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RECORDATION NO. ..... Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

Date NOV 15 1977
Fee $ 50
ICC Washington, D.

November 10, 1977

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

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are six copies each of a Conditional Sale Agreement dated as of November 4, 1977 between SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111, and ACF Industries, Incorporated, 750 Third Avenue, New York, New York, 10017, covering the boxcars numbered AN 5200 through AN 5399, both inclusive.

Also enclosed is a check in the sum of $50.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing document.

The identifying legend on the equipment shall read: "Owned by a Bank or Trust Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c".

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,

Martin D. Goodman
Secretary

MDG:md
Enc.

Recordation Department

TWO EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111 (415) 983-0123
TELEX 34-234 CABLE SSI
SUBSIDIARY OF THE ITEL CORPORATION

RECORDATION NO. 9086 Filed & Recorded
NOV 15 1977 12 50 PM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

This Conditional Sale Agreement is made as of November 4, 1977 between ACF Industries, Incorporated, a Delaware corporation (hereinafter called Builder,) and SSI Rail Corp., a Delaware corporation, (hereinafter called SSI.)

Whereas, SSI desires to purchase from Builder and Builder desires to sell to SSI 200 boxcars;

Whereas, the parties anticipate this Agreement will be assigned to a third party (hereinafter called the Assignee) and subsequently amended and modified by SSI and Assignee;

NOW THEREFORE, the parties agree:

1. Construction and Sale. Builder will construct Two Hundred (200) 50' 6" XM 70-ton capacity general purpose, single sheath boxcars, numbered AN 5200-5399, inclusive (such boxcars being hereinafter called the Equipment.) Builder will sell and deliver to SSI and SSI will purchase from Builder, accept delivery and pay for the Equipment. The design, quality and component parts of each unit of Equipment shall conform at delivery to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units. The Equipment will meet Builder's Specification Number 77-OGO-244 dated July 26, 1977.

2. Inspection and Delivery. Builder will begin construction of the Equipment promptly and will begin delivery on or about December 1, 1977 and complete deliveries on or about December 30, 1977. Builder will deliver the Equipment to SSI, at SSI's option, either at the Builder's plant or to the railroad line of SSI's lessee Apalachicola Northern Railroad Company ("Lessee").

During construction, the Equipment will be subject to inspection and approval by the authorized inspectors of SSI. Builder will grant the inspectors reasonable access to its plant. Builder will submit each unit to an inspector for inspection. If each such unit conforms to the specifications, requirements and standards applicable thereto, the inspector shall execute and deliver to the Builder a Certificate of Acceptance stating that such unit has been inspected and accepted on behalf of SSI and is marked in accordance with Article 6 hereof, provided, however, that the Builder shall not thereby be relieved of its warranty provided in Article 9.

Upon shipment of each unit, SSI will assume the risk of any loss or damage to or destruction of such unit provided that Builder shall not thereby be relieved of its warranties under Article 9 hereof.

3. Purchase Price and Payment. The price will not exceed $35,350 per unit nor $7,070,000 for all of the Equipment. The purchase price shall be payable on demand, but not before ten days after shipment of all of the Equipment from Builder's plant. If payment shall not be then demanded, SSI will pay interest at ten per cent per annum of the unpaid balance of the purchase price.

If Builder assigns the right to receive the payments to be made by SSI, the Assignee thereof may request SSI to make, and SSI shall make, such payment to Assignee.

4. Taxes. SSI will pay all local, state, federal or foreign taxes (other than net income, gross receipts, [except gross receipts taxes in the nature of or in lieu of sales or use taxes,] excess profits and similar taxes) or license fees, assessments, charges, fines, or penalties hereafter levied or imposed upon or in connection with or measured by this agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof. SSI will keep the Equipment free and clear of all such impositions which might in any way affect the title of the Builder.

5. Title to the Equipment. Builder hereby retains full legal title to and property in, and a security interest in, the Equipment and all proceeds thereof for itself and for the express benefit of any assignee of the Builder until the purchase price shall have been paid in full notwithstanding the delivery of the Equipment to and the possession and use thereof by SSI or any lessee thereof.

SSI hereby irrevocably appoints Builder, during any period in which a default hereunder is in existence, its agent and attorney-in-fact to assert and enforce from time to time, in the name of and for the account of SSI, whatever claims and rights SSI may have with respect to the Equipment.

Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term, "the Equipment," as used in this Agreement.

Except as otherwise specifically provided herein, when Builder shall have been paid the purchase price in full, together with interest and all other payments as herein provided, and all SSI's obligations herein contained shall have been performed, absolute right to possession of, title to, and property in the Equipment shall pass to and vest in SSI without further transfer or action on the part of Builder. At such time Builder shall, at the request and expense of SSI, execute to SSI a bill of sale for the Equipment as is, where is, and without warranty of any kind except only that the Equipment is free from all liens and incumbrances created by Builder.

6. Marking of the Equipment. SSI will cause each unit of the Equipment to be numbered with its or its lessee's identifying number. SSI will keep and maintain plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words:

> Owned by a Bank or Trust Company under a Security Agreement filed under the Interstate Commerce Act, Section 20c

or other appropriate markings approved by the Builder. SSI will make the changes thereof and additions thereto which may be required by law in order to protect the Builder's title to and property in the Equipment and its rights under this Agreement. SSI will not operate, or permit to be operated, any unit until such markings have been made thereon and will replace promptly any such marking which may be removed, defaced or destroyed.

The identifying numbers shall be those set forth in Section 1 of this Agreement. SSI will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Builder and filed, recorded or deposited on behalf of SSI in all public offices where this Agreement shall have been filed, recorded or deposited. Except as provided in this paragraph, SSI will not allow the name of any person, association or corporation to be placed on any unit of Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the equipment to be lettered with the names or initials or other insignia customarily used by Lessee, its affiliates or its sub-lessees on railroad equipment used by them of the same or a similar type for convenience of identification.

7. Maintenance: Complicance with Laws and Rules. SSI will cause the Equipment to be maintained in good order and repair at its own expense. SSI will comply, and cause every lessee or user of the Equipment to 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 Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment. If any such laws or rules require the alteration of any part on any unit of Equipment, SSI will conform therewith at its own expense.

8. Indemnities. SSI will indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause, and expenses in connection therewith, including counsel fees, arising out of the retention by Builder of title to the Equipment or the use or operation thereof by SSI, except any losses, damages, injuries, liabilities, claims and demands arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in effect notwithstanding full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

9. Builder's Warranty. Builder warrants the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 and, except in cases of articles and materials specified by SSI and not manufactured by the Builder, warrants the Equipment to be free from defects in material and workmanship under normal use and service. The liability of the Builder under this warranty shall be limited, as Builder may elect: (i) to repair of the defect at the Builder's plant; or (ii) to replacement of the defective part; or (iii) to the cost of repair or replacement according to the Association of American Railroads Code of Rules Governing Conditions of and Repairs to Freight and Passenger Cars with Interchange of Traffic. The foregoing warranty of the Builder shall begin at the time of delivery of a unit of Equipment under this Agreement and terminate one year after such delivery. This warranty is expressly in lieu of all other warranties expressed or implied on the part of the Builder. Builder neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of the Equipment.

Neither the inspection as provided in Article 2 nor any examination nor the acceptance of any units of Equipment as provided in Article 2 shall be deemed a waiver or a modification by SSI of any of its rights under this Article 9.

10. Assignments. All rights of the Builder under this Agreement may be assigned by Builder and reassigned by any assignee at any time. No assignment shall subject any assignee to, or relieve the Builder from, any obligations of the Builder to construct and deliver the Equipment or to respond to its warranties contained in Article 9 nor relieve SSI of any of its obligations to Builder under Article 8.

SSI represents, for the purpose of assurance to Assignee and for the purpose of inducing Assignee to take such assignment, that in the event of any assignment by the Builder, the rights of Assignee to any unpaid portion of the purchase price, together with interest thereon, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder.

Upon any such assignment and the delivery of a counterpart or copy of such assignment to SSI, such assignee shall by virture of such assignment acquire all of the assignor's right, title and interest in and to the Equipment and this Agreement subject only to such reservations as may be contained in such an assignment. From and after such assignment and delivery of such counterpart or copy to SSI, all payments to be made by SSI hereunder shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

11. Remedies. If at any time SSI shall be in default of any obligation to pay the purchase price or indemnify the Builder, the Builder may take immediate possession of the Equipment without liability to return to SSI any sums theretofore paid and free from all claims whatsoever and may remove the Equipment from the use of SSI or any other person. For such purposes, Builder may enter upon SSI's premises or any other 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 of SSI.

If the Builder shall demand possession of the Equipment and shall reasonably designate a point for delivery to SSI, SSI shall, at its own expense, cause the Equipment to be moved to such point or points. At Builder's option, Builder may keep the Equipment at such point or points selected by it without charge or rent

for storage until Builder shall have leased, sold or otherwise disposed of the Equipment, provided that SSI's obligation to pay for such storage shall not exceed 120 days. Upon application to any court of equity, the Builder shall be entitled to a decree of specific performance of this paragraph. SSI hereby waives any claims against the Builder for damages in connection with any retaking of any units of Equipment in any reasonable manner.

Builder may elect to retain the Equipment in satisfaction of the entire indebtedness in respect of the purchase price and dispose of it as Builder shall deem fit. Builder shall give SSI written notice within thirty days after an election to so dispose of the Equipment.

At any time while SSI is in default hereunder, Builder may upon reasonable notice to SSI, sell any unit of Equipment free from any and all claims of SSI at public or private sale, provided that if SSI shall tender full payment of the total unpaid balance of the indebtedness, together with interest and expenses of the Builder in arranging the sale (including reasonable attorneys' fees,) the possession of and title to the property shall pass to SSI.

Every remedy specified herein shall be in addition to every other remedy now or hereafter existing at law or in equity. Every remedy may be exercised at any time and simultaneously and as often and in such order as the Builder may deem expedient. All powers and remedies shall be cumulative. The exercise of one shall not be a waiver of the right to exercise any other. Acceptance of any payment after it shall have become due will not alter or affect SSI's obligations or the Builder's rights with respect to any subsequent payments.

12. Recording. SSI will cause this Agreement, any assignments hereof, and any amendments or supplements hereto to be filed and recorded with the Interstate Commerce Commission in accordance with section 20c of the Interstate Commerce Act. SSI will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Builder or Assignee for the purpose of proper protection to the satisfaction of the Builder or Assignee, of its title to the Equipment. SSI will promptly furnish to the Builder certificates or other evidence of filing, reigstering, depositing and recording such documents.

13. Insurance. SSI will maintain physical damage, fire and extended cover insurance with a reliable insurance company to the full insurable value of the Equipment subject, however, to a limit of $500,000 per occurrence. The extent of such coverage shall not, subject to the above limitation, be less than the unpaid purchase price. Upon demand, SSI will furnish Builder with a copy of such insurance policies or a certificate of such insurance.

14. Governing Law. SSI warrants that its chief place of business and its chief executive offices are located in the state of California. The terms of this agreement and all rights and obligations hereunder shall be governed by the state of California.

15. Contingencies. Builder shall not be liable to SSI for any loss or damage suffered as a result of Builder's failure to deliver or delay in delivering the Equipment where such failure or delay is caused by fire, flood, natural disaster, labor trouble (including strikes, slow-downs or walk-outs,) war, riot, civil disorder, embargo, government regulations or restrictions of any kind, expropriation of plant by federal or state authority, interruption of or delay in transportation, power failure, inability to obtain materials or supplies, accident, explosion, act of God or other causes of like or different character beyond the Builder's control.

16. Disclaimer of Consequential Damages. BUILDER SHALL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. CONSEQUENTIAL DAMAGES SHALL INCLUDE LOSS OF USE, INCOME OR PROFIT, OR ANY OTHER ECONOMIC LOSS AND LOSS FROM PHYSICAL DAMAGE TO PROPERTY (INCLUDING PROPERTY HANDLED OR PROCESSED IN THE EQUIPMENT.)

17. Execution. This agreement may be executed in any number of counterparts and such counterparts together shall constitute one in the same contract.

IN WITNESS WHEREOF, the parties have hereby executed this instrument.

ACF INDUSTRIES, INCORPORATED

[Corporate Seal]
Attest:

By Duane A. Burns

VICE PRESIDENT

ASSISTANT SECRETARY

SSI RAIL CORP.

[Corporate Seal]

Attest:

By

Donald H. Gleason
Vice President

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

On this 14th day of November, 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 aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edwin F. Meyer
Notary Public

EDWIN F. MEYER
NOTARY PUBLIC, State of New York
No. 30-[illegible]7803
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 11th day of November, 1977, before me personally appeared Donald H. Gleason, to me personally known, who, being by me duly sworn, says that he is Vice President of SSI Rail Corp., that one of the seals affixed to the aforegoing 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.

OFFICIAL SEAL
BARBARA F. MACK
NOTARY PUBLIC - CALIFORNIA
COUNTY OF ALAMEDA
My Commission Expires Jan. 4, 1981

Barbara F. Mack
Notary Public

[Notarial Seal]

My Commission expires: