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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1973

between

ACF INDUSTRIES, INCORPORATED

and

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1973

between

ACF INDUSTRIES, INCORPORATED

and

FIRST NATIONAL BANK IN ST. LOUIS

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350 100-Ton 4600 Cu. Ft. Covered Hopper Cars
$4,970,000 Maximum Committed Amount

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

CONDITIONAL SALE AGREEMENT dated as of September 1, 1973, by and between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, an Indiana corporation (hereinafter called the Railroad).

WHEREAS the Builder has agreed to construct or cause to be constructed and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment);

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* The Builder will construct the Equipment and will sell and deliver it to the Railroad and the Railroad will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment shall conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement and each unit of the Equipment (except as provided in Article 8 hereof) shall be new railroad equipment.

ARTICLE 2. *Delivery.* The Builder will deliver the various units of the Equipment to the Railroad at such point or points within the United States of America as shall be specified by the Railroad, freight charges, if any, prepaid (unless the Railroad shall otherwise specify or direct), in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of Government, such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials, or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted on or before November 30, 1973, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute (*a*) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder and (*b*) a separate agreement providing for the purchase of such excluded Equipment by the Railroad, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Railroad and the Builder shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives of the Railroad. Upon delivery of each unit, the

Railroad agrees to cause to be executed and delivered to the Builder, a certificate of acceptance (hereinafter called the Certificate of Acceptance) executed by an agent or representative of the railroad stating that such unit has been inspected and is accepted by him on behalf of the Railroad, has been completed in accordance with the Specifications and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of the Equipment covered thereby has been delivered to the Railroad and conforms with the Specifications and is acceptable to the Railroad in all details.

On delivery of each of such units hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest and freight charges, are set forth in Schedule B hereto (which price is hereinafter called the base price). The base price or prices shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group); *provided, however,* that if there shall at any time have been delivered to and accepted by the Railroad units of the Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 10 days or more following the last date

of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay in cash to the Manufacturer at the office of the Manufacturer, or at such other place as the Manufacturer may designate, the Purchase Price of the Equipment and prepaid freight, as follows:

(*a*) On each Closing Date (as hereinafter defined) with respect to each Group:

(*i*) the amount, if any, by which the estimated aggregate purchase price of all the units of the Equipment in such Group, as stated in the invoices for such units (hereinafter called the Group Invoiced Purchase Price), exceeds the lesser of (*a*) 80% of the Group Invoiced Purchase Price, or (*b*) the applicable Committed Amount shown in Item 3 of Schedule A multiplied by the number of such units in such Group; and

(*ii*) the amount, if any, of prepaid freight paid by the Builder in respect of such units upon shipment thereof from the Builder's plant to the place for delivery thereof designated by the Railroad;

(*b*) Upon receipt of a final certificate of aggregate Purchase Price (hereinafter called the Final Certificate) for all Groups, the amount, if any, by which the final aggregate Purchase Price of all Groups, as stated in the final invoice or invoices therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (*a*) and (*c*) of this paragraph;

(*c*) In 20 equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to clause (*i*) or (*ii*) of this subparagraph (*c*) shall not, when divided by 20, result in an amount ending in an integral cent) semi-annual instalments, as hereinafter provided, the lesser of (*i*) an amount equal to 80% of the Final Invoiced Purchase Price, or (*ii*) the applicable Committed Amount shown in Item 3 of Schedule A multiplied by the number of such units of the Equipment delivered hereunder.

If this Agreement shall have been assigned by the Builder, the obligations of the Railroad under subparagraph (*b*) of the preceding paragraph of this Article 3 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligation.

The first instalment of the portion of the indebtedness in respect of the Purchase Price of all the Equipment payable pursuant to subparagraph (*c*) of the third paragraph of this Article 3 shall be payable on March 1, 1974, and subsequent instalments shall be payable semi-annually thereafter on each September 1 and March 1, through September 1, 1984. The unpaid portion of such indebtedness shall bear interest, from the respective Closing Dates or, in the case of any portion thereof owing by reason of the fact that the Final Invoiced Purchase Price exceeds the aggregate of the Group Invoiced Purchase Prices, from the tenth business day after delivery of the Final Certificate, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at the rate per annum equal to the best rate of First National Bank of St. Louis for loans of 90-day maturity to substantial and responsible commercial borrowers (hereinafter called the Commercial Prime Rate) as from time to time in effect. Each change in such interest rate shall take effect on the first day of the month following the change in such Prime Rate. Such interest to be payable semi-annually on the dates of maturity of instalments of principal as above set forth.

Anything herein contained to the contrary notwithstanding, the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before November 30, 1973.

The term "Closing Date" with respect to any Group shall mean such date, not more than 10 business days following presentation by the Builder to the Railroad of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

The Railroad may, at its option, at any time, prepay any or all of the principal instalments, without premium, in the inverse order of maturity; ***provided, however,*** that if such prepayment shall be made directly or indirectly from proceeds of borrowings, a premium shall be payable in the amount of ½ of 1% per annum upon each instalment so prepaid from the date of prepayment to the date upon which such instalment is due; and *provided further,* the foregoing premium for the privilege of prepayment

shall not apply to prepayment of all (but not less than all) remaining principal instalments, with accrued interest to date of prepayment, if such full prepayment is made on or after the date of payment for the sixth principal instalment and on or before the date of payment for the tenth principal instalment, whether such prepayment be made with borrowed funds or otherwise.

ARTICLE 4. *Changes in Prices.* The base price or prices of the Equipment are subject to increase or decrease in accordance with the Builder's Proposal referred to in Schedule B hereto, as such Proposal shall be from time to time amended, and as may be agreed to by the Builder and the Railroad.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of sales taxes], excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement or any sale, use payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result

in a lien upon any unit of the Equipment, *provided, however, that* the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of an invoice therefor; *provided, further,* that the Railroad shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof (as evidenced by an opinion of counsel for the Manufacturer), or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment," as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price

of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will then execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will then execute and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing, or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 7. *Marking of Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule B hereto and will cause to be kept plainly, distinctly, permanently and conspicuously marked in stencil on each side of such unit, in letters not less than one-half inch in height, the name of the Manufacturer followed by the word "Owner" or other appropriate words designated by the

Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Manufacturer to the Equipment and its rights under this Agreement. The Railroad will not place any unit of the Equipment which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such marking, which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except with the consent of the Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Manufacturer by the Railroad and shall promptly be filed, recorded or deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Railroad may cause the Equipment to be lettered with the name, emblem or initials of the Railroad or with the name, emblem, or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full

indebtedness in respect to the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On or before March 1 in each year the Railroad shall pay to the Manufacturer a sum equal to the fair value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however,* that from time to time, in any calendar year, when the total fair value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of which a payment shall theretofore have been made to the Manufacturer pursuant to this Article 8) shall exceed $100,000, the Railroad, within 30 days of such event, shall pay to the Manufacturer a sum equal to the fair value of such units.

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation at the annual rate (but not in excess of 6%) approved by the Interstate Commerce Commission for such unit for each period of 12 calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder

or to or toward the cost of a unit or units of standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than the date of this Agreement, to replace such unit having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments of the indebtedness hereunder thereafter falling due in the inverse order of their maturities (but without premium and whether or not such amount shall be sufficient to prepay one or more entire instalments). In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the Railroad shall pay any additional cost of such unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the applicable rate of depreciation on the replaced unit shall be conclusively determined by the certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad.

The Railroad will cause any replacing unit to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall execute, ac-

knowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar railroad equipment.

Whenever the Railroad shall file with the Manufacturer pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith, in such number of counterparts or copies as may reasonably be requested:

(1) a certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 8 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on the earliest date when any such money was paid to the Manufacturer; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Manufacturer free and clear of all liens, security interests and other encumbrances, and that such unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, any money paid to the Manufacturer pursuant to this Article 8, shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, maturing in not more than five years from the

date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest or earned discount received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon the disposition of any Government Securities by the Manufacturer pursuant hereto, whether at maturity or by sale or redemption or otherwise, any amounts received thereon, including any interest received by the Manufacturer upon or prior to such disposition, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Manufacturer for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If the amounts so received on such Government Securities (including such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Government Securities.

In the event that any moneys paid to, or held by, the Manufacturer pursuant to this Article 8 are applied to the prepayment of indebtedness in respect to the Purchase Price the Railroad will pay to the Manufacturer on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

If one of the events of default specified in Article 18 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 (including for this purpose Government Securities and interest thereon) shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

ARTICLE 9. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 10. *Builder's Warranty of Material and Workmanship.* The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment to be free from defects in material and workmanship (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Builder) under normal use and service, the Builder's obligation under this Article 10 being limited to making good at its plant, any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Builder (unless return is waived by the Builder in writing) with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental special or consequential damages of any kind. **The foregoing warranty of the Builder is expressly in lieu of all other warranties expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2 and**

16 hereof, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid.

ARTICLE 11. *Compliance With Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment, and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 12. *Reports and Inspections.* On or before March 1, in each year, commencing with the year 1974, the Railroad will furnish to the Manufacturer a statement showing, as at the preceding December 31, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use, whether by accident, or otherwise, during the preceding calendar year, and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request. The Manufacturer shall have the right, by its agents, but shall be under no obligation to inspect the Equipment and

the Railroad's records with respect thereto once in every year.

ARTICLE 13. *Possession and Use.* The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Railroad, to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any other railroad controlling, controlled by, or under common control with, the Railroad, or over which the Railroad has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic, and may lease the Equipment to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 14. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns, which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. Any amounts paid by any Assignee of the Builder in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

ARTICLE 15. *Railroad's Indemnities.* The Railroad agrees to indemnify and save harmless the Manufacturer from

and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment; *provided, however,* that the Builder shall not be relieved from its warranty covering material and workmanship hereinbefore in Article 10 set forth.

ARTICLE 16. *Patent Indemnities.* Except in cases of designs, articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees in any manner imposed upon or accruing against the Railroad or its assigns because of the use in or about the construction or operation of the Equipment or any unit thereof, of any design, article or material infringing or claimed to infringe on any United States patent or other right; and the Railroad likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing

against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material specified by the Railroad and not manufactured by the Builder which infringes or is claimed to infringe on any United States patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any designs or against the seller or sellers of any designs, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the grounds that any such design, article or material or operation thereof infringes or is claimed to infringe on any United States patent or other right, and the Builder further agrees to execute and deliver to the Railroad, or its assigns, all and every such further assurance as may be reasonably requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give prompt notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder, and the Railroad will give prompt notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder.

ARTICLE 17. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a railroad

company or other purchaser (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to the Manufacturer, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Railroad of its obligations to the Builder under Articles 2, 5, 15 and 16 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the

assignee at the address of the assignee specified in the aforesaid notice or as the assignee shall otherwise direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such transfer or assignment, or successive transfer or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such transferee or assignee, change the name marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the

Equipment, with such words or legends as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of changing any marking in the event of any transfer or assignment of title to not less than all the Equipment at the time covered by this Conditional Sale Agreement shall be borne by the Railroad, and, in the event of any transfer or assignment of title to less than all such Equipment, such cost shall be borne by the transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such transfer or assignment, deliver to the assignee at least 5 business days prior to the Closing Date with respect to such Group, all documents required by the terms of such transfer or assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and if such payment shall not have been previously paid by the assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate purchase price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect the date such payment was due.

ARTICLE 18. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(*a*) The Railroad shall fail to pay in full, when due and payable hereunder, any sum payable by the Railroad as herein provided for indebtedness in respect of the Purchase Price of the Equipment or for interest thereon and such failure shall continue for more than 10 business days; or

(*b*) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Manufacturer for such compliance; or

(*c*) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter modified, amended or substituted, shall be filed by or against the Railroad and, unless such petition shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(*d*) Any proceedings shall be commenced by or against the Railroad for any relief which includes,

or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceedings shall within 30 days from the filing or effective date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(*e*) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declara-

tion at the rate of 10% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Manufacturer may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. If at any time after such declaration all sums which shall have become due and payable by the Railroad hereunder (other than indebtedness which shall have become due and payable solely by reason of such declaration) shall be paid by the Railroad (with interest at the rate of 10% to the extent legally enforceable) before any sale or lease of any of the Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Manufacturer, or provision deemed by the Manufacturer to be adequate shall be made therefor, then, and in every such case, the Manufacturer shall waive any such event of default and its consequences and rescind and annul any such declaration. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 19. *Remedies.* If the Railroad shall make default as hereinbefore provided, then at any time after the entire

indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Manufacturer, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Manufacturer, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Manufacturer reasonably convenient to the Railroad.

This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Manufacturer shall deem fit (including, if the Manufacturer so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however,* that, if the Railroad, within 20 days of receipt of notice of the Manufacturer's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest

thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Manufacturer, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale, and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof at any time during a period of 30 days after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Manufacturer shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may specify in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any

such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less that 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Manufacturer may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the Purchase Price therefor the Manufacturer shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency (with interest thereon at the rate of 10% per annum to the extent legally enforceable), the Manufacturer may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement. In the event that the Manufacturer shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Manufacturer hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the

full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or sell the Equipment or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder and any and all rights of redemption.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Manufacturer's rights or the obligations of the Railroad hereunder. The Manufacturer's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Manufacturer's rights hereunder with respect to any subsequent payments or default therein.

ARTICLE 22. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for

the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

ARTICLE 23. *Payment of Expenses.* The Railroad will pay all reasonable costs, charges, and expenses, except the counsel fees of the Builder, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgement, delivery, filing, registration or recording of this Agreement, of the first assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price due hereunder. In addition, the Railroad will pay all reasonable costs, charges, and expenses, except fees and expenses of counsel, but including stamp and other taxes, if any, of the first assignee of this Agreement.

ARTICLE 24. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at its chief place of business at 210 North 13th Street, St. Louis, Missouri 63103, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as

may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term "Manufacturer" whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 29. *Execution.* This Agreement may be simultaneously 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 contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date specified in the introductory paragraph of this Agreement, 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, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

ACF INDUSTRIES, INCORPORATED

By *Vice President*

Attest:

Asst. Secretary

[SEAL]

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

By *Vice President*

Attest:

Asst. Secretary

[SEAL]

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

On this 30th day of August, 1973, before me personally appeared **W. W. WILSON**, to me personally known, who being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

Edwin F. Meyer
Notary Public

[SEAL]

STATE OF MISSOURI,
CITY OF ST. LOUIS. } ss.

On this 27th day of AUGUST, 1973, before me personally appeared C.J. MAURER, to me personally known, who being by me duly sworn, says that he is a Vice President of CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. C. Mason
Notary Public

My Commission Expires SEPT 28, 1974

[SEAL]

R. C. MASON
NOTARY PUBLIC, CITY OF ST. LOUIS, MO.

SCHEDULE A

ACF INDUSTRIES, INCORPORATED

Item 1: ACF Industries, Incorporated, a New Jersey corporation.

Item 2: For the purpose of making settlement, the Equipment shall be delivered to and accepted by the Railroad hereunder and settled for in one Group of Equipment delivered to and accepted by the Railroad.

Item 3: The Committed Amount: $14,200.00 per unit of Equipment or $4,970,000 aggregate for all units of Equipment.

Item 4: 750 Third Avenue, New York, N.Y. 10017.

SCHEDULE B

ACF INDUSTRIES, INCORPORATED (BUILDER)
CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY,
VENDEE (RAILROAD)

Type	Quantity	Specifications	Railroad's Car Nos.	Unit Base Price*	Delivery
100-Ton 4600 Cu. Ft. Covered Hopper Cars	350	C&EI Spec. FC-13-73, Aug. 21, 1972; and Builder's Spec. 73-011-088, and Gen. Arr. Drwg. SK-6-E-9666	C&EI 717300-717649 both incl.	$17,664	September, 1973

All in accordance with the Builder's proposals of March 8, 1973 and the Railroad's Acceptance March 30, 1973, as supplemented or amended from time to time.

* Includes all changes to March 30, 1973. Prices rounded to nearest dollar.

All prices f.o.b. Builder's Plant, Huntington, W.Va. with title to pass at Chicago Ill., and do not include freight to point of delivery.

AGREEMENT AND ASSIGNMENT dated as of September 1, 1973, by and between the corporation first named in the testimonium below (hereinafter called the Builder), and FIRST NATIONAL BANK OF ST. LOUIS (hereinafter called the Assignee), a national banking association organized under the laws of the State of Missouri, with its chief place of business at Broadway and Locust Streets, St. Louis, Missouri 63101.

WHEREAS the Builder and CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, an Indiana corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of September 1, 1973 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described or referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar 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:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (*a*) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted and, as to each such unit upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (*b*) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (ex-

cept the right to manufacture and the right to receive the payments specified in the third paragraph of Article 2 thereof and in subparagraphs (*a*) and (*b*) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof, and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (*c*) except as limited in subparagraph (b) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder for or on account of the failure of the Railroad 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 liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 5, 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligation under Articles 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of

the foregoing assignment and transfer, the 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 the 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 Railroad 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. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad 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 the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature, except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and 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 the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and

recordations referred to in Article 22 of the Conditional Sale Agreement have been effected.

SECTION 3. The Builder convenants and 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 or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 10 and 16 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 Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments.

The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, 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 the Equipment, or any unit thereof, of any design, article or material which infringes, or is claimed to infringe on any patent right, except for any design, article or material specified by the Railroad and not

manufactured by the Builder. The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, 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 the Equipment or any unit thereof.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously marked on each side thereof, the following legend in letters not less than one-half inch in height:

"FIRST NATIONAL BANK IN ST. LOUIS,
ASSIGNEE, OWNER."

SECTION 5. Upon request of the Assignee, its successors and assigns, the Builder 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.

SECTION 6. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Builder an amount equal to that portion of the Group Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Railroad pursuant to subparagraph (*a*) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 5 business days prior to such Closing Date, the following documents, in such number of counterparts as may reasonably be requested, in form and substance satisfactory to it:

(*a*) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting

to the Assignee and to the Railroad that at the time of delivery to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature, except only the rights of the Railroad under the Conditional Sale Agreement;

(*b*) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad in accordance with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of the Railroad and further stating that all such units have been marked as required by Section 4 hereof;

(*c*) An invoice or invoices for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(*d*) An opinion of counsel for the Railroad stating that (*i*) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (*ii*) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding upon the Railroad and enforceable against the Railroad in accordance with its terms, (*iii*) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (*iv*) no approval of the Interstate Commerce

Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, and (*v*) title to the units of the Equipment in such Group is validly vested in the Assignee, free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

(*e*) An opinion of counsel for the Builder stating that (*i*) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (*ii*) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (*iii*) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (*iv*) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (*v*) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens, security interests and other encumbrances, except only the rights of the Railroad under the Conditional Sale Agreement; and

(*f*) Unless payment of that portion of the Group Invoiced Purchase Price for such Group payable pursuant to subparagraph (*a*) of the third paragraph of Article 3 of the Conditional Sale Agreement is made by the Assignee through the use of funds furnished to it for the purpose by the Railroad, a counterpart of a receipt from the Builder acknowledging such payment.

Within 10 business days after delivery to the Assignee of the Final Certificate (as defined in the Conditional Sale Agreement) accompanied by or bearing thereon a certification by the Railroad as to the correctness of the stated price, the Assignee shall pay to the Builder the amount, if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable by the Railroad pursuant to subparagraph (*c*) of the third paragraph of Article 3 of the Conditional Sale Agreement shall exceed the amounts theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. The Final Certificate shall be delivered on or before June 1, 1973.

The Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof. The Assignee shall at the request of the Builder or the Railroad execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

SECTION 7. 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 Railroad 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 8. The Builder hereby:

(*a*) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale

Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms 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 perfectly to confirm the rights, title and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. This Agreement and Assignment may be simultaneously 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 Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified in the introductory paragraph of this Agreement and Assignment, 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, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

ACF INDUSTRIES, INCORPORATED

By W W Wilson

Vice President

Attest:

Asst. Secretary

[SEAL]

FIRST NATIONAL BANK IN ST. LOUIS

By R Patrick Shannon

ASST. *Vice President*

Attest:

Asst. Cashier

[SEAL]

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

On this 30th day of August, 1973, before me personally appeared **W. W. WILSON**, to me personally known, who, being by me duly sworn, says that he is a Vice President of ACF INDUSTRIES, INCORPORATED; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

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

Edwin F. Meyer
Notary Public

[SEAL]

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

On this 7th day of September, 1973, before me personally appeared R. Patrick Hannan to me personally known, who, being by me duly sworn, says that he is a Asst Vice President of FIRST NATIONAL BANK IN ST. LOUIS; that one of the seals affixed to the foregoing instrument is the seal of said corporation; that said instrument was signed and sealed on behalf of said National Banking 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 National Banking Association.

Arthur R. Kiz
Notary Public

My Commission expires
My Commission Expires January 26, 1975

[SEAL]

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 September 1, 1973.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY

By _____
Vice President