

The First National Bank in Albuquerque

No. APR 23 1981

Date.....

Fee \$... 50.00

ICC Washington, D. C.

VIA REGISTERED MAIL  
RETURN RECEIPT REQUESTED

REGISTRATION NO. 13066

February 19, 1981

APR 23 1981-10 20 AM

INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECEIVED  
APR 23 10 21 AM '81  
I.C.C.  
FEE OPERATION

RE: Security Agreement dated as of January 28, 1981  
from Johnson Enterprises Limited Partnership, as  
Debtor to The First National Bank in Albuquerque,  
as Secured Party

Gentlemen:

Pursuant to 49 C.F.R. §1116.1, et seq., we are submitting  
to you herewith for recording the original and two fully  
executed and acknowledged counterparts of the above-referenced  
Security Agreement.

In accordance with 49 C.F.R. §1116.4, the following information  
regarding such Security Agreement is submitted:

(1) The names and addresses of the parties to this  
transaction are as follows:

(a) Mortgagee - Secured Party

The First National Bank in Albuquerque  
Post Office 1305  
Albuquerque, New Mexico 87102

(b) Mortgagor - Debtor:

Johnson Enterprises Limited Partnership  
414 South Main Street  
Roswell, New Mexico 88201

INTERSTATE  
COMMERCE COMMISSION  
RECEIVED

APR 22 1981

ADMINISTRATIVE SERVICES  
MAIL UNIT

(2) A general description of the equipment covered by  
the Security Agreement, each of which is owned by  
Johnson Enterprises Limited Partnership, is as  
follows:

<u>Quantity</u>	<u>Rail Car Number</u>	<u>Class, Size and Type</u>	<u>Manufacturer</u>
1	RUSX 4916	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4917	100-ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4918	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4919	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4920	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4884	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4885	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4886	100-ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4887	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
1	RUSX 4888	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated

Also enclosed herewith is the required recordation fee of \$50.00.

Upon recordation, the original of the above-referenced Security Agreement should be returned as follows:

First National Bank in Albuquerque  
Post Office Box 1305  
Albuquerque, New Mexico 87102

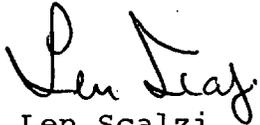
Attention: Len Scalzi

Thank you for your assistance in this matter.

Very truly yours,

FIRST NATIONAL BANK IN ALBUQUERQUE

By:



Len Scalzi  
Vice President

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/23/81

OFFICE OF THE SECRETARY

**First National Bank in Albuquerque**  
**P.O.Box 1305**  
**Albuquerque, New Mexico 87102**  
**Atten: Len Scalzi**

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 4/23/81 at 10:30am and assigned re-  
recording number(s). 13066  
10779-A  
10780-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

SE-30  
(7/79)

APR 23 1981-10 22 AM

INTERSTATE COMMERCE COMMISSION

Security Agreement

This Security Agreement, dated as of the 28th day of January, 1981, by and between Johnson Enterprises Limited Partnership, a New Mexico Limited Partnership, whose address is 414 South Main Street, Roswell, New Mexico 88201 (hereinafter called the "Debtor") and First National Bank in Albuquerque, a national banking association organized and existing under and by virtue of the laws of the United States of America, whose address is P.O. Box 1305, Albuquerque, New Mexico, 87102 (hereinafter called the "Secured Party").

## W I T N E S S E T H :

Debtor, for valuable consideration received, hereby bargains, sells, remises, mortgages and grants a security interest to Secured Party in the Collateral, as hereinafter defined, to secure the performance and payment of the obligations of Debtor to Secured Party hereunder and of any other liability of Debtor to Secured Party, now existing or hereafter incurred, whether originally contracted with Secured Party or with another and assigned or transferred to Secured Party, whether contracted by Debtor alone or jointly with others and whether absolute or contingent, secured or unsecured, matured or unmatured, and all extensions and renewals thereof, all hereinafter sometimes called "Obligations."

2. As used in this Security Agreement, the term "Collateral" shall mean the property described in Schedule "A" attached hereto and made a part herto, together with all attachments, accessories, accessions and equipment now or hereafter affixed thereto or used in connection therewith and substitutions and replacements thereof, the proceeds of such property, whether disposed of voluntarily or involuntarily, all insurance covering such property and all contracts, accounts receivable and sums payable to Debtor with respect to such property. The inclusion of proceeds within the Collateral shall not be deemed a consent by Secured Party to dispose of any such property. Any proceeds of said property received by Debtor shall not be commingled with any other property of Debtor but shall be segregated and held in trust by Debtor for Secured Party, and Debtor shall deliver the same immediately to Secured Party.

3. Debtor has executed and delivered to the Secured Party a Promissory Note of even date herewith whereby the Debtor promises to pay to the Secured Party the principal sum of \$309,471.60 plus interest accrued thereon in installments. Debtor hereby agrees to honor and pay all obligations due pursuant to such Promissory Note and agrees to perform the covenants and agreements set forth herein.

4. Debtor warrants and covenants as follows:

(a) The Debtor now is the owner of the Collateral, free and clear of all security interests, liens and any other encumbrances and no financing statement or security document covering the Collateral is on file in any public office; and

(b) The Collateral is not and will not be attached to any real property.

5. At the request of Secured Party, Debtor will join with Secured Party in executing any financing statements relating to the Collateral and all other instruments reasonably necessary in the opinion of Secured Party to better establish and protect its interest in the Collateral.

6. Debtor covenants that Debtor shall: (a) promptly pay all taxes levied or assessed against the Collateral and keep it free and clear of all liens, attachments and encumbrances, except any encumbrance contemplated by the terms of this Agreement; (b) maintain insurance in responsible companies against loss by theft and fire, and against such other risks as are usually carried by owners of similar Collateral or as may be required by Secured Party, in such amounts and payable in such manner as Secured Party shall request; (c) promptly notify Secured Party in writing of any loss or damage to the Collateral; (d) keep the Collateral in first class order, repair and running condition and replace any worn, broken or defective parts and house it in suitable shelter; (e) permit Secured Party and its representatives free access to the Collateral at all reasonable times for the purpose of inspection; (f) not abandon the Collateral; (g) not sell, assign, lease, mortgage, grant a security interest in, or otherwise dispose of any interest in the Collateral or in this agreement without first obtaining written consent of Secured Party, and a claim to proceeds in a filed financing statement shall not be deemed to authorize or consent to any such acts; (h) not use or permit the Collateral to be used for any unlawful purpose or in violation of any federal, state or municipal law, statute or ordinance or for hire; and (i) not permit the Collateral to become a part of or to be affixed to any real property without first making arrangements satisfactory to Secured Party to protect its prior security interest in the Collateral. If Debtor fails to observe or perform any covenant or agreement contained in this paragraph, which failure is not remedied by Debtor within ten (10) days after written notice thereof is sent by ordinary mail, Secured Party may, at its option, in addition to any other remedy, take whatever action that may be necessary to protect and preserve Secured Party's interest in the Collateral, including but not limited to payment of insurance premiums, repairs, storage, transportation, removal of liens, etc., the amount of such

expenditure shall become forthwith due and payable by Debtor with interest at the highest legal rate per annum; and if Secured Party takes any action authorized hereunder it shall not be liable to Debtor for damages as a result of its failure to remedy any such default, delays, temporary withdrawals of the Collateral from service or other causes.

7. Debtor hereby assigns to Secured Party any and all moneys, including but not limited to, proceeds of insurance, return of unearned premiums, which may become due under any policy insuring the Collateral against any loss or damage and directs the insurance company issuing such policy to make payments thereof directly to Secured Party. Secured Party may, at its option, apply such insurance moneys so received to the cost of repairs to the Collateral and/or to payment of any of the obligations, whether or not due, in any order Secured Party may determine, and shall remit any surplus to Debtor. Debtor irrevocably appoints Secured Party as Debtor's attorney-in-fact, with full power of substitution, to receive all such moneys, to execute proof of claim, to endorse drafts, checks and other instruments for the payment of money payable to Debtor in payment of such insurance moneys, to adjust and compromise any claim, to execute releases, to cancel any insurance policy covering the Collateral when such policy is not required to protect Debtor's or Secured Party's interest, and to do all other acts and things that may be necessary or required to carry into effect the powers herein granted.

8. The occurrence of any of the following events shall constitute a default hereunder: (a ) failure to pay when due, any amount payable on any of the Obligations; (b) if any statement, representation or warranty made herein or in the related credit application, or in any supporting financing statement by or on behalf of Debtor shall be false or breached in any material respect; (c) failure to observe or perform any other covenant or agreement herein or in any note executed in connection with this Agreement; (d) death of Debtor or any endorser of guarantor of the Promissory Note or the Obligations; (e) should Debtor, or any endorser or guarantor of the Obligations or the Promissory Note referred to in paragraph 3 hereof become insolvent (however evidenced) or commit any act of bankruptcy or make a general assignment for the benefit of creditors, or if any proceeding is instituted by or against any of them for any relief under any bankruptcy or insolvency laws, or if a receiver is appointed of, or a writ or order of attachment or garnishment is made or issued, or if any proceeding or procedure is commenced, or any remedy supplementary to or in enforcement of a judgment is employed against, or with respect to any property of any of them; (f) the failure of Debtor, to pay when due the Promissory Note mentioned in paragraph 3 hereof; (g) should Secured Party have reasonable cause to deem the indebtedness evidenced hereby insecure, or the collateral unsafe or in jeopardy or the collateral be lost or substantially destroyed.

9. Whenever a default shall exist, Secured Party shall have all remedies under the law, the Uniform Commercial Code in effect in the State of New Mexico, and as follows: (a) all Obligations including any notes executed in connection herewith shall become immediately due and payable, at the option of Secured Party, without notice of demand; (b) Secured Party or its representative may enter such place or places where any of the Collateral may be located and take and carry away the same, with or without legal process, to Secured Party's place of storage; (c) to sell the Collateral at public or private sale, whether or not the Collateral is present at such sale and whether or not the Collateral is in constructive possession of Secured Party or the person conducting the sale, in one or more sales, as an entirety or in parcels, for the best price that Secured Party can obtain and upon such terms as Secured Party may deem desirable; (d) Secured Party may be the purchaser at any such sale; (e) to require Debtor to pay all expenses of such sale, taking, repairing, keeping and storage of the Collateral, including reasonable attorney's fees; (f) to apply the proceeds of such sale to all expenses in connection with the taking, care and sale of the Collateral, and any balance of such proceeds may be applied toward the payment of the Obligations in such order of application as Secured Party may from time to time elect; (g) upon Secured Party's demand, Debtor agrees to assemble, at Debtor's expense, the Collateral at a convenient place acceptable to both parties; and (h) to exercise any one or more rights or remedies accorded by the Uniform Commercial Code in effect in the State of New Mexico. If the proceeds of any such sale are insufficient to pay the expenses, as aforesaid, and the Obligations, the Debtor agrees to pay any deficiency to Secured Party upon demand and if such proceeds are more than sufficient to pay such expenses and Obligations, Secured Party agrees to pay the surplus to Debtor. If any Obligation and/or this Agreement is referred to any attorney to enforce collection, Debtor agrees to pay reasonable attorney's fees.

10. If at the time of repossession any of the Collateral contains other personal property not included in the Collateral, Secured Party may take such personal property into custody and store it at the risk and expense of Debtor; Debtor agrees to notify Secured Party within 48 hours after repossession of the Collateral of any such other personal property claimed and failure to do so will release Secured Party or representatives from any liability for loss or damage thereto.

11. Debtor and Secured Party hereby acknowledge that Debtor's predecessors have entered into certain Railroad Car Management Agreements dated as of March 17, 1979 with United States Rail Services, Inc. Pursuant to the terms of such Agreements, United States Rail Services, Inc. undertakes to use its best efforts to lease the Collateral to shippers or other users of railroad cars. Pursuant to a separate Collateral

Assignment of even date herewith, Debtor has assigned its interest in such Agreements to Secured Party. The security interest granted to Secured Party herein is expressly made subject to Debtor's obligations under said Agreement and any leases of the Collateral made in conformance therewith.

12. If any provision of this Agreement is contrary to applicable law, the same shall not invalidate the remaining provisions hereof. If and to the extent that applicable law confers any rights or imposes any duties inconsistent with or in addition to any of the provisions of this Agreement, the affected provisions shall be considered amended to conform thereto. A waiver by Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to or waiver of any such right or remedy which Secured Party would have had on any future occasion nor shall Secured Party be liable for exercising or failing to exercise any such right or remedy Secured Party may enforce the remedies hereunder successively or concurrently and the exercise of one shall not bar the other. None of the terms hereof may be excluded, modified and/or amended except by an agreement in writing. The parties hereto waive the right to a jury trial in any action brought in any court whether involving this agreement or the Collateral. It is expressly understood and agreed that whenever any notice to the Debtor is required hereby or is otherwise required, such notice may be sent to Debtor by ordinary mail to the address shown at the end of this Agreement, and if so mailed, such notice shall be deemed sufficient notice thereof. "Debtor" and "Secured Party" as used in this Security Agreement, includes the heirs, executors or administrators, successors or assigns of those parties. This Agreement shall be binding, jointly and severally, upon the party or parties described as Debtor. Secured Party is authorized to insert in this Agreement, the Schedule and Financing Statements, date, identifying numbers or marks of the Collateral and to correct any patent error therein and in Secured Party's counterparts thereof after execution and delivery to Secured Party. This Agreement and the obligations were made in and shall be governed by the laws of the State of New Mexico and Debtor consents to the jurisdiction of the courts of the State of New Mexico in any lawsuit brought in connection therewith. Debtor acknowledges receipt of a copy of this Security Agreement.

13. This Agreement may be executed by the parties here to in one or more counterparts, each of which shall be deemed an original hereof without any obligation to account for any other counterpart.

14. Debtor and Secured Party acknowledge that the Collateral is subject to (i) a certain Security Agreement dated August 17, 1979 by and between Patricia J. Christenson, as Debtor, and the Secured Party, recorded August 30, 1979 with the Interstate Commerce Commission, Recordation No. 10779 and (ii) to a certain Security Agreement dated August 17, 1979 by and between S. P. Johnson, III, as Debtor, and Secured Party, recorded August 30, 1979 with the Interstate Commerce Commission, Recordation No. 10780, as amended by Amendment recorded with the Interstate Commerce Commission on August 13, 1980, Recordation No. 10780A (collectively the "Prior Security Agreements"). In connection with the acquisition of the Collateral by Debtor, the Debtor has assumed the obligations under the Prior Security Agreements and executes this Security Agreement to better confirm the interest of the Secured Party in and to the Collateral.

IN WITNESS WHEREOF, the undersigned has executed or caused this Security Agreement to be executed in the State of New Mexico the date first set forth above.

THE FIRST NATIONAL BANK IN ALBUQUERQUE

By

Ben Traji

ATTEST:

Patricia M. Durak  
Asst Cashier

JOHNSON ENTERPRISES LIMITED PARTNERSHIP

By

S P Johnson III  
S. P. Johnson, III, General Partner

By

Patricia J. Cooper  
Patricia J. Cooper, General Partner

By

Geraldine O. Johnson  
Geraldine O. Johnson, Limited Partner

STATE OF NEW MEXICO     )  
                                  )  
COUNTY OF BERNALILLO    )     ss.

On this 9 day of March, 1981, before me personally appeared Ken Scalzi, to me personally known, who being by me duly sworn, says that he is the Vice President of First National Bank in Albuquerque, that the seal 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.

Patricia M. Gurek  
Notary Public

My commission expires:  
5/20/83

STATE OF NEW MEXICO     )  
                                  )  
COUNTY OF Chaves     )     ss.

On this 2nd day of March, 1981, before me personally appeared S.P. Johnson, III, Patricia J. Cooper and Geraldine O. Johnson, partners of Johnson Enterprises Limited Partnership, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged that they executed the same as their free act and deed on behalf of said partnership.

Mary S. Powell  
Notary Public

My commission expires:  
June 6, 1984

SCHEDULE "A"

Description of Collateral

Ten railroad covered hopper cars described as follows:

<u>Rail Car Number</u>	<u>Class, Size and Type</u>	<u>Manufacturer</u>
RUSX 4916	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4917	100-ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4918	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4919	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4920	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4884	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4885	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4886	100-ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4887	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated
RUSX 4888	100-Ton, 4,650 cubic foot capacity covered hopper car	ACF Industries, Incorporated