of such payment, shall redeliver the cars to the Railroads in the condition they were in when

repossessed and, by appropriate instrument or instruments, transfer to the Railroads title to and property in the cars free and clear of all liens and encumbrances. In the event that the payment of the purchase price is not made by the Railroads to ACF within ten (10) business days after the date when payment is due, ACF, at its option, may within a reasonable time thereafter sell the cars for a reasonable purchase price or retain them for its own use, in which event the Railroads' rights in the cars shall cease and terminate and its obligation to pay to ACF said purchase price, plus a sum equivalent to the cost and expenses incurred by ACF in repossession of the cars, shall be reduced by an amount equal to the net proceeds of sale of the cars in the event that they shall have been resold by ACF, or by an amount equal to the fair value thereof in the event that ACF shall have retained the cars for its own use. Any extension of time granted by ACF to the Railroads for payment of any sum due hereunder or for the performance of any of the obligations hereunder shall not be deemed a waiver of any of the rights and remedies of ACF existing hereunder or otherwise. Any notice provided for hereunder shall be deemed to be properly served if delivered or mailed to the Railroads in care of Clinchfield Railroad Company, Erwin, Tennessee 37650, and to ACF at 750 Third Avenue, New York, New York 10017. Any notice hereunder to any assignee of ACF or the Railroads shall be deemed to be

properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroads or ACF, as the case may be, by such assignee. The term "business days" as used herein shall mean calendar days, excluding Saturdays, Sundays, and any other day on which banking institutions in Baltimore, Maryland or New York, New York are authorized to remain closed.

18. Recordation: The Railroads will, at their expense, on execution and delivery of this Agreement, cause same to be duly filed and recorded with the Interstate Commerce Commission, in accordance with Section 20c of the Interstate Commerce Act, as amended, and wherever else required in order to publish notice of and protect the title of ACF in and to the cars.

19. Execution: This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original and all such counterparts shall together constitute but one and the same Agreement, which will be sufficiently evidenced by any such original counterpart.

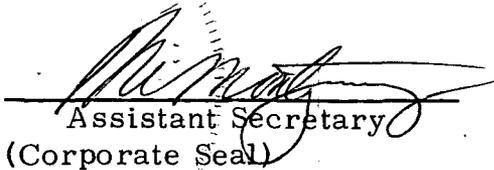
20. Prior Agreements: This Agreement shall constitute the entire contract between the Railroads and ACF and all prior agreements, contracts, proposals or other documents (other than written modifications of the specifications referred to herein) between ACF and the Railroads with respect to the cars shall cease and terminate upon the signing of this Agreement and shall no longer have any force or effect whatsoever. No verification

or modification of this Agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of ACF and the Railroads. The Railroads will pay all reasonable costs, charges and expenses, excepting the counsel fees of ACF, incident to the preparation, printing or other duplication, execution, acknowledgment, delivery, filing, registration or recordation of this Agreement and any supplements thereto or amendments thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereto affixed, duly attested by their respective officers thereunto duly authorized, all as of the day and year first above written.

Attest:

ACF INDUSTRIES, INCORPORATED

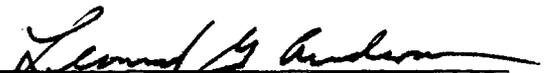
  
Assistant Secretary  
(Corporate Seal)

By   
Vice President

Attest:

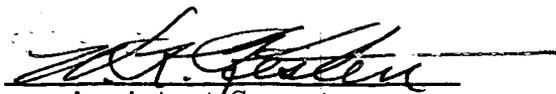
SEABOARD COAST LINE RAILROAD COMPANY

  
Assistant Secretary  
(Corporate Seal)

By   
Treasurer

Attest:

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

  
Assistant Secretary  
(Corporate Seal)

By   
SECRETARY AND TREASURER

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

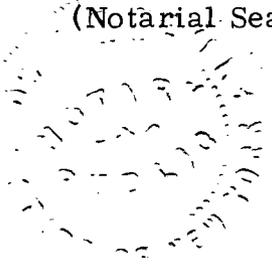
On this *3<sup>rd</sup>* day of October, 1973, before me personally ap-  
peared **W. W. WILSON**, to me personally known, who, being  
by me duly sworn, says that he is a Vice-President of ACF INDUSTRIES,  
INCORPORATED, that one of the seals affixed to the foregoing instrument  
is the corporate seal 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 instru-  
ment was the free act and deed of said corporation.

*Edwin F. Meyer*  
\_\_\_\_\_  
Notary Public

EDWIN F. MEYER  
NOTARY PUBLIC, State of New York  
No. 30-7917803  
Qualified in Nassau County  
Certificate filed in New York County  
Commission Expires March 30, 1974

My commission expires

(Notarial Seal)





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

On this <sup>15<sup>th</sup></sup> day of October, 1973, before me personally  
appeared C. Hayden Edwards ~~J. A. KILDUFF~~, to me personally known, who, being by me  
duly sworn, says that he is ~~an Assistant Vice President~~ <sup>Secretary & Treasurer</sup> of LOUISVILLE  
AND NASHVILLE RAILROAD 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 exe-  
cution of the foregoing instrument was the free act and deed of said  
corporation.

Janeb A. Blaine  
Notary Public

My commission expires June 15, 1977

(Notarial Seal)

