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14470

RECORDATION NO. Filed 11/25

4-318A008 NOV 13 1984 7:15 PM

INTERSTATE COMMERCE COMMISSION

NOV 13 1984

10.00

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RORY O. MILLSON

November 13, 1984

ACF Industries, Incorporated
Conditional Sale Financing Dated as of October 1, 1984

Dear Mr. Bayne:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of ACF Industries, Incorporated, for filing and recordation, counterparts of the Conditional Sale Agreement dated as of October 1, 1984, between ACF Industries, Incorporated, and Mercantile-Safe Deposit and Trust Company which includes an assignment of all leases now or hereafter entered into by ACF Industries, Incorporated, or its affiliates or assigns, relating (but only to the extent relating) to such equipment, and of all rentals and proceeds in respect of such equipment under any such lease or other agreement.

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

(1) Agent:

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza
Baltimore, Maryland 21203

Handwritten signature: C. D. ...

NOV 13 1 45 PM '84
MOTION PICTURE UNIT

(2) Purchaser:

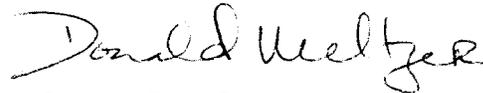
ACF Industries, Incorporated
750 Third Avenue
New York, N.Y. 10017

Please file and record the documents referred to in this letter and index them under the names of the Agent and the Purchaser.

The equipment covered by the aforementioned Agreement is listed in Exhibit A attached hereto.

Enclosed is our check for \$10 for the required recordation fee. Please accept for recordation one counterpart of the enclosed Agreement, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,



Donald Meltzer
As Agent for ACF Industries,
Incorporated

Mr. James H. Bayne, Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423.

Encls.

Page 1

SCHEDULE A
to the
CONDITIONAL SALE AGREEMENT

<u>Quantity</u>	<u>Equipment</u> AAR Car Type Code*	<u>Initialed ACFX and Numbered</u>
5	C113	27833-27837
262	C113	27839-28100
30	C214	36241-36270
7	C514	36271-36277
134	C214	36532-36665
29	C214	36812-36840
50	C214	36841-36890
2	C614	59684-59685
38	C614	59687-59724
8	C614	59726-59733
42	C614	59742-59783
8	C614	59792-59799
52	C614	59827-59878
5	C614	59884-59888
12	T104	75712-75723
32	T104	75725-75756

* Codes beginning with the letter "C" are covered hopper cars; codes beginning with the letter "T" are tank cars.

part 2

<u>Quantity</u>	<u>AAR Car Type Code</u>	<u>Initialed ACFX and Numbered</u>
10	T103	75757-75766
40	T104	75773-75812
141	T104	75817-75957
10	T105	75958-75967
5	T104	75968-75972
7	T106	75973-75979
4	T108	75980-75983
10	T106	75984-75993
1	T105	75994
2	T107	75995-75996
3	T105	75997-75999
45	T104	76140-76184
50	T104	76215-76264
10	T055	76265-76274
10	T105	76275-76284
15	T106	76347-76361
18	T104	76362-76379
12	T055	76407-76418
31	T104	76419-76449
11	T104	76451-76461
2	T104	76463-76464
1	T104	76478
15	T105	76494-76508

10/13

<u>Quantity</u>	<u>AAR Car Type Code</u>	<u>Initialled ACFM and Numbered</u>
1	T108	76510
1	T108	76512
2	T108	76515-76516
13	T929	77140-77152
7	T929	77165-77171
16	T564	77172-77187
3	T564	86480-86482
6	T564	86484-86489
75	C214	99271-99345

Interstate Commerce Commission
Washington, D.C. 20423

11/13/84

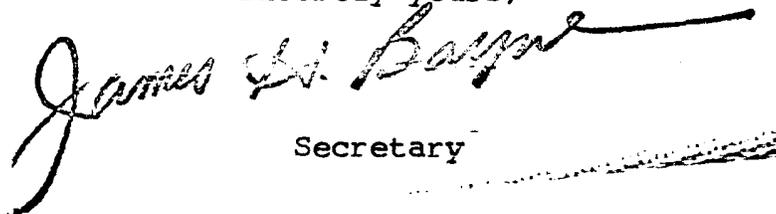
OFFICE OF THE SECRETARY

Donald Moltzer
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/13/84 at 1:55pm and assigned re-
recording number (s). 14351-H. 14470

Sincerely yours,


Secretary

Enclosure (s)

14470

RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 2044-741]

CONDITIONAL SALE AGREEMENT

Dated as of October 1, 1984

Between

ACF INDUSTRIES, INCORPORATED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent

This Conditional Sale Agreement is secured by the Equipment subject hereto and an assignment of all Leases now or hereafter entered into by ACF Industries, Incorporated, or its affiliates or assigns, relating (but only to the extent relating) to such Equipment, and of all rentals and proceeds in respect of such Equipment under any such Lease or other agreement.

CONDITIONAL SALE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. SALE	C-1
ARTICLE 2. INSPECTION AND DELIVERY	C-1
ARTICLE 3. PURCHASE PRICE AND PAYMENT	C-2
ARTICLE 4. TAXES	C-4
ARTICLE 5. SECURITY INTEREST IN EQUIPMENT AND RENTALS	C-5
ARTICLE 6. MARKING OF THE EQUIPMENT	C-7
ARTICLE 7. CASUALTY OCCURRENCES; SUBSTITUTION AND REPLACEMENT	C-9
ARTICLE 8. AFFIRMATIVE COVENANTS	C-14
ARTICLE 9. PROHIBITION AGAINST LIENS	C-15
ARTICLE 10. INDEMNITIES AND TITLE	C-16
ARTICLE 11. ASSIGNMENT BY AGENT	C-17
ARTICLE 12. DEFAULTS	C-18
ARTICLE 13. REMEDIES	C-21
ARTICLE 14. APPLICABLE STATE LAWS	C-25
ARTICLE 15. FILING	C-25
ARTICLE 16. PAYMENT OF EXPENSES	C-26
ARTICLE 17. NOTICES	C-26
ARTICLE 18. HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT	C-27
ARTICLE 19. DEFINITIONS	C-28
ARTICLE 20. GOVERNING LAW	C-30
ARTICLE 21. EXECUTION	C-30
SCHEDULE A EQUIPMENT	

CONDITIONAL SALE AGREEMENT dated as of October 1, 1984, between MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation (the "Agent"), and ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Company").

The Agent will acquire the equipment described in Schedule A hereto (the "Equipment") pursuant to the Purchase Agreement among the Company, the Agent, and the parties named in Schedule A to the Purchase Agreement (together with their successors and assigns collectively called the "Investors" and individually called an "Investor"), dated as of October 1, 1984 (the "Purchase Agreement"). The Agent has agreed to conditionally sell the Equipment to the Company pursuant to this Agreement. Reference is made to Article 19 for definitions of certain terms used in this Agreement.

In consideration of the agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1. SALE

The Agent hereby agrees to conditionally sell, and the Company agrees to purchase from the Agent, the Equipment on November 13, 1984, or such other date as the parties hereto may mutually agree to (the "Closing Date").

ARTICLE 2. INSPECTION AND DELIVERY

2.01. Delivery of Units. The Agent will deliver on the Closing Date the units of Equipment to the Company, at the place or places at which such units are located on the Closing Date, and the Company shall execute and deliver to the Agent on the Closing Date a certificate of acceptance stating that such units of Equipment have been inspected and accepted on behalf of the Company.

2.02. Risk of Loss; Disclaimer of Warranties. The Company assumes the responsibility and risk of any damage to or the destruction or loss of each unit of Equipment, and shall not be released from its obligations hereunder in any such event, it being agreed that the Company is acquiring the Equipment on an "as is" basis.

THE AGENT DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT DELIVERED TO THE COMPANY HEREUNDER, AND THE AGENT DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE EQUIPMENT FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, EITHER UPON DELIVERY THEREOF TO THE COMPANY OR OTHERWISE, it being agreed that all such risks, as between the Agent and the Company, are to be borne by the Company. The Agent shall have no responsibility or liability to the Company or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any unit of the Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any unit of the Equipment. The Company's delivery of a certificate of acceptance shall be conclusive evidence as between the Company and the Agent that the units of Equipment described therein are in all the foregoing respects satisfactory to the Company, and the Company will not assert any claim of any nature whatsoever against the Agent based on any of the foregoing matters.

ARTICLE 3. PURCHASE PRICE AND PAYMENT

3.01. Purchase Price. The purchase price of the Equipment will be an amount set forth in an invoice delivered by the Agent to the Company and will equal 80% of the AAR Value of the Equipment (80% of the AAR Value being hereafter called the "Purchase Price"). The Company will endorse upon such invoice its acceptance of the Purchase Price and such acceptance shall be conclusive evidence of the correctness of the Purchase Price.

3.02. Payment of Purchase Price. The Company hereby acknowledges itself to be indebted to the Agent in the amount of the aggregate Purchase Price of the Equipment and hereby promises to pay the same in 26 consecutive semiannual installments payable on May 1 and November 1 in

each year, commencing on May 1, 1985, as hereinafter provided (the "CSA Indebtedness"). The installments of CSA Indebtedness payable on each such date shall be in an amount set forth below:

<u>Principal Payment Dates (both inclusive)</u>	<u>Principal Payments</u>
May 1, 1985, to May 1, 1990	\$ 1,500,000
November 1, 1990, to May 1, 1994	2,000,000
November 1, 1994, to November 1, 1997	2,500,000;

provided, however, that if for any reason the aggregate Purchase Price of the Equipment is less than \$50,000,000 each such installment of the CSA Indebtedness shall be proportionally reduced, and provided further, that if a prepayment is made or prepayments are made pursuant to Article 7 hereof, each subsequent installment of the CSA Indebtedness to be paid shall be proportionally reduced.

The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date at the rate of 14-7/8% per annum, payable to the extent accrued on May 1, 1985, and on each November 1 and May 1 thereafter, until the CSA Indebtedness has been paid in full.

3.03. Calculation of Interest. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

3.04. Penalty Interest. The Company will pay interest at the Overdue Rate on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.05. Manner of Payment. All payments provided for in this Agreement shall be made 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. If any of the dates for payment of principal or interest is not a business day (which shall be any calendar day, excluding Saturdays, Sundays and any other day on which national banking associations in the Borough of Manhattan,

City and State of New York, or Baltimore, Maryland are authorized or obligated to remain closed), such payment shall be payable on the next succeeding business day.

3.06. Payment After Assignment. In the event the Agent, pursuant to Article 11 hereof, assigns the right to receive the payments herein provided to be made by the Company, the assignee thereof may request the Company to make and the Company shall make such payments to it at such address as shall be supplied to the Company by the assignee.

3.07. Prepayment. The Company may, without penalty, prepay installments of CSA Indebtedness as provided in Article 7 hereof, but shall not otherwise have the right to prepay the CSA Indebtedness.

ARTICLE 4. TAXES

All payments to be made by the Company hereunder will be free of expense to the Agent for collection or other charges and will be free of expense to the Agent with respect to the amount of any local, state, Federal or foreign taxes (other than withholding, 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 (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Company assumes and agrees to pay on demand. The Company will also pay promptly all impositions which may be imposed upon the Collateral or for the use or operation of the Equipment or upon the earnings arising therefrom or upon the Agent solely by reason of its interest in the Collateral and will keep at all times all and every part of the Collateral free and clear of all impositions which might in any way affect the security interest of the Agent or result in a lien upon any part of the Collateral; provided, however, that the Company shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the interest or rights of the Agent in or to the Collateral or otherwise under this Agreement. If any such impositions shall have been charged or levied against

the Agent directly and paid by the Agent, the Company shall reimburse the Agent upon presentation of an invoice therefor, and any amounts so paid by the Agent shall be secured by and under this Agreement; provided, however, that the Company shall not be obligated to reimburse the Agent for any impositions so paid unless the Agent shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Agent) or unless the Company shall have approved the payment thereof.

ARTICLE 5. SECURITY INTEREST IN COLLATERAL

5.01. Security Interest in Equipment. The Agent hereby retains a security interest in the Equipment until the Company shall have made all its payments under this Agreement 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 Company as provided in this Agreement. The security interest retained under this Section 5.01 shall secure the payment and performance of all the obligations of the Company hereunder. All attachments, accessories and added parts now or hereafter placed on, installed or attached to the Equipment, any and all present or future additions to the Equipment, and any and all present or future 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 shall be included in the term "Equipment" as used in this Agreement.

5.02. Security Interest in Leases. As security for the payment and performance of the obligations of the Company hereunder, the Company hereby grants, pledges and assigns unto the Agent all of its rights, title and interest in and to all Leases and Lease Proceeds; provided, however, that until a Default shall occur, it is understood that the Company shall be entitled to collect and receive all the Lease Proceeds; provided further, however, that in no event shall the Company collect Lease Proceeds in respect of any Lease in advance for a period exceeding 60 days after such collection.

From and after the date of any Default (i) the Agent shall have the right to demand that all Lease Proceeds be paid directly to it by all lessees and users of the Equipment; (ii) the Company shall upon written request of the Agent deliver to the Agent the originals of all Leases

(provided, however, that any Lease relating to both Equipment subject hereto and rolling stock subject to a certain Loan Agreement between the Company and National Westminster Bank USA, as agent ("NWB"), dated as of June 28, 1984, shall be delivered to, and held by NWB in accordance with the terms of an Intercreditor Agreement, satisfactory in form and substance to NWB and to the Investors, which generally provides for NWB to hold any such Lease for the benefit of the Agent, as well as for the benefit of NWB); (iii) the Company shall upon written request of the Agent deliver to the Agent a schedule of all Leases, identifying the Equipment subject to each Lease; (iv) the Agent may, if it so elects, enforce all or any number of the Leases against the lessees and users of the Equipment to the same extent as the Company otherwise would be entitled to enforce such Leases; and (v) subject only to the first sentence of the penultimate paragraph of Section 7.02 hereof, the Agent may, if it so elects, at any time and from time to time after a Declaration of Default (as defined in Section 12.01 of this Agreement), exercise its remedies under Article 13 hereof in respect of all or any portion of the Equipment, including, without limitation, taking possession of such Equipment to the exclusion of the lessees or other users thereof. All Lease Proceeds collected by the Agent after the date of any Default shall be held by the Agent and applied to the payment of the CSA Indebtedness and interest thereon. The Agent shall have no obligation to take any action under this paragraph unless requested so to do by Investors holding interests equal to not less than a majority in principal amount of the outstanding CSA Indebtedness. In connection with any particular Default pursuant to which the Agent has taken action hereunder, if such Default shall thereafter be cured prior to a Declaration of Default, the Agent shall no longer have the rights granted under subparagraphs (i) through (v) above and shall return to the Company any Leases delivered under subparagraph (ii) above; provided, however, that such cure shall have no effect on any of the rights of the Agent hereunder in the event of any Default subsequent to such cure.

Notwithstanding anything to the contrary contained in this Agreement, it is understood that NWB has or may have an interest in leases which in the same lease cover both rolling stock not subject to this Agreement and the Equipment, in addition to the interest of the Agent created under this Agreement in such leases.

5.03. Transfer to Company. Except as otherwise specifically provided in Article 7 hereof, when and only

when the full CSA Indebtedness, together with interest thereon and all other payments as herein provided, shall have been paid, and all the Company's obligations herein contained shall have been performed by the Company, absolute right to the possession of, title to and property in the Collateral shall pass to and vest in the Company without further transfer or action on the part of the Agent, except that the Agent, if so requested by the Company at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Company, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained hereby, and deliver such bill or bills of sale to the Company, (b) execute and deliver 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 such transfer and release of the security interest of the Agent in the Collateral and (c) pay to the Company any money paid to the Agent pursuant to Article 7 hereof and not theretofore applied as therein provided. The Company 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 instrument or instruments 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 instrument or instruments or to file such certificate within a reasonable time after written demand by the Company.

ARTICLE 6. MARKING OF EQUIPMENT

6.01. Marking of Equipment. The Company agrees that if (unless waived by the Agent) on or before August 1 in each calendar year the Agent shall fail to receive an opinion of the Company's counsel to the effect that marking of the Equipment, in the manner hereinafter in this Section 6.01 provided, is not required by law in order properly to protect the title of the Agent to the Equipment, the security interest of the Agent in the Collateral or the rights of the holders of the Certificates, or if, at any time, in the opinion of the Company, or if the Company becomes aware that, the marking of one or more units of Equipment is required by law properly to protect the title of the Agent to the Equipment, the security interest of the Agent in the Collateral or the rights of the holders of Certificates, the Company shall, as soon as practicable

after determining that such marking is required or after the failure of the Company to deliver the aforementioned opinion of counsel, arrange for the marking of each such unit of Equipment in the following manner. There shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of each such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than seven-sixteenths of one inch in height:

TITLE TO THIS CAR IS SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION.

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Agent's ownership of each unit of the Equipment.

In case, prior to the payment and performance of all the Company's obligations provided for herein, any of such plates or marks shall at any time be removed, defaced, obliterated or destroyed, the Company shall forthwith cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Agent by the Company and which shall be filed and recorded in like manner as this Agreement.

The Equipment may be lettered, "ACF Industries, Incorporated", "Shippers Car Line", "ACFX", "SHPX", or in some other appropriate manner for convenience of identification of the interest of the Company therein, and may also be lettered, in case of a lease or contract for the use of any Equipment made pursuant to Section 7.02 hereof, in such manner as may be appropriate for convenience of identification of the leasehold interest therein or contract for use thereof; but the Company, during the continuance of this Agreement provided for herein, shall not allow the name of any person to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or by any person other than the Agent.

ARTICLE 7. CASUALTY OCCURRENCES;
SUBSTITUTION AND REPLACEMENT

7.01. Maintenance of Equipment; Casualty Occurrences. The Company agrees that it will maintain and keep all the Equipment in good order and proper repair at its own cost and expense, unless and until it becomes worn out, unsuitable for ordinary use, lost, stolen or destroyed (each such occurrence being hereinafter called a "Casualty Occurrence"). Whenever any of the Equipment shall suffer a Casualty Occurrence, the Company shall, within 60 days after it shall have been informed of such Casualty Occurrence, deliver to the Agent an Officer's Certificate describing such Equipment and stating the Value thereof as of the date such Equipment suffered such Casualty Occurrence. When the total Value of all units of the Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Agent pursuant to this Section) shall exceed \$500,000, the Company, within 60 days after it shall have been informed of such event, shall deposit with the Agent an amount in cash equal to the Value of such units as of the date of the Casualty Occurrence in respect of each thereof. The rights and remedies of the Agent to enforce or to recover any of the CSA Indebtedness shall not be affected by reason of any Casualty Occurrence. Cash deposited with the Agent pursuant to this Section shall be applied to prepay on the next succeeding principal payment date for the payment of CSA Indebtedness, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness or, upon Request delivered to the Agent prior to such prepayment date, be held and applied as provided in Section 7.04 if and so long as no Default shall have occurred and be continuing.

The Company agrees to furnish to the Agent before August 1 in every calendar year commencing August 1, 1985, and during the continuance of this Agreement, an Officer's Certificate, dated as of the preceding December 31, (1) stating the description and numbers of all units of Equipment that may have suffered a Casualty Occurrence or which have been withdrawn from use pending repairs (other than running repairs) since the date of the last preceding statement (or the date of this Agreement in the case of the first such statement), and (2) covering such other matters as the Agent may reasonably request in connection with such Casualty Occurrence. The Agent shall have no duty or obligation to request the inclusion of any additional matters pursuant to clause (2) of the next preceding

sentence unless requested so to do in writing by Investors holding interests under the Purchase Agreement of 10% or more in aggregate principal amount of the CSA Indebtedness at the time outstanding. The Company further agrees to furnish to the Agent, not later than 30 days after the end of each quarterly accounting period, an Officer's Certificate stating as at the end of such quarterly accounting period (1) the number of units covered by each Lease by type of car and (2) the aggregate annualized rentals payable under each Lease and the expiration date thereof.

The Agent, by its agents, shall have the right at any reasonable time (which may be more frequent than once in each calendar year), but shall be under no duty, to inspect the Equipment at the then existing locations thereof.

7.02. Possession of Equipment. Without first obtaining the written consent of the Agent, the Company will not (a) assign or transfer its rights hereunder, (b) transfer the Equipment or any part thereof, or (c) part with the possession of, or suffer or allow to pass out of its possession and control, any of the Equipment.

An assignment or transfer to a domestic corporation which shall acquire all or substantially all the property of the Company (by merger, consolidation or otherwise) and which, by execution of an appropriate instrument reasonably satisfactory to the Agent, shall assume and agree to perform each and all the obligations and covenants of the Company hereunder and under the Purchase Agreement shall not be deemed a breach of this covenant but no such assignment, transfer or assumption shall have the effect of releasing the Company from its obligations hereunder or under the Purchase Agreement unless (i) consented to in writing by the Agent upon written directions from Investors holding interests under the Purchase Agreement of more than 50% of the CSA Indebtedness or (ii) the successor entity has outstanding securities rated A or better by Standard and Poor's or rated a comparable rating by Moody's Investors Service. The Company agrees to give to the Agent and to the Investors written notice not less than 20 days prior to the closing of any such assignment or transfer specifying the name of the proposed successor entity, whether or not such successor entity has outstanding securities rated A or better as provided above and, if not, whether or not it is requesting the consent of the Agent. The Company covenants and agrees not to merge or consolidate with or transfer (whether in one transaction or a series of transactions) all

or substantially all of its assets to any other person or entity unless such entity is a solvent corporation organized under the laws of the United States of America or a state thereof or the District of Columbia, and immediately after giving effect to such transaction no Default shall have occurred and be continuing hereunder.

Notwithstanding the foregoing, so long as there has been no Declaration of Default (as such term is defined in Section 12.01 hereof), the Company and any of its subsidiaries shall be entitled to the possession and use of the Equipment in accordance with the terms hereof, and the Company may also (a) furnish the Equipment or any part thereof to railroad companies for use upon the lines of railroads owned or operated by them or over which they have trackage rights and upon connecting and other railroads in the usual interchange of traffic, or to other than railroad companies for use in their business, and (b) lease or contract to others all or any part of the Equipment, but only, in either case (i.e., (a) or (b)), upon and subject to all the terms and conditions of this Agreement; provided, however, that the Company shall not use the Equipment or permit the use of the Equipment in any jurisdiction other than in the continental United States and Canada.

Any such Lease for a term not in excess of six months (including in such term any prior renewals or extensions of such term and the term of any renewal or extension which may be made at the option of either party) may provide that the party acquiring the use of units of the Equipment, so long as it shall not be in default under such Lease, shall be entitled to the possession of such units and the use thereof. Every other such Lease shall contain provisions which have the effect of subjecting the rights of the party acquiring the use of units of the Equipment under such Lease to the rights and remedies of the Agent in respect of such units.

7.03. Substitution and Replacement of Equipment. So long as no Default shall have occurred and be continuing, upon Request, the Agent shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Agent in and to any of the units of Equipment as provided herein; provided, however, that prior to or contemporaneously with any assignment or transfer to such transferee (a) there shall be paid to the Agent cash in an amount not less than the Value, as of the date of such Request, of the units of Equipment to be

assigned or transferred by the Agent or (b) there shall be conveyed to the Agent, at the time of assignment or transfer of any units of Equipment, other units of Replacement Equipment and of a Value not less than the Value, as of the date of such Request, of the units of Equipment to be assigned or transferred; and provided further that no assignment or transfer contemplated under this Section shall be made if the Value of Equipment to be transferred by the Agent, together with the Value of Equipment theretofore transferred by the Agent pursuant to this Section, shall exceed an aggregate of \$5,000,000 unless written consent to make such substitution is obtained from Investors holding interests under the Purchase Agreement of more than 50% in principal amount of the CSA Indebtedness then outstanding. Any unit of Replacement Equipment conveyed to the Agent as provided in this Section 7.03 or in Section 7.04 shall, from and after the date of such transfer be deemed to be Equipment for all purposes of this Agreement.

This Section shall not be deemed in any way to limit the Company's right to purchase Replacement Equipment in the event of a Casualty Occurrence or Casualty Occurrences pursuant to Sections 7.01 and 7.04 hereof.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if Replacement Equipment is to be conveyed to the Agent in substitution for the Equipment to be assigned or transferred by the Agent, deliver to the Agent the following papers:

- (1) an Officer's Certificate dated as of the date of the Request stating (i) the Value, as of the date of said Request, of the Equipment so to be assigned or transferred by the Agent and the date such Equipment was first put into use (or that such Equipment was first put into use not later than a specified date), (ii) the Value of such Replacement Equipment as of such date and the date such Replacement Equipment was first put into use (or that such Replacement Equipment was first put into use not earlier than a specified date), (iii) that each such unit so to be substituted is Replacement Equipment as herein defined and (iv) that the Company is not in Default;

- (2) a bill or bills of sale to the Agent in respect of such Replacement Equipment, which bill or bills of sale shall contain the same warranties and covenants regarding such Replacement Equipment as

required in subparagraph (A) (i) of Paragraph 3 of the Purchase Agreement regarding the original Equipment.

(3) a duly executed supplement to this Agreement subjecting such Replacement Equipment to all of the provisions of this Agreement, including an assignment to the Agent of the Leases and Lease Proceeds in respect of such Equipment in like manner as provided in Section 5.02; and

(4) an opinion of counsel for the Company to the effect that (i) such bill or bills of sale together with such supplement are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Agent title to such Replacement Equipment and a first security interest therein and in Leases thereof and Lease Proceeds therefrom free from all claims, liens, security interests and other encumbrances (except as permitted herein) other than the rights of the Company hereunder and (ii) that such supplement has been duly executed by the Company and has been duly filed with the Interstate Commerce Commission pursuant to the requirements of 49 U.S.C. § 11303 and as otherwise required by law and no other filing is necessary with any other commission, agency or other instrumentality of the United States of America or in any state of the United States of America or in the District of Columbia for the protection of the rights of the Agent under this Agreement, including, without limitation, protection of the Agent's security interest in such Replacement Equipment and the Leases and Lease Proceeds relating thereto.

At the time of delivery of any Request pursuant to the first paragraph of this Section, the Company shall, if cash is to be paid to the Agent in respect of the Equipment to be assigned or transferred by the Agent, deliver to the Agent an Officer's Certificate stating to the effect set forth in clauses (i) and (iv) of subparagraph (1) of the third paragraph of this Section.

7.04. Disposition of Deposited Funds; Payment. Funds deposited by the Company with the Agent pursuant to Section 7.03 or permitted to be deposited and applied hereunder pursuant to Section 7.01 hereof are herein called "Deposited Funds". Deposited Funds shall be used, as the Company shall direct in a Request to the Agent to purchase Replacement Equipment having a Value equal to the Deposited

Funds so used upon delivery to the Agent of an Officer's Certificate stating as provided in clauses (ii), (iii) and (iv) of subparagraph (1) of the third paragraph of Section 7.03 together with the documents specified in subparagraphs (2), (3) and (4) of said third paragraph.

ARTICLE 8. AFFIRMATIVE COVENANTS

8.01. Repairs and Replacements. The Company will maintain in good repair, working order and condition, subject to normal wear and tear, all of the properties and assets from time to time owned by it including, without limitation, the Equipment and make all reasonable repairs, replacements, additions and improvements thereto, consistent with customary practices of similar businesses.

8.02. Continuance of Business. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and all material franchises, rights and privileges necessary for the proper conduct of its business pertaining to the leasing of railroad cars and continue to engage in such type of business.

8.03. Performance of Obligations. The Company will pay and discharge all of its obligations and liabilities in accordance with customary trade practices, including, without limitation, all taxes, assessments and governmental charges upon its income and properties, when due, unless and to the extent only that such obligations, liabilities, taxes, assessments and governmental charges shall be contested in good faith and by appropriate proceedings and then only to the extent that a bond is filed in cases where the filing of a bond is necessary to avoid the creation of a lien against any of its properties and duly perform all of its obligations under each lease or other contract for the use of railroad rolling stock (including but not limited to the Equipment), and do, or cause to be done, all things reasonably necessary in order to keep each such lease or contract in full force and effect except in the case of a default by the lessee or user thereunder.

8.04. Insurance. The Company will maintain with responsible insurance companies, such insurance on such of its properties, in such amounts and against such risks as is customarily maintained by similar businesses, and in any event, in an amount not less than the full fair insurable value of all of the assets and properties of the Company and

its subsidiaries where insurance is customarily maintained. The Company will file with the Agent upon its request a detailed list of the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, dates of the expiration thereof and the properties and risks covered thereby; and, within 30 days after notice in writing from the Agent, obtain such additional insurance as the Agent may reasonably request. The Agent shall have no obligation to make or give any such request or notice unless requested so to do by Investors holding interests of at least 10% in the outstanding CSA Indebtedness.

In addition, the Company will maintain all insurance required by the Pension Benefit Guarantee Corporation (the "PBGC") covering its obligations to the PBGC.

8.05. Net Worth. The Company, on a consolidated basis, will maintain tangible net worth (as determined in accordance with generally accepted accounting principles, consistently applied) in an amount not less than \$65,000,000.

8.06. Applicable Laws. During the term of this Agreement, the Company will at all times comply in all material 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 United States Department of Transportation, 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 title, operation or use of the Equipment (the "Applicable Laws"), and in the event that any Applicable Law requires any alteration, replacement or addition of any part on any unit of the Equipment, the Company will conform therewith, at its own expense; provided, however, that the Company may, in good faith, contest the validity or application of any Applicable Law in any reasonable manner which does not, in the opinion of the Agent, adversely affect the property or rights of the Agent under this Agreement.

ARTICLE 9. PROHIBITION AGAINST LIENS

9.01. Discharge of Liens. The Company will pay or discharge any and all sums claimed by any party from,

through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in any unit of Equipment or Leases or Lease Proceeds; provided, however, that the Company shall be under no obligation to pay or discharge any such claim so long as it is contesting such claim in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the title or interests of the Agent in or to the Collateral or otherwise under this Agreement. Any amounts paid by the Agent in discharge of liens, charges or security interests upon the Collateral shall be secured by and under this Agreement.

9.02. Certain Exceptions. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 10. INDEMNITIES AND TITLE

10.01. Indemnities and Title. The Company agrees to indemnify, protect and hold harmless the Agent and the Investors from and against all losses, patent liabilities, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof (other than those arising from the gross negligence or wilful acts of the Agent or the Investors), and expenses in connection therewith, including reasonable counsel fees arising out of the acquisition of the Equipment by the Agent under the Purchase Agreement, the retention by the Agent of a security interest in the Equipment or the pledge of the Leases and Lease Proceeds, the use and operation of Equipment during the period when said security interest remains in the Agent or the transfer of said security interest in the Equipment or the assignment or application of the Lease and the Lease Proceeds by the Agent pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Promptly following receipt by the Agent or the Investors of notice of the commencement of any action or the assertion of any claim as to which indemnity may be sought

hereunder, the Agent will give prompt notice to the Company, but the omission so to notify the Company shall not relieve the Company from any liability which it may have to the Agent or the Investors otherwise than such indemnity. The Company shall be entitled to participate in the action or claim, including, without limitation, the negotiation and approval of any settlement thereof and, to the extent the Company may wish, to assume the defense thereof, with counsel reasonably satisfactory to the Agent; provided, however, that if in the reasonable judgment of counsel for the Agent there exists a potential or actual conflict of interest which would make it inadvisable for the Agent or Investors to be represented by counsel for the Company or there are legal defenses available to the Agent or Investors which are different from or in addition to those available to the Company, the Agent or Investors shall be entitled to retain separate counsel reasonably satisfactory to the Company and the Company shall pay the fees and expenses of such separate counsel; provided further that the Company shall not be liable to the Agent or Investors for any settlement in which the Company will be paying any sums involved in such settlement made without the consent of the Company.

ARTICLE 11. ASSIGNMENT BY AGENT

11.01. Assignment by Agent. Subject to Paragraph 10 of the Purchase Agreement, all or any of the rights, benefits and advantages of the Agent under this Agreement, including the right to receive the payments herein provided to be made by the Company, may be assigned by the Agent and reassigned by any assignee at any time or from time to time.

11.02. Notice to Company. Upon any such assignment pursuant to Section 11.01 hereof, and in addition to the requirements of Paragraph 10 of the Purchase Agreement, either the assignor or the assignee shall give written notice to the Company, 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, subject to the rights of the Investors hereunder, all the assignor's right, title and interest in and to the Equipment, the Leases and the Lease Proceeds and this Agreement, 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 Company of the notification of any such assignment, all payments thereafter to be made by the Company under this

Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 12. DEFAULTS

12.01. Events of Default. In the event that any one or more of the following events of default shall occur and be continuing:

(a) the Company shall fail to pay in full any installment of the principal of or interest on the CSA Indebtedness or any other sum payable by the Company as provided in this Agreement within 10 days after payment thereof shall be due hereunder, provided that any payment made after its due date shall include additional interest on the overdue amount (to the extent permitted by applicable law) at the Overdue Rate; or

(b) the Company shall, for more than 30 days after written notice from the Agent to the Company, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or of the Purchase Agreement on its part to be kept or performed or to make provision satisfactory to the Agent for such compliance; or any representation or warranty made by the Company in the Purchase Agreement shall prove to be untrue in any material respect; or

(c) a petition for reorganization under Title 11 of the United States Code (as now or hereafter constituted) shall be filed by or against the Company and, unless such petition shall have been 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 Company under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Company for any relief which includes or might result in any modification of the obligations of

the Company hereunder under any bankruptcy or insolvency law or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been 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 Company under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Company or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or lease (including, for the purpose of this clause, contracts for the use thereof) of any of the Equipment, or, except as herein authorized, shall part with the possession of any of the Equipment, and shall fail or refuse either to cause such assignment or transfer or lease to be canceled by agreement of all parties having any interest therein and recover possession of such Equipment within 30 days after the Agent shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Agent a sum in cash equal to the Value, as of the date of such unauthorized action, of such Equipment (any sum so deposited to be returned to the Company upon the cancelation of such assignment, transfer or lease and the recovery of possession by the Company of such Equipment), or

(f) the Company shall fail to perform any term, condition or covenant of any bond, note, debenture, loan agreement, indenture, guaranty, trust agreement, mortgage or similar instrument to which the Company is a party or by which it is bound, or by which any of its respective properties or assets may be affected (a "Debt Instrument"), so that, as a result of any such

failure to perform and after the expiration of any applicable grace period (assuming the giving of appropriate notice at the end thereof, if required), indebtedness in an aggregate amount of \$5,000,000 or more included therein or secured or covered thereby may be declared due and payable prior to the date on which such indebtedness would otherwise become due and payable; or any event or condition referred to in any Debt Instrument shall occur or fail to occur, so that, as a result thereof (assuming the giving of appropriate notice thereof, if required), indebtedness in an aggregate amount of \$5,000,000 or more included therein or secured or covered thereby may be declared due and payable prior to the date on which such indebtedness would otherwise become due and payable;

then at any time after the occurrence of such an event of default the Agent may, upon written notice to the Company and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Agent, declare (a "Declaration of Default") the entire CSA Indebtedness, 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 the CSA Indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate; provided that payment of any sum made after its due date shall include additional interest on the overdue amount (principal and interest to the extent permitted by applicable law) at the Overdue Rate. The Agent shall thereupon be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company wherever situated. The Company shall promptly notify the Agent of any event which has come to its attention which constitutes a Default.

12.02. Agent May Waive Default. If approved in writing by Investors holding interests of at least 50% in the outstanding CSA Indebtedness, the Agent may at its election waive any Default and its consequences and rescind and annul any Declaration of Default by notice to the Company in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this Section, 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 13. REMEDIES

13.01. Agent May Take Possession of Equipment.

At any time during the continuance of a Declaration of Default, the Agent may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Agent, take or cause to be taken by its agent or agents immediate possession of one or more of the units of Equipment without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as expressly provided in Section 13.06 hereof, and may remove the same from possession and use of the Company or any other person and for such purpose may enter upon any premises where the Equipment may be located and may reasonably use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company.

13.02. Delivery of Equipment. In case the Agent shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Company or elsewhere for the delivery of the Equipment to the Agent, the Company shall, at its own expense, forthwith and in the usual manner (including without limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points as shall be reasonably designated by the Agent and shall there deliver the Equipment or cause it to be delivered to the Agent. At the option of the Agent, the Agent may keep the Equipment on any available lines or premises of the Company until the Agent shall have leased, sold or otherwise disposed of the same, and for such purpose the Company agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Agent reasonably convenient to the Company and, at the Company's risk, to permit inspection of the Equipment by the Agent, the Agent's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having competent jurisdiction, the Agent shall be entitled to a decree against the Company requiring specific performance thereof. The Company hereby expressly waives any and all claims against the Agent 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.

13.03. Disposition of Equipment. At any time during the continuance of a Declaration of Default, the Agent (after retaking possession of the Equipment as hereinbefore in this Article 13 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire unpaid CSA Indebtedness and make such disposition thereof as the Agent shall deem fit. Written notice of the Agent's election to retain the Equipment shall be given to the Company by telegram or registered mail, addressed as provided in Article 17 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Agent should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Company's rights in the Equipment shall thereupon terminate and all payments made by the Company may be retained by the Agent as compensation for the use of the Equipment by the Company; provided, however, that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Agent the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Agent in retaking possession of, removing and storing the Equipment and the Agent's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; provided further that if the Company or any other persons notified under the terms of this Section object in writing to the Agent within 30 days from the receipt of notice of the Agent's election to retain the Equipment, then the Agent may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Agent shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of Section 13.04 hereof.

13.04. Sale of Equipment. At any time during the continuance of a Declaration of Default, the Agent, with or without retaking possession thereof, at its election and upon reasonable notice to the Company and to any other

persons to whom the law may require notice of the time and place, may sell any unit of Equipment, free from any and all claims of the Company or any other party claiming from, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Agent may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Company should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Agent in retaking possession of, removing, storing, holding and preparing the Equipment for and otherwise arranging for the sale and the Agent's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Agent in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Agent under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Agent 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 Agent may determine. The Agent or the Company may bid for and become the purchaser of any unit of Equipment so offered for sale. The Company shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed to the Company as provided in Article 17 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Company 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. In the event that the Agent shall be the purchaser of the Equipment, it shall not be accountable to the Company (except to the extent of surplus money received as provided in Section 13.06 hereof), and in payment of the purchase price therefor the Agent shall be entitled to have credited on account thereof all or any part of the sums due to the Agent from the Company hereunder. From and after the date of any such sale, the Company shall pay to the Agent

the per diem earnings received by the Company for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

13.05. Remedies Not Exclusive. Each and every power and remedy hereby specifically given to the Agent 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 Agent. 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 Agent 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. Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Agent's rights or the Company's obligations hereunder. The Agent's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Agent's rights hereunder with respect to any subsequent payments or default therein.

13.06. Deficiency or Surplus. If, after applying all sums of money realized by the Agent under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Agent upon demand, together with interest from the date of such demand to the date of payment by the Company at the Overdue Rate. If the Company shall fail to pay such deficiency, the Agent may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Agent, there shall remain a surplus in the possession of the Agent, such surplus shall be paid to the Company.

13.07. The Company To Pay Expenses. The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Agent in enforcing its remedies under the terms of this Agreement (including all reasonable expenses incurred under the Intercreditor Agreement referred to in Section 5.02 of this Agreement). In the event that the Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such

suit the Agent may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

If a Default shall occur, the Company will pay all reasonable expenses, including attorneys' fees, incurred by the Investors in enforcing and protecting their rights and remedies under this Agreement and the Certificates (as defined in Paragraph 2 of the Purchase Agreement) and incurred by the Investors in seeking advice of counsel with respect to such Default.

The foregoing provisions of this Article 13 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 14. APPLICABLE STATE LAWS

Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall be ineffective as to such jurisdiction without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 15. FILING

The Company will cause this Agreement, any assignment hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303. The Company will from time to time perform any other act and will execute, deliver and file (and will refile when necessary) any and all further instruments required by law or reasonably requested

by the Agent for the purpose of proper protection (to the satisfaction of counsel for the Agent) of its interest in the Collateral and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; provided, however, that the Company shall not be required to take any such action in Canada if (1) such action is unduly burdensome and (2) after giving effect to the failure to take such action, the Company has taken all action required by law so as to protect the title of the Agent to units of Equipment having a Value of not less than 85% aggregate Value of all the Equipment; provided, further, however, that the Company shall not be required to make any filings, in any jurisdiction, of the Leases or copies thereof or any filings identifying the lessees to such Leases or identifying the specific units subject to any such Lease, unless a change in the laws of any applicable jurisdiction requires such filing to ensure the perfection of the Agent's security interest in the Leases and Lease Proceeds. The Company will promptly furnish to the Agent certificates or other evidence satisfactory to the Agent of such filings.

ARTICLE 16. PAYMENT OF EXPENSES

The Company will pay all reasonable costs and expenses incident to this Agreement (including the fees and expenses of the Agent and the Investors) and any instrument supplemental or related hereto or thereto, including all reasonable fees and expenses of counsel for the Agent and the Investors, and all reasonable fees and expenses with regard to compliance with Article 15 hereof.

ARTICLE 17. NOTICES

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, 750 Third Avenue, New York, New York 10017, Attention of the Office of the Secretary;

(b) to the Agent, at 2 Hopkins Plaza, Baltimore Maryland if by hand, and at P.O. Box 2258, Baltimore, Maryland 21203 if by mail, Attention of the Corporate Trust Department; and

(c) to any assignee of the Agent or of the Company, at such address as may have been furnished in writing to each of the other parties hereto by such assignee;

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 18. HEADINGS; EFFECT AND
MODIFICATION OF AGREEMENT

18.01. Headings. All Article and Section headings have been provided for convenience only and shall not affect any interpretation of this Agreement.

18.02. Effect and Modification of Agreement.
This Agreement, including the Schedules hereto, exclusively states the rights of the Agent and the Company with respect to the Equipment and supersedes all other agreements (other than the Purchase Agreement), 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 Agent and the Company and, if any such variation, modification or waiver would materially affect the rights and interests of the Investors hereunder, approved in a written instrument signed by Investors holding interests in at least a majority of the CSA Indebtedness.

ARTICLE 19. DEFINITIONS

As used in this Agreement and the Purchase Agreement:

"AAR Value" means the settlement value of a unit or units of Equipment at the date such unit or units were first put into use as determined under the Interchange Rules of the Association of American Railroads as in effect on the date of this Agreement.

"Car Builder's Cost" in respect of any unit of equipment shall include direct cost of labor and material and overhead, but shall exclude the overhead of the Company's corporate headquarters and any manufacturing profit of the Company or any of its subsidiaries or affiliates.

"Casualty Occurrence" has the meaning set forth in Section 7.01 herein.

"Collateral" means, collectively, all the Equipment, the Leases, the Lease Proceeds, and any insurance proceeds payable in respect of any Casualty Occurrence suffered by any unit of Equipment.

"CSA Indebtedness" has the meaning set forth in Section 3.02 herein.

"Default" means the occurrence of any event of default as set forth in Section 12.01 herein or any event which with lapse of time, notice and/or demand provided for therein could constitute an event of default.

"Lease Proceeds" means all rents, moneys and proceeds payable to or receivable by the Company with respect to any lease or other agreement existing as of the date hereof or entered into in the future with respect to, but only to the extent that such rents, moneys, and proceeds derive from, any of the Equipment.

"Leases" mean all present and future leases of any one or more unit of the Equipment and all other contracts for use of any one or more unit of the Equipment, including, without limitation, all extensions, renewals, supplements and modifications of any of the foregoing. If any of the Leases shall include both Equipment subject to this Agreement and equipment not subject hereto, then said Leases

shall be subject to this Agreement to the extent they cover Equipment subject to this Agreement; and for purposes of this Agreement, the term Lease shall mean a lease only in so far as such lease applies to Equipment subject to this Agreement.

"Officer's Certificate" means a certificate signed by the Chairman of the Board, Vice Chairman of the Board, the President, an Executive Vice President, a Senior Vice President, a Vice President, the Controller, the Secretary, an Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company.

"Overdue Rate" shall mean interest at the rate of 15-7/8% per annum.

"Replacement Equipment" means standard-gauge railroad equipment first put into service after June 1982 (other than passenger, cabooses, work equipment or box cars), which railroad equipment is rolling stock used or intended for use in connection with interstate commerce with an estimated useful life extending to at least June 1, 2002.

"Request" means a written request for the action therein specified, delivered to the Agent, dated not more than five days prior to the date of delivery to the Agent and signed on behalf of the Company by the Chairman of the Board, Vice Chairman of the Board, the President, a Senior Vice President, the Treasurer or any Assistant Treasurer of the Company.

"Value" means an amount determined as follows:

(1) the Value of any unit of Equipment assigned or transferred by the Agent as provided in Section 7.03, and as used in Section 7.01 and Articles 12 and 15 in respect of Equipment, shall be deemed to be the greater of (a) the fair market value thereof or (b) the AAR Value thereof less 1/20 of such AAR Value for each full year elapsed between the date such unit was first put into use and the date as of which Value is to be determined;

(2) the Value of any unit of Replacement Equipment conveyed to the Agent as provided in Sections 7.03 and 7.04 shall be deemed to be the lesser of (a) the fair market value thereof or (b) the AAR Value of such unit less 1/20 of such AAR Value for each full year elapsed

between the date such unit was first put into use and the date of the transfer thereof to the Agent.

ARTICLE 20. GOVERNING LAW

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of any filing of this Agreement and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof may be filed.

ARTICLE 21. EXECUTION

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. Although for convenience this Agreement is dated as of the date first set forth above, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by duly authorized officers as of the date first set forth above.

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY,

by


Vice President

[Corporate Seal]

Attest:


Corporate Trust
Officer

ACF INDUSTRIES, INCORPORATED,

by

Wm W Zell
Title: **TREASURER**

[Corporate Seal]

Attest:

M. L. Braslin
Asst. Secretary

STATE OF MARYLAND,)
) ss.:
COUNTY OF BALTIMORE,)

On this 13th day of November 1984, before me personally appeared R.E. Schreiber, to me personally known, who, being by me duly sworn, says that he is a Vice President of Mercantile-Safe Deposit and Trust Company, a Maryland corporation, 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.

Lisa J. Mandelk
Notary Public

[Notarial Seal]

My Commission expires 7-1-86

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

On this 12th day of November 1984, before me personally appeared R.N. McLaughlin, to me personally known, who, being by me duly sworn, says that he is the Treasurer of ACF Industries, Incorporated, a New Jersey corporation, 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.

Caryn W. Sherman
Notary Public

[Notarial Seal]

My Commission expires

CARYN W. SHERMAN
NOTARY PUBLIC, State of New York
No. 0120421
Qualified in the County of
Commission Expires 07/01/87

SCHEDULE A
to the
CONDITIONAL SALE AGREEMENT

<u>Quantity</u>	<u>Equipment</u> AAR Car Type Code*	<u>Initialed ACFX and Numbered</u>
5	C113	27833-27837
262	C113	27839-28100
30	C214	36241-36270
7	C514	36271-36277
134	C214	36532-36665
29	C214	36812-36840
50	C214	36841-36890
2	C614	59684-59685
38	C614	59687-59724
8	C614	59726-59733
42	C614	59742-59783
8	C614	59792-59799
52	C614	59827-59878
5	C614	59884-59888
12	T104	75712-75723
32	T104	75725-75756

* Codes beginning with the letter "C" are covered hopper cars; codes beginning with the letter "T" are tank cars.

<u>Quantity</u>	<u>AAR Car Type Code</u>	<u>Initialed ACFX and Numbered</u>
10	T103	75757-75766
40	T104	75773-75812
141	T104	75817-75957
10	T105	75958-75967
5	T104	75968-75972
7	T106	75973-75979
4	T108	75980-75983
10	T106	75984-75993
1	T105	75994
2	T107	75995-75996
3	T105	75997-75999
45	T104	76140-76184
50	T104	76215-76264
10	T055	76265-76274
10	T105	76275-76284
15	T106	76347-76361
18	T104	76362-76379
12	T055	76407-76418
31	T104	76419-76449
11	T104	76451-76461
2	T104	76463-76464
1	T104	76478
15	T105	76494-76508

<u>Quantity</u>	AAR Car Type <u>Code</u>	Initialed ACFX and <u>Numbered</u>
1	T108	76510
1	T108	76512
2	T108	76515-76516
13	T929	77140-77152
7	T929	77165-77171
16	T564	77172-77187
3	T564	86480-86482
6	T564	86484-86489
75	C214	99271-99345