

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

OCT 5 2 30 PM '77

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GEORGE J. GILLESPIE, III
RICHARD S. SIMMONS
WAYNE E. CHAPMAN
THOMAS D. BARR
MELVIN L. BEDRICK

GEORGE T. LOWY
ROBERT ROSENMAN
JAMES H. DUFFY
ALAN J. HRUSKA
JOHN E. YOUNG
JAMES M. EDWARDS
DAVID G. ORMSBY
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RICHARD J. HIEGEL
FREDERICK J. HARRIS
CHRISTINE BESHAR
ROBERT S. RIFKIND
DAVID BOIES
DAVID O. BROWNWOOD
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ROBERT G. JOFFE
ROBERT F. MULLEN
ALLEN FINKELSON
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212 HANOVER 2-3000

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TELETYPE: 710-581-0338

TELEFAX: 125547

9027 - A

RECORDATION NO.

FILED & RECORDED

OCT 5 1977-2 45 PM

INTERSTATE COMMERCE COMMISSION

OCT 5 1977

DATE
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9027

RECORDATION NO. FILED & RECORDED

OCT 5 1977-2 45 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Chicago and North Western Transportation Company for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of August 15, 1977, between The Connecticut Bank and Trust Company, as Trustee, and each of ACF Industries, Incorporated, and Thrall Manufacturing Company;

(b) Agreement and Assignment dated as of August 15, 1977, between each of ACF Industries, Incorporated, and Thrall Manufacturing Company and First Security Bank of Utah, National Association, as Agent;

2(a) Lease of Railroad Equipment dated as of August 15, 1977, between Chicago and North Western Transportation Company and The Connecticut Bank and Trust Company, as Trustee;

(b) Assignment of Lease and Agreement dated as of August 15, 1977, between The Connecticut Bank and Trust Company, as Trustee, and First Security Bank of Utah, National Association, as Agent.

Charles M. Williams To George

RECORDATION NO.

9027

OCT 5 1977-2 45 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO.

9027 - B

OCT 5 1977-2 45 PM

INTERSTATE COMMERCE COMMISSION

October 5, 1977

COUNSEL

ROSWELL L. GILPATRICK
CARLYLE E. MAW

EDWARD S. PINNEY
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TERMINAL HOUSE
22, GROSVENOR GARDENS
LONDON, SW1W 0AU ENGLAND
TELEPHONE: 01-730-5203
TELEX: 917640

CABLE ADDRESSES
CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON S. W. 1.

The names and addresses of the parties to the
aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

First Security Bank of Utah,
National Association,
79 South Main Street,
Salt Lake City, Utah 84111.

(2) Trustee-Vendee-Lessor:

The Connecticut Bank and Trust
Company,
One Constitution Plaza,
Hartford, Connecticut 06115.

(3) Builders:

ACF Industries, Incorporated,
AMCAR Division,
750 Third Avenue,
New York, New York 10017

Thrall Car Manufacturing Company,
Box 218,
Chicago Heights, Illinois 60411.

(4) Lessee:

Chicago and North Western
Transportation Company,
400 West Madison Street,
Chicago, Illinois 60606.

Please file and record the documents referred to
in this letter and cross-index them under the names of the
Agent-Vendor-Assignee, the Trustee-Vendee-Lessor, the Builders
and the Lessee.

The equipment covered by the aforementioned docu-
ments consists of the following:

Two Hundred Forty-four 100-ton Covered
Hopper Cars (AAR Mechanical Designation # L353), bearing
identifying numbers CNW 180256-180499, both inclusive; and

Twenty-five 100-ton Coil Steel Flat Cars (AAR Mechanical Designation # E240), bearing identifying numbers CNW 39650-39674 both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



Robert W. Olson
As Agent for Chicago and North
Western Transportation Company

Robert L. Oswald, Esq., Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

9027-A
RECORDATION NO. Filed & Recorded

OCT 5 1977 -2 42 PM

INTERSTATE COMMERCE COMMISSION

Agreement and Assignment

Dated as of August 15, 1977

between

each of

ACF INDUSTRIES, INCORPORATED,

and

THRALL CAR MANUFACTURING COMPANY

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely as Agent

AGREEMENT AND ASSIGNMENT dated as of August 15, 1977, between each of ACF INDUSTRIES, INCORPORATED, AND THRALL CAR MANUFACTURING COMPANY (such corporations being hereinafter individually called a Builder and collectively called the Builders) and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the Assignee.

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of the date hereof with ITT Industrial Credit Company, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment); and

WHEREAS the Vendee and Chicago and North Western Transportation Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of such Builder's Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the

Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to such Builder's Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of such Builder's Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any unit of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Builder's Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the

Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to each Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to each Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to such units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2 of the Lease;

(c) an invoice of such Builder for such units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the

terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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.

SECTION 9. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the Units or Equipment giving rise to such right or obligation and its successors as herein provided.

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 officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by K. D. Johnson
EXECUTIVE Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Assistant Secretary

THRALL CAR MANUFACTURING COMPANY,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, *not in its individual capacity
but solely as Agent,*

by _____
Authorized Officer

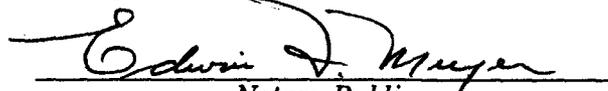
[SEAL]

Attest:

Authorized Officer

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

On this 29 day of September, 1977, before me personally appeared K. D. JOHNSON, to me personally known, who being by me duly sworn, says that he is ~~Exec Vice Pres.~~ 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.



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, 1978



STATE OF ILLINOIS, }
COUNTY OF , } SS.:

On this day of , 1977, before me personally appeared
, and , to me personally known, who being by me duly sworn, says that
he is of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed
to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed
and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged
that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 15, 1977.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

by _____
Authorized Officer

Agreement and Assignment

Dated as of August 15, 1977

between

each of

ACF INDUSTRIES, INCORPORATED,

and

THRALL CAR MANUFACTURING COMPANY

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely as Agent

AGREEMENT AND ASSIGNMENT dated as of August 15, 1977, between each of ACF INDUSTRIES, INCORPORATED, AND THRALL CAR MANUFACTURING COMPANY (such corporations being hereinafter individually called a Builder and collectively called the Builders) and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the Assignee.

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of the date hereof with ITT Industrial Credit Company, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment); and

WHEREAS the Vendee and Chicago and North Western Transportation Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of such Builder's Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the

Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to such Builder's Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of such Builder's Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any unit of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Builder's Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the

Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to each Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to each Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to such units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2 of the Lease;

(c) an invoice of such Builder for such units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the

terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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.

SECTION 9. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the Units or Equipment giving rise to such right or obligation and its successors as herein provided.

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 officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

THRALL CAR MANUFACTURING COMPANY,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, *not in its individual capacity
but solely as Agent,*

by _____
Authorized Officer

[SEAL]

Attest:

Authorized Officer

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

On this _____ day of _____, 1977, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is a _____ 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires _____

STATE OF ILLINOIS, }
COUNTY OF Cook, } ss.:

On this 29th day of September, 1977, before me personally appeared C. H. Wright and _____, to me personally known, who being by me duly sworn, says that he is Vice President of THRALL CAR MANUFACTURING 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.

Anna L. Hines

Notary Public



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 15, 1977.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

by _____
Authorized Officer

Agreement and Assignment

Dated as of August 15, 1977

between

each of

ACF INDUSTRIES, INCORPORATED,

and

THRALL CAR MANUFACTURING COMPANY

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely as Agent

AGREEMENT AND ASSIGNMENT dated as of August 15, 1977, between each of ACF INDUSTRIES, INCORPORATED, AND THRALL CAR MANUFACTURING COMPANY (such corporations being hereinafter individually called a Builder and collectively called the Builders) and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the Assignee.

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of the date hereof with ITT Industrial Credit Company, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment); and

WHEREAS the Vendee and Chicago and North Western Transportation Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of such Builder's Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the

Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to such Builder's Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of such Builder's Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any unit of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Builder's Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the

Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to each Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to each Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to such units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2 of the Lease;

(c) an invoice of such Builder for such units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the

terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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.

SECTION 9. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the Units or Equipment giving rise to such right or obligation and its successors as herein provided.

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 officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

THRALL CAR MANUFACTURING COMPANY,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, *not in its individual capacity
but solely as Agent,*
by *Thomas C. Lambert*
Authorized Officer

[SEAL]

Attest:

Lidia B. Fisher
Authorized Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this 30th day of September, 1977, before me personally appeared Thomas C. Crompton personally known, who being by me duly sworn, says that he is an Authorized Officer of First Security Bank of Utah, National Association, that one of the seals affixed to the foregoing instrument is the seal of said 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 bank.

Susan L. Hayward
Notary Public

[NOTARIAL SEAL]

My commission expires June 6, 1981

My Commission expires

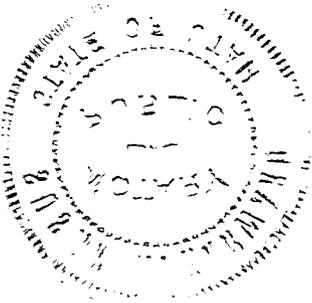


ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 15, 1977.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

by _____
Authorized Officer



Agreement and Assignment

Dated as of August 15, 1977

between

each of

ACF INDUSTRIES, INCORPORATED,

and

THRALL CAR MANUFACTURING COMPANY

and

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,
not in its individual capacity but solely as Agent

AGREEMENT AND ASSIGNMENT dated as of August 15, 1977, between each of ACF INDUSTRIES, INCORPORATED, AND THRALL CAR MANUFACTURING COMPANY (such corporations being hereinafter individually called a Builder and collectively called the Builders) and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting not in its individual capacity but solely as Agent under a Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the Assignee.

WHEREAS each of the Builders and The Connecticut Bank and Trust Company, as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of the date hereof with ITT Industrial Credit Company, have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called such Builder's Equipment); and

WHEREAS the Vendee and Chicago and North Western Transportation Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

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

(a) all the right, title and interest of such Builder in and to each unit of such Builder's Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver its Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 13 of the

Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to such Builder's Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of such Builder's Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and such Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any unit of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to such Builder's Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the

Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of such Builder's Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to each Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to each Builder an amount equal to the portion of the Purchase Price of the units of such Builder's Equipment being settled for on such Closing Date which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in such units, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, such Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to such units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2 of the Lease;

(c) an invoice of such Builder for such units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee all right, title and interest of such Builder in such units of the Equipment, free from all claims, liens, security interests and other encumbrances at the time of delivery (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the satisfaction of all of the conditions contained in Paragraph 6 of the Participation Agreement and the Assignee having on deposit, pursuant to the

terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as such Builder is concerned, a legal, valid and existing agreement binding upon such Builder in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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.

SECTION 9. The rights and obligations of the Builders under this Assignment are several in accordance with their interests and not joint. Accordingly, whenever this Assignment, by use of such designation as "each Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the Units or Equipment giving rise to such right or obligation and its successors as herein provided.

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 officials, and their respective seals to be hereunto affixed and duly attested, all as of the date first above written.

ACF INDUSTRIES, INCORPORATED,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

THRALL CAR MANUFACTURING COMPANY,

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, NATIONAL
ASSOCIATION, *not in its individual capacity
but solely as Agent,*

by _____
Authorized Officer

[SEAL]

Attest:

Authorized Officer

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

On this day of , 1977, before me personally appeared
 , to me personally known, who being by me duly sworn, says that he is a 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF ILLINOIS, }
COUNTY OF } ss.:

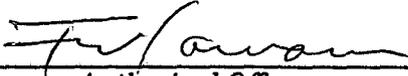
On this day of , 1977, before me personally appeared
 , and , to me personally known, who being by me duly sworn, says that
he is of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed
to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed
and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged
that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 15, 1977.

THE CONNECTICUT BANK AND TRUST COMPANY,
as Trustee,

by 
Authorized Officer