



ACF INDUSTRIES

INCORPORATED

750 THIRD AVENUE, NEW YORK, N. Y. 10017, (212) 986-8600, CABLE ADDRESS: ACFUSA

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MAR 23 1977
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RECORDATION NO. 8762 Filed & Recorded

MAR 28 1977 -2 30 PM

March 23, 1977

~~INTERSTATE~~ COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D. C.

RECORDATION NO. 8762-A Filed & Recorded

MAR 28 1977 -2 30 PM

ICC Washington, D. C.
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Gentlemen:

Re: Grand Trunk ~~Interstate Commerce Commission~~ Company

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and 3 counterparts each of a Conditional Sale Agreement dated as of February 1, 1977 and an Agreement and Assignment dated as of February 1, 1977 relating thereto.

The general description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Manufacturers under Conditional Sale Agreement and Assignors under Agreement and Assignment:

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

Whitehead and Kales Company
58 Haltiner Street
Detroit, Michigan 48218

Vendee under Conditional Sale Agreement:

Harold K. Criswell, Albert C. Welti and Robert F. Whitworth, Jr., as Trustees under G.T.W. Trust No. 77-1 c/o Matrix Leasing International, Inc.
Bank of America Center
San Francisco, California 94104

Agent and Assignee under Agreement and Assignment:

Continental Illinois National Bank and Trust Company of Chicago
231 South LaSalle Street
Chicago, Illinois 60690

COUNTERPARTS - ET. Karpman

Interstate Commerce Commission -2-

March 23, 1977

Re: Grand Trunk Western Railroad Company

The undersigned is one of the Manufacturers under the Conditional Sale Agreement and one of the Assignors under the Agreement and Assignment and has knowledge of the matters set forth therein.

Please return the original and 1 copy of the Conditional Sale Agreement and the Agreement and Assignment to James E. Luebchow, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

ACF INDUSTRIES, INCORPORATED

By *RW Montgomery*
Its Asst. Secretary

MANUFACTURER

RECORDATION NO. 876-A Filed & Recorded

MAR 28 1977 -2 30 PM

ILLINOIS COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1977

Among

ACF INDUSTRIES, INCORPORATED

and

WHITEHEAD AND KALES COMPANY

Manufacturers

And

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

Agent and Assignee

(G.T.W. Trust No. 77-1)
(50 Box Cars; 40 Flat Cars; 40 Auto Racks)

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AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of February 1, 1977 (this "Assignment") among ACF INDUSTRIES, INCORPORATED, a New Jersey corporation, and WHITEHEAD AND KALES COMPANY, a Michigan corporation (collectively, the "Manufacturers" and individually, a "Manufacturer") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Agent and Assignee under a Finance Agreement dated as of February 1, 1977 (the "Finance Agreement"), said Bank as so acting being hereinafter called the "Assignee".

WHEREAS, the Manufacturers and Harold K. Criswell, Albert C. Welti and Robert F. Whitworth, Jr., as Trustees (the "Vendee") under a Trust Agreement dated as of February 1, 1977 (the "Trust Agreement") among such Trustees and CARGILL LEASING CORPORATION, a Delaware corporation (the "Trustor"), relating to G.T.W. Trust No. 77-1, have entered into a Conditional Sale Agreement dated as of February 1, 1977 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth by the Manufacturer and the purchase by the Vendee of the railroad equipment described in Schedules A, B and C to the Conditional Sale Agreement (collectively, the "Equipment" and individually, an "Item" or "Item of Equipment"); and

WHEREAS, the Vendee and Grand Trunk Western Railroad Company (the "Railroad") have entered into an Equipment Lease dated as of February 1, 1977 (the "Lease") providing for the lease of the Equipment to the Railroad.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturers, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Assignment by Manufacturers. Each of the Manufacturers hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of such Manufacturer in and to each Item of Equipment to be built by it when and as delivered and accepted and upon payment by the Assignee to such Manufacturer of the amount required to be paid under Section 5 hereof and payment by the Vendee of the amount required to be paid under Section 3.3(a) of the Conditional Sale Agreement with respect to such Item;

(b) All the right, title and interest of such Manufacturer in and to the Conditional Sale Agreement (except the right and obligation to construct and deliver the various Items of Equipment to be built by it and the right to receive the payments specified in paragraph (a) of Section 3.3 thereof and reimbursement for taxes paid or incurred by such Manufacturer) and in and to any and all amounts which may be or become due or owing to such Manufacturer under the Conditional Sale Agreement on account of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) 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 above in subparagraph (b) hereof, all of such Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against such Manufacturer 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 such Manufacturer to deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 10.3, 11 and 12.5 (with respect to marking) of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Manufacturer under Sections 2, 3.3(a), 10 and 12 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 12 of the Conditional Sale Agreement, all obligations of such Manufacturer to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Manufacturer. In furtherance of the foregoing assignment and transfer, each Manufacturer 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 Manufacturer 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 their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee (it being understood that such agreement with respect to the expense and liability of enforcement shall in no event be construed as a waiver of the Assignee's rights with respect thereto under Section 15 of the Conditional Sale Agreement and Section 14.2 of the Lease).

Section 2. Covenants and Agreements of Manufacturers.

Each Manufacturer covenants and agrees that it will construct and deliver the various Items of Equipment to be built by it 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 and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Manufacturer. Each Manufacturer further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to be built by it to the Vendee under the Conditional Sale Agreement it will have legal title to such Item and good and lawful right to sell such Item and the title to such Item will be free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Railroad under the Lease; and each Manufacturer further covenants and agrees that it will defend the title to such Item built by it against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by such Manufacturer to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder and the Railroad under the Lease.

Each Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment 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 Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Vendee arising out of a breach by such Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Sections 10 and 11 of the Conditional Sale Agreement, 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 Railroad by such Manufacturer. Either Manufacturer'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 Section 12.4 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Railroad 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 Manufacturer of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Manufacturer the right, at such Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Railroad against and only

against such Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of such Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to such Manufacturer of any suit, proceeding or action by the Assignee herein described.

Except in cases of designs, systems, processes, formulas or combinations specified by the Vendee or the Railroad and not developed or purported to be developed by such Manufacturer, and articles and materials specified by the Vendee and the Railroad and not manufactured by such Manufacturer, each Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including reasonable 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 the Equipment built by it, or any Item thereof, 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 notice to such Manufacturer of any claim actually known to the Assignee which is based upon any such alleged infringement and will give such Manufacturer the right, at such Manufacturer's expense, to compromise, settle or defend against such claim.

Each Manufacturer agrees that any amount payable to it by the Vendee or the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Items of Equipment.

Section 3. Equipment Markings. Each Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment built by it, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"Leased from Trustees under G.T.W. Trust No. 77-1, Vendee, and subject to a Security Interest held by Continental Illinois National Bank and Trust Company of Chicago."

Section 4. Recordation. Upon request of the Assignee, its successors and assigns, each Manufacturer will execute and deliver 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 such Manufacturer therein or in the Equipment.

Section 5. Conditions Precedent to Payment by Assignee.

The Assignee, on or before noon on each Closing Date fixed as provided in Section 3.5 of the Conditional Sale Agreement with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer of each Item of Equipment in such Group at such bank or trust company in the United States of America as such Manufacturer shall designate for payment to it, an amount equal to 62.869368% of the aggregate Purchase Price for all Items of Equipment in such Group for which settlement is then being made, provided that:

(a) Prior to or concurrently with the First Delivery Date (as defined in the Conditional Sale Agreement) all of the conditions precedent set forth in paragraphs (a) through (i), both inclusive, of Section 3.4 of the Conditional Sale Agreement shall have been satisfied or complied with;

(b) Concurrently with the delivery to and acceptance by the Railroad under the Lease of each Item of Equipment in such Group, the Vendee shall have received from the Railroad a Certificate of Acceptance covering such Item of Equipment executed by a duly authorized representative of the Railroad pursuant to Section 1 of the Lease;

(c) Unless payment of the amount payable pursuant to subparagraph (a) of Section 3.3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendee, the Assignee shall obtain from the relevant Manufacturer a receipt therefrom for such payment.

The obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the prior timely receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect thereto. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the relevant Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof.

Section 6. Further Assignments. Subject to the terms and provisions of the Finance Agreement, 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, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

Section 7. Representation of Manufacturers; Further Assurances. Each Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns and the Investors (as defined in the Finance Agreement) that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon such Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, 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 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 nearly perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

Section 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all the rights conferred by any applicable Federal statute, rule or regulation.

Section 9. Severability. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

Section 10. Execution in Counterparts. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee and the Railroad. Although this Assignment is dated for convenience 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.

IN WITNESS WHEREOF, each Manufacturer and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective seals to be affixed and duly attested, all as of the day, month and year first above written.

ACF INDUSTRIES, INCORPORATED

By Guar a Bews
Vice President

(Corporate Seal)
Attest:
[Signature]
ASSISTANT Secretary

WHITEHEAD AND KALES COMPANY

By C. E. Wieser
President **C. E. WIESER**
VICE PRES.-FINANCE

(Corporate Seal)
Attest:
[Signature]
Secretary

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

By Donald W. [Signature]
Vice President

(Seal)
Attest:
[Signature]
TRUST OFFICER Cashier

STATE OF NEW YORK)
) SS
COUNTY OF New York)

On this 22ND day of March, 1977, 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.



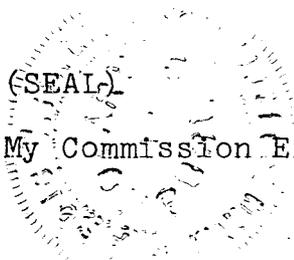
Edwin F. Meyer
Notary Public

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

My Commission Expires:

STATE OF MICHIGAN)
) SS
COUNTY OF Wayne)

On this 21st day of March, 1977, personally appeared C. E. Wieser, to me personally known, who being by me duly sworn, says that he is a Vice President of WHITEHEAD AND KALES 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.



Ardis W. Hall
Notary Public

ARDIS W. HALL
Notary Public, Wayne County, Mich.
My Commission Expires Sept. 6, 1977

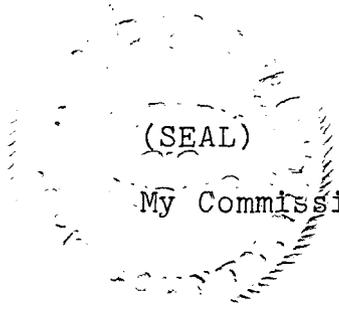
My Commission Expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 16th day of MARCH, 1977, personally appeared DONALD W. ALVIN, to me personally known, who being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association and that said instrument was signed and sealed on behalf of said association 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 association.



Notary Public R. S. DONOVAN



My Commission Expires: _____

April 26, 1980