

EXECUTED IN 6 COUNTERPARTS

OF WHICH THIS IS NO. 5

REGISTRATION NO. 8243 FILED & RECORDED

MAR 24 1976 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of March 1, 1976

between

ACF INDUSTRIES, INCORPORATED

and

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

Covering

128 100-Ton Open Top Hopper Cars

THIS AGREEMENT, dated as of March 1, 1976, by and between ACF Industries, Incorporated, a New Jersey corporation (Manufacturer), and THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O);

W I T N E S S E T H :

The Manufacturer and C&O heretofore entered into a letter Agreement dated February 25, 1975 (a copy of which letter Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Manufacturer and C&O, whereunder the Manufacturer agreed to construct at its St. Louis, Missouri plant and to deliver to C&O at Cincinnati, Ohio, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for 128 100-ton open top hopper cars to bear C&O road numbers 184372 - 184499, inclusive (Cars).

As contemplated by said letter Agreement, C&O intends to finance the purchase of the Cars from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of May 1, 1976, but deliveries of the Cars are scheduled to begin on or about April 20, 1976, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before June 1, 1976. C&O, in order that it may use the Cars pending establishment of such financing arrangement, has arranged with the Manufacturer to give it temporary custody and possession of the Cars upon their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer the Cars as of the date each of them is delivered to C&O at Cincinnati, Ohio, or such other point or points as may be directed by C&O, for the period ending on the earlier of June 1, 1976, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Car to the delivery point, C&O's representative will execute a certificate of acceptance acknowledging the receipt of delivery of such Car under this Agreement. Title to the Cars shall remain in the Manufacturer and C&O's right and interest therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

C&O agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind, and
- (b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Cars or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Cars by C&O during the term of this Agreement. C&O's obligations contained in this paragraph shall survive the termination of this Agreement.

C&O will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Car to C&O under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously stencilled upon each side of each Car, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

"CHESAPEAKE AND OHIO RAILWAY EQUIPMENT TRUST OF 1976,
FIRST PENNSYLVANIA BANK N.A., TRUSTEE, OWNER, LESSOR"

C&O hereby agrees to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Cars.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Cars, C&O shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Cars as provided in the letter Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided,

however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the letter Agreement relating to the Cars. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the letter Agreement, and C&O receives written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O under this Agreement, shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the letter Agreement, 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 the Manufacturer in respect to the Cars, 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 C&O by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O, its successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

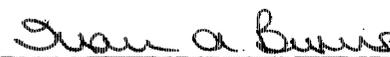
C&O agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O of

the Cars, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Cars in accordance with the terms of the letter Agreement, or impair any of the Manufacturer's rights under the letter Agreement.

Attest:

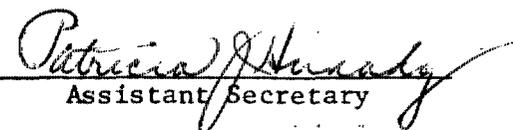
ACF INDUSTRIES, INCORPORATED


Assistant Secretary

By 
Vice President

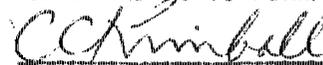
Attest:

THE CHESAPEAKE AND OHIO RAILWAY COMPANY


Assistant Secretary

By 
Assistant Vice-President
and Treasurer

APPROVED AS TO FORM

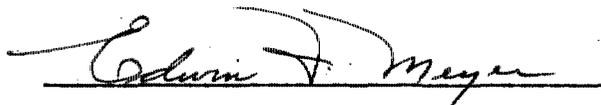


GENERAL ATTORNEY

3/18/76

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

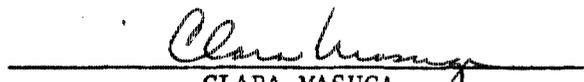
On this 22nd day of March, 1976, before me personally appeared
IVAN A. BURNS , to me personally known, who, being by me duly sworn,
says that he is a Vice President of ACF INDUSTRIES, INCORPORATED, that
one of the seals affixed to the foregoing instrument is the corporate
seal of said corporation, that said instrument was signed and sealed on
behalf of said corporation by authority of its Board of Directors and he
acknowledged that the execution of the foregoing instrument was the free
act and deed of said corporation.



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, 1978

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 18TH day of March, 1976, before me personally appeared
L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says
that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND
OHIO 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.



CLARA MASUGA
Notary Public, Cuyahoga County, Ohio
My Commission Expires April 21, 1979