

RECORDATION NO. 8853-B Filed & Recorded

JUL 28 1977 - 1 40 PM

INTERSTATE COMMERCE COMMISSION



RECEIVED

JUL 29 1 35 PM '77

I. C. C. FEE OPERATION BR.

July 1, 1977

Hon. H. ...
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 8853-C Filed & Recorded 210A043

JUL 29 1977 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

CC Washington, D.

Enclosed for filing with and recording by the Interstate Commerce Commission are six copies each of the following documents:

First Amendment and Supplement to Conditional Sale Agreement made as of July 1, 1977 between ACF Industries, Incorporated and SSI Rail Corp.

Agreement and Assignment made as of July 1, 1977 between ACF Industries, Incorporated and The Bank of California, N.A., 400 California Street, San Francisco, California, 94104.

Also enclosed is our check in the sum of \$20.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

These documents relate to that certain Conditional Sale Agreement made as of June 1, 1977, filed and recorded with the Interstate Commerce Commission on June 10, 1977 at 1:50 p.m. and assigned recordation number 8853. Therefore, we respectfully request that the documents submitted herein be cross-referenced to the aforementioned Conditional Sale Agreement and assigned recordation numbers 8853 B and C.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to the party delivering this letter on our behalf.

Very truly yours
[Signature]
M. D. Goodman
Secretary

Cathleen A. Mc Namara
[Signature]

AGREEMENT AND ASSIGNMENT ("this Assignment") made as of this 1st day of July, 1977, between ACF Industries Incorporated, a Delaware corporation (hereinafter called "Builder"), and The Bank of California, N.A. (hereinafter called "Assignee");

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W I T N E S S E T H:

INTERSTATE COMMERCE COMMISSION

Whereas, Builder and SSI Rail Corp., a Delaware corporation (hereinafter called "SSI,") heretofore entered into a conditional sale agreement made as of June 1, 1977, filed and recorded with the Interstate Commerce Commission and assigned Recordation No. 8853 as amended by the First Amendment and Supplement to Conditional Sale Agreement made as of July 1, 1977 (hereinafter called "the Conditional Sale Agreement,") providing for the construction, sale and delivery by Builder and the purchase by Railroad of eighty (80) open top hopper cars, AAR Mechanical Designation HT, numbered LEF 2500 through 2579, inclusive (hereinafter called "the Equipment");

WHEREAS, Builder has delivered and SSI has accepted the Equipment; and

WHEREAS, the parties anticipated that the Conditional Sale Agreement and the right, title and interest of Builder in and to the Equipment would be sold and assigned to Assignee;

NOW, THEREFORE, in consideration of the premises and the sum of One Million Seven Hundred Seventy-Three Thousand Five Hundred Ninety-One and 04/100 Dollars (\$1,773,591.04) paid to Builder by Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants herein set forth, the parties agree as follows:

1. Builder hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns, the following:

- (a) All the right, title and interest of Builder in and to the Equipment subject to the Conditional Sale Agreement; and

under the Conditional Sale Agreement prior to the time that such unit was numbered and marked as provided in Section 6 of the Conditional Sale Agreement or prior to the time the Conditional Sale Agreement was filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

3. Builder agrees with Assignee that in any suit, proceeding or action brought by Assignee under the Conditional Sale Agreement for any amount due thereunder or to enforce any provision thereof, Builder will indemnify, protect and hold harmless Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by SSI arising out of a breach or alleged breach by Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to SSI by Builder or by reason of any act or omission of Builder. Builder's obligation so to indemnify, protect and hold harmless Assignee is conditioned upon (a) the Assignee's timely motion to strike any such defense, setoff, counterclaim or recoupment asserted by SSI, and (b) if the court or other body having jurisdiction denies such motion or other action and accepts such a defense, setoff, counterclaim or recoupment, Assignee's prompt notification to Builder and Assignee's giving Builder the right, at Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

4. Except in cases of articles, materials and designs furnished or specified by SSI and not manufactured by Builder, Builder agrees to indemnify, protect and hold harmless Assignee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against Assignee because of the use in or about the construction or operation of any unit of Equipment of any such articles, materials and designs which infringes or is claimed to infringe on any patent or other right. Assignee will give prompt notice to Builder of any claim actually known to Assignee which is based upon any such alleged infringement and will give Builder the right, at Builder's expense, to compromise, settle or defend against such claim.

5. Builder agrees that any amount payable to it by SSI with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, and not hereby assigned to Assignee, shall not be secured by any lien, charge or security interest upon the Equipment.

6. Builder hereby represents and warrants to Assignee that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it and insofar as Builder is concerned is a legal, valid and existing agreement binding upon Builder in accordance with its terms and is now in full force without further amendment or modification thereto.

7. Builder hereby agrees that it will from time to time at the Request of Assignee make, execute and deliver all such future instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions set forth herein and more perfectly confirm the right, title and interest hereby assigned and transferred to Assignee or intended so to be.

8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be executed in their respective corporate names by their duly authorized officers, and their respective corporate seals to be hereunto affixed and attested, all as of the date first above written.

ACF INDUSTRIES INCORPORATED

By Juan A. Bums
Its Vice President

ATTEST: [Signature]
Its Secretary
[CORPORATE SEAL]

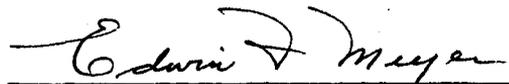
THE BANK OF CALIFORNIA, N.A.

By [Signature]
Its Vice President

ATTEST: [Signature]
Its Secretary
[CORPORATE SEAL]

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

On this 19th day of July, 1977, before me personally appeared IVAN A. BURNS, to me personally known, who, being by me duly sworn, says that he is 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.


Notary Public

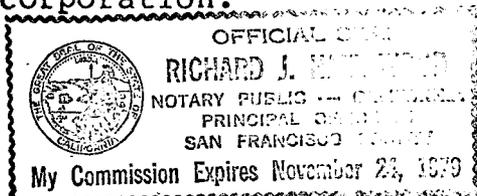
EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-7917803
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1978

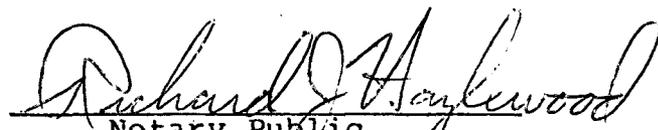
[Notarial Seal]

My Commission expires:

STATE OF CALIFORNIA)
) SS:
CITY AND COUNTY OF)
SAN FRANCISCO)

On this 13th day of July, 1977, before me personally appeared F.E. Nelson, to me personally known, who, being by me duly sworn, says that he is Vice President of The Bank of California, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.




Notary Public

[Notarial Seal]

My Commission expires: 11-24-79

ACKNOWLEDGMENT OF NOTICE AND CONSENT TO ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment between ACF Industries, Incorporated and The Bank of California, N.A. and the terms and conditions set forth therein is hereby acknowledged and consented to as of July 14th, 1977.

SSI RAIL CORP.

By:


Donald H. Gleason
Vice President