



# ACF INDUSTRIES

INCORPORATED

750 THIRD AVENUE, NEW YORK, N. Y. 10017, (212) 986-8600, CABLE ADDRESS: ACFUSA

12258

RECORDATION NO. .... Filed 1426 September 30, 1980

OCT 2 1980 -3 40 PM  
276A075

INTERSTATE COMMERCE COMMISSION

Certified Mail

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Date OCT 2 1980

Fee \$ 50.00

OCT 2 3 37 PM '80  
I.C.C.  
OPERATION BR.

Dear Sir:

ICC Washington, D. C.

We enclose herewith for filing with the Commission pursuant to 49 U.S.C. §11303 and the regulations thereunder three original counterparts of an Interim User Agreement dated as of September 23, 1980 between the following:

- (a) Vendee (Interim User) Elgin, Joliet and Eastern Railway Company  
P.O. Box 880  
Joliet, Illinois 60434
- (b) Vendor (Manufacturer) ACF Industries, Incorporated  
750 Third Avenue  
New York, New York

The equipment covered by the above Interim User Agreement consists of six hundred fifty-eight (658) 100-ton 52'6" steel floor, fixed end gondola cars, AAR Car Code GB, bearing Elgin, Joliet and Eastern Railway Company Road Nos. 87300 to 87957 (subject to revision), both inclusive.

We also enclose a check drawn to the order of the Commission in the sum of \$50.00 in payment of the recordation fee in this connection.

We request that two copies of the enclosed Interim User both bearing the Commission's recordation data, be returned to R. W. Montgomery, Assistant Secretary, ACF Industries, Incorporated, 750 Third Avenue, New York, New York, 10017, or to the bearer.

Sincerely,

*R. W. Montgomery*  
R. W. Montgomery  
Assistant Secretary

RWM:ss  
Enclosures

*Handwritten notes and signatures on the left margin, including a large signature and the initials 'CO' at the bottom.*

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

10/2/80

OFFICE OF THE SECRETARY

**R.W. Montgomery**  
**ACF Industries, Incorp.**  
**750 Third Street Avenue**  
**New York, N.Y. 10017**

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 \_\_\_\_\_ at \_\_\_\_\_, and assigned re-  
recording number(s). **10/9/80** **3:40pm**

**12258**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

12258

RECORDATION NO. .... Filed 1426

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INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of September 23, 1980, by and between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer"), and Elgin, Joliet and Eastern Railway Company (hereinafter called the "Vendee"),

W I T N E S S E T H:

The Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") referred to in Section 1 of Schedule A hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2 of Schedule A and the Vendee has agreed to accept and pay for the Railroad equipment (hereinafter called the "Cars") described in Section 3 of Schedule A; and

Inasmuch as the Vendee has not as yet consummated financing arrangements for the acquisition of the Cars, it is not in a position to accept delivery of and pay for the Cars under the terms of the Purchase Agreement at this time. The Vendee represents that such financing arrangements will be consummated on or before December 31, 1980. The Vendee (in order that it may use the Cars pending completion of the above financing arrangements) has requested the Manufacturer to give the Vendee temporary custody and possession of the Cars on their completion, solely as a bailee of the Cars, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Cars to the Vendee and the Vendee agrees to accept the Cars from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Car shall commence on the date of acceptance of such Car and end on the earlier of December 31, 1980 or the date of payment of the purchase price of such Car under the above financing arrangements. When the purchase price of all the Cars has been paid, this Agreement shall automatically be terminated without further action by or notice to any party concerned. Risk of loss in respect to each Car will pass to the Vendee at the time such Car is shipped from our works.

2. After the Vendee's representative finds that each Car upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of inspection certifying to that effect. Upon delivery of each Car to the delivery point, the Vendee's representative will execute a certificate of acceptance acknowledging the receipt of

delivery of each Car under this Agreement. Title to the Cars shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of the bills of sale. The Vendee, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, the Vendee shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Cars.

3. The Vendee agrees that it will permit no liens of any kind to attach to the Cars; and that it will

- (a) indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and
- (b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Cars or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Cars by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

4. The Vendee will, at its own expense, keep and maintain the Cars in good order and running condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Cars which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or other termination of this Agreement, other than by payment of the purchase price, the Vendee will surrender and deliver up the Cars in good order and running condition to Manufacturer free of all charges at the point designated by the Manufacturer.

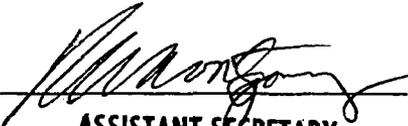
5. Prior to the delivery of each Car to the Vendee, it will be numbered with a car number as set forth in Section 3 of Schedule A, and there shall be plainly, distinctly, permanently, and conspicuously marked and maintained by the Vendee upon each side of each Car in letters not less than one inch in height the words set forth in Section 5 of Schedule A.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Cars, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and

pay for the Cars in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

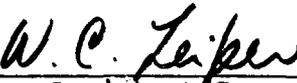
Attest:

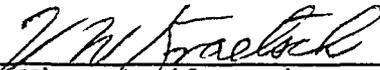
ACF INDUSTRIES, INCORPORATED

  
ASSISTANT SECRETARY

Attest:

By   
ELGIN, JOLIET AND EASTERN RAILWAY  
COMPANY

  
Assistant Secretary

By   
Vice President-Finance

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

On this 30th day of September, 1980, before me personally appeared H. A. BORST, to me personally known, who, being by me duly sworn, says that he is TREASURER of ACF Industries, Incorporated, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anthony M. Romanello  
Notary Public

(Seal)

ANTHONY M. ROMANELLO  
Notary Public, State of New York  
No. 31-4703607  
Qualified in New York County  
My Commission Expires: Commission Expires March 30, 1981

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

On this 23 day of September, 1980 before me personally appeared V.W. Kraetsch, to me personally known, who, being by me duly sworn says that he is Vice President-Finance of Elgin, Joliet and Eastern Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Anthony M. Tellep  
Notary Public

(Seal)

ANTHONY M. TELLEP, Notary Public  
PITTSBURGH, ALLEGHENY COUNTY, PA.  
MY COMMISSION EXPIRES  
DECEMBER 18, 1982  
My Commission Expires: Dec. 18, 1982

SCHEDULE A

SECTION 1. Purchase Agreement

1. EJ&E Purchase Order No. E-05771-18-C, dated June 23, 1980; EJ&E Change Order No. Six dated June 20, 1980.
2. ACF Original Order Acknowledgement Letter, dated November 9, 1978.
3. ACF Change Order No. Six Acknowledgement Letter, dated August 22, 1980.

SECTION 2. Delivery Point

St. Louis, Missouri.

SECTION 3. Railroad Equipment

658\* new 100-ton 52'6" steel floor, fixed end gondola cars (AAR Car Code GB bearing Elgin, Joliet and Eastern Railway Company Road Nos. 87300 to 87957\*, both inclusive.

SECTION 4. Purchase Price

Base Price - \$38,039\* per unit.

SECTION 5. Markings on Cars

Marked by stencil printed in contrasting color upon both sides of each unit of equipment in letters not less than one inch in height, the words:

"This Unit Subject to Financing Agreement  
Recorded with the ICC".

\* Subject to Revision