

815  
NEW NUMBER

ELIAS C ALVORD (1942)  
ELLSWORTH C ALVORD (1964)

ROBERT W ALVORD\*  
CHARLES T KAPPLER  
JOHN H DOYLE\*  
RICHARD N BAGENSTOS  
JAMES C MARTIN, JR \*

\* ALSO ADMITTED IN NEW YORK  
\* ALSO ADMITTED IN MARYLAND

LAW OFFICES  
ALVORD AND ALVORD

200 WORLD CENTER BUILDING  
918 SIXTEENTH STREET, N W  
WASHINGTON, D.C.

20006-2973  
(202) 393-2266

OF COUNSEL  
URBAN A LESTER

CABLE ADDRESS  
ALVORD'

TELEX  
440367 A AND A

TELEFAX  
(202) 393-2156

RECORDATION NO 16652 FILED 1425

December 15, 1989 DEC 15 1989 - 10 50 PM

INTERSTATE COMMERCE COMMISSION

9-349-A001

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three original copies of a Loan, Chattel Mortgage and Security Agreement dated December 15, 1989, a primary document as defined in the Commission's Rules for the Recordation of Documents, 49 C.F.R. Section 1177.

The names and addresses of the parties to the enclosed document are:

Debtor: ACF Industries, Incorporated  
100 South Bedford Road  
Mt. Kisco, NY 10549

Secured Party: Norstar Bank  
40 Main Street  
Hempstead, NY 11511

A description of the railroad equipment covered by the enclosed document is set forth in Annex "A" attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$15 payable to the order of the Interstate Commerce Commission covering the required recordaiton fee.

Kindly return stamped copies of the enclosed document not needed for your files to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Suite 200, Washington, D.C. 20006.

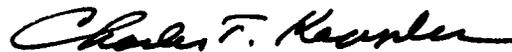
*Charles T. Kappler*

Ms. Noreta R. McGee  
December 15, 1989  
Page 2

A short summary of the enclosed primary document to appear in the Commission's index is:

Loan, Chattel Mortgage and Security Agreement dated December 15, 1989 between ACF Industries, Incorporated, Debtor and Norstar Bank, Secured Party, covering 224 railroad railcars bearing ACFX marks and numbers.

Very truly yours,

  
Charles T. Kappler

CTK/skh

ANNEX "A"

<u>CARS INITIALED AND NUMBERED</u>	<u>AAR DESIG.</u>	<u>TOTAL CARS</u>
ACFX 65648 - 65649	C214	2
" 66091	C214	95
" 66094		
" 66231 - 66232		
" 66237		
" 66239 - 66240		
" 66245		
" 66254 - 66255		
" 66261 - 66264		
" 66270 - 66272		
" 66277 - 66278		
" 66281		
" 66284		
" 66293 - 66296		
" 66301 - 66304		
" 66309 - 66312		
" 66317 - 66320		
" 66323 - 66328		
" 66333 - 66367		
" 66372 - 66375		
" 66377 - 66391		
" 66651 - 66652	C214	101
" 66654 - 66656		
" 66658		
" 66660		
" 66665 - 66667		
" 66669		
" 66671 - 66672		
" 66673		
" 66678 - 66680		
" 66690		
" 66693		
" 66712		
" 66740		
" 66743		
" 66745		
" 66747 - 66751		
" 66754 - 66758		
" 66760		
" 66763 - 66792		
" 66797 - 66802		
" 66809 66822		
" 66826		
" 66828		
" 67061		
" 67063 - 67069		
" 67074 - 67075		
" 67077 - 67080		
" 67117		
ACFX 73099 - 73124	T106	26
		<hr/>
	Totals	224

**Interstate Commerce Commission**

Washington, D.C. 20423

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OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St N.W.  
Washington, D.C. 20006

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 12/15/89 at 10:50<sup>am</sup>, and assigned recordation number(s). 16652

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

RECORDATION NO 16652 FILED 1425

DEC 15 1989 - 10 50 PM

INTERSTATE COMMERCE COMMISSION

LOAN, CHATTEL MORTGAGE AND SECURITY AGREEMENT

AGREEMENT, made this 15<sup>th</sup> day of December, 1989, by and between:

ACF INDUSTRIES, INCORPORATED, a New Jersey corporation, with an office at 3301 Rider Trail South, Earth City, Missouri, 63045-1393 (hereinafter referred to as the "Debtor"); and

NORSTAR BANK, a New York banking corporation, having an office at 40 Main Street, Hempstead, New York 11511 (hereinafter referred to as the "Bank").

W I T N E S S E T H:

WHEREAS, the Debtor has requested the Bank to make loans to it up to an aggregate amount of \$20,000,000 upon and subject to the terms and conditions set forth herein; and

WHEREAS, the Bank is willing to make such loans to the Debtor, subject to the terms, provisions and conditions hereinafter set forth;

NOW, THEREFORE, IT IS AGREED:

1. Definitions. For all purposes of this Agreement, unless the context otherwise requires:

"Agreement" shall mean this Agreement as it may from time to time be amended modified, supplemented or restated.

"Business Day" shall mean any day which is not a Saturday or a Sunday and on which banks in the State of New York are not authorized or required to close.

"Code Section 4975" shall mean, at any date, Section 4975 of the Internal Revenue Code of 1986, as the same shall be in effect at such date.

"Collateral" shall have the meaning set forth in Section 4 hereof.

"Commitment" shall mean \$20,000,000, as such amount shall be reduced from time to time in accordance with the terms hereof.

"Cost" shall mean, with respect to any item of railroad rolling stock not built by the Debtor, the price of such item as shown on the invoice for such item delivered to the Bank pursuant to Section 3(b)(ii) or Section 3(c)(ii) hereof, exclusive of (i) any amount included in such price consisting of preparation, handling, freight, storage or other like charges or (ii) any sales, excise or other taxes payable in connection with the sale of such item, and, with respect to any item of railroad rolling stock built by the Debtor, the so-called "car-builder's cost" including direct cost of labor and material and overhead, but excluding the overhead of the Debtor's corporate headquarters and any manufacturing profit.

"Equipment" shall mean all of the railroad rolling stock described on Schedule B annexed hereto which is intended for use in interstate commerce, together with any standard gauge rolling stock (other than locomotives or passenger or work equipment) hereinafter subjected to the lien of this Agreement.

"ERISA" shall mean, at any date, the Employee Retirement Income Security Act of 1974 and the regulations thereunder, all as the same shall be in effect at such date.

"Event of Default" shall have the meaning set forth in Section 11 hereof.

"Indenture" shall mean the Indenture dated as of December 15, 1984 between the Debtor and Fleet National Bank, as Trustee, as amended and supplemented from time to time.

"Leases" shall mean the lease agreements or relevant portion thereof entered into and to be entered into by the Debtor with the Lessees which lease agreements or relevant portion thereof provide for the leasing of units of the Equipment by the Debtor to the Lessees, at the respective rentals and upon the other terms and conditions therein provided.

"Lessees" shall mean various industrial shippers and others who, with the Debtor, are parties to the Leases.

"Loan" shall mean each loan made at any time prior to December 31, 1990 (the "Expiration Date") to the Debtor in accordance with the terms hereof, provided that on the date of the making of such loan the Bank shall have been granted a first priority perfected security interest in all Collateral, and the amount of such loan is not greater than 85% of the Cost of such Collateral securing such loan.

"Note" shall have the meaning set forth in Section 2(b) hereof.

"Obligations" shall have the meaning set forth in Section 4 hereof.

"Officers' Certificate" shall mean a certificate signed by the Chairman of the Board, Vice-Chairman of the Board, President, Vice-President, Treasurer or Assistant Treasurer of the Debtor.

"Opinion of Counsel" shall mean an opinion in writing signed by legal counsel who shall be reasonably satisfactory to the Bank and who may be an employee of or of counsel to the Debtor. The acceptance by the Bank of, and its action on an Opinion of Counsel shall be conclusive evidence that such counsel is satisfactory to the Bank.

A "person" shall include an individual, a corporation, an association, a joint stock company, a business trust, a partnership, a joint venture, an unincorporated organization, or a government or any agency or political subdivision thereof.

"Subsidiary" shall mean any corporation engaged primarily in the business of owning, leasing or operating railroad rolling stock of which more than 50% of the outstanding stock having ordinary voting power to elect a majority of the Board of Directors of such corporation is at the time directly or indirectly owned by the Debtor, or by one or more of its subsidiaries, or by the Debtor and one or more of its subsidiaries, except that, with respect to Section 18(g), "Subsidiary" shall not be limited to corporations engaged primarily in the business of owning, leasing or operating railroad rolling stock but shall include all subsidiaries required to be consolidated with the Borrower under generally accepted accounting principles.

2. Amount and Terms of Loans.

(a) Subject to and upon the terms and conditions herein set forth, the Bank may make Loans to the Debtor on or before December 31, 1990, subject to Section 2(j) hereof (the "Termination Date") in an aggregate principal amount at any one time outstanding up to, but not exceeding, the Commitment as then in effect. Subject to the terms of this Agreement, the Debtor may borrow, prepay (as provided in subsection (e)) and reborrow the amount of the Commitment. Each Loan shall be in immediately available funds in the amount of \$500,000 or an integral multiple thereof. Each Loan shall be made at 11:00 A.M., New York time, or at such time or place as may be agreed upon by the Debtor and the Bank.

(b) The Loans shall be evidenced by a single promissory note to the order of the Bank substantially in the form of Exhibit A annexed hereto (such note, as it may from time to time be modified, amended, supplemented or restated, is herein referred to as the "Note") which shall be payable to the order of the Bank in a principal amount equal to the Commitment, dated the date hereof and duly executed by the Debtor with blanks appropriately filled in conformity herewith. The Note shall be payable upon demand (and in any event, subject to Section 2(j) hereof, no later than December 31, 1990 (the "Maturity Date")), provided, however, that in no event shall the Maturity Date extend beyond four years and three hundred and sixty-four (364) days from the date such Loan was made (the "Final Maturity Date") and shall be subject to prepayment as provided in this Section 2. All Loans made by the Bank hereunder and all payments and prepayments made on account of the principal thereof shall be recorded by the Bank on the schedule attached to the Note; provided, however, that the Bank's failure to make such notation with respect to any Loan shall not limit or otherwise affect the obligation of the Debtor herein or under the Note with respect to any such Loan, and payments by the Debtor shall not be affected by failure to make a notation thereof on said schedule.

(c) The Note shall bear interest from the date thereof to maturity on the unpaid principal balance thereof at a rate equal to one-eighth of one percent (1/8%) per annum in excess of the peg lending rate announced by the Bank from time to time as its peg rate of interest (the "Peg Rate"), which interest rate shall change when and as the Peg

Rate shall change, and after maturity (whether by acceleration, demand or otherwise) at a rate two and one-eighth percent (2-1/8%) per annum in excess of the Peg Rate (the "Post Maturity Rate"), which rate shall change as aforesaid; provided, however, that the Post Maturity Rate shall not become applicable to the Note until two days after such date of maturity. Interest on the outstanding unpaid principal amount under the Note shall be payable in arrears monthly on the first day of each month, commencing January 1, 1990, until maturity, and thereafter upon demand. Interest shall be calculated on the basis of a 360-day year and actual days elapsed. In no event shall the rate of interest on the Note exceed the maximum rate authorized by applicable law.

(d) The Debtor shall from time to time (until payment in full of the Note), upon the substantial destruction of any of the Equipment, at its option, either grant to the Bank a lien on other similar railroad rolling stock (by its execution and delivery of the documents and instruments referred to in Section 3(b)(ii) hereof) which has a Cost at least equal to that of the Equipment substantially destroyed, or make a payment in respect of the Loans in an amount not less than 85% of the Cost of such destroyed Equipment.

(e) Upon not less than three Business Days' prior written notice to the Bank, the Debtor shall have the right to prepay the Note from time to time in part in amounts of \$500,000 or an integral multiple thereof or at any time in whole. Upon the giving of notice of prepayment pursuant to this Section 2(e), the amount therein specified to be prepaid shall be due and payable on the date therein specified for such prepayment, together with accrued interest thereon to such date. No prepayment pursuant to this Section 2(e) of less than the entire unpaid principal amount of the Note shall be credited to or relieve the Debtor to any extent from its obligation to make any prepayment required by Section 2(d). Upon any such prepayment, the Debtor may request that Collateral consisting of railroad rolling stock be released in accordance with the terms of Section 22 hereof.

(f) Whenever any payment to be made hereunder or on the Note shall become due and payable on a day which is not a Business Day, such payment may be made on the next succeeding Business Day and, in the case of any payment of

principal, such extension of time shall in such case be included in computing interest on such payment.

(g) The Debtor shall make each payment or prepayment hereunder and under the Note not later than 1:00 p.m. (New York City time) on the day when due in lawful money of the United States of America to the Bank at its office at 40 Main Street, Hempstead, New York 11511, or at such other place as the Bank may from time to time designate, in immediately available funds for the account of the Bank.

(h) The Debtor agrees that the proceeds of all borrowings hereunder shall be used for working capital purposes, including the construction of new railroad rolling stock.

(i) The Debtor shall pay to the Bank a commitment fee (the "Commitment Fee") at the rate of  $\frac{3}{8}$  of 1% per annum on the daily average unused amount of the Commitment hereunder, for the period from the date hereof to and including the date on which the Loans have been repaid in full. The accrued Commitment Fee shall be payable quarterly on the last day of every calendar quarter following the date hereof until the Loans have been repaid in full and the Commitment has been terminated. If at any time the Bank shall have determined that the adoption of any applicable law, rule or regulation regarding capital adequacy or reserves on commitments, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Bank with any request or directive regarding capital adequacy or reserves on commitments (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Bank's capital as a consequence of its obligations hereunder to a level below that which the Bank could have achieved but for such adoption, change or compliance (taking into account the Bank's policies with respect to capital adequacy and reserves on commitments) by an amount deemed by the Bank to be material, then from time to time, the Bank may increase the amount of the Commitment Fee in such amounts as will compensate the Bank for such reduction. The Bank shall provide to the Debtor a certificate setting forth in

reasonable detail the reason for and method of computation of such increase.

(j) Each year the Debtor may, upon 60 Business Days' notice prior to the Maturity Date (other than the Final Maturity Date) then in effect for the Loans, request the Bank to extend the Termination Date then in effect and the Maturity Date of the Loans then in effect for an additional year. The Bank shall respond within 45 Business Days after receipt of the Debtor's request, and if the Bank agrees to such an extension, then each of the Termination Date and the Maturity Date then in effect shall be extended an additional year.

### 3. Conditions Precedent.

(a) Prior to the making of the initial Loan hereunder, the following conditions precedent shall have been satisfied in a manner satisfactory in form and substance to the Bank:

(i) this Agreement shall have been duly executed by the Debtor for recording with the Interstate Commerce Commission, and shall have been delivered by the Debtor to the Bank;

(ii) the Bank shall have received (x) certified copies of the resolutions of the Board of Directors of the Debtor approving this Agreement, and each of the other instruments and documents executed by the Debtor and delivered to the Bank pursuant to this Agreement, which copies shall have been certified by a Secretary or an Assistant Secretary of the Debtor as of the date of this Agreement, and (y) certified copies of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect thereto;

(iii) the Bank shall have received the Note, which Note shall have been duly executed and delivered by the Debtor;

(iv) the Bank shall have received a certificate of the Secretary or an Assistant Secretary of the Debtor dated as of the date of this Agreement, certifying the names and true signatures of the officers of

the Debtor authorized to sign each document to which it is signatory and which is to be delivered by it hereunder;

(v) the Bank shall have received favorable opinions of counsel for the Debtor as to all matters specified in subsections (a), (c), (e), (f) and (i) of Section 19, to all matters specified in the second sentence of subsection (d) thereof and to the further effect that all documents required pursuant hereto have been duly executed and delivered by the Debtor and that such documents, upon any filing or recording required under applicable law, create a valid and enforceable first priority security interest in the collateral therein described, which opinions shall be dated the date of this Agreement, addressed to the Bank, and otherwise be in form and substance satisfactory to the Bank; and

(b) Prior to the making by the Bank of any Loans hereunder, the following conditions precedent shall have been satisfied in a manner satisfactory in form and substance to the Bank:

(i) amendments to this Agreement, together with appropriate instruments to be recorded with the Interstate Commerce Commission, including, without limitation, supplements to this Agreement in substantially the forms annexed hereto as Exhibit C, shall have been duly executed and delivered by the Debtor and the Bank to provide for the granting to the Bank of a first priority perfected security interest in the Collateral with respect to such Loan, and copies of such instruments and documents, together with a copy of the invoices for the purchase by the Debtor of such Collateral (if purchased), or other satisfactory evidence of its Cost (if built by the Debtor) shall have been received by the Bank; and

(ii) the Bank shall have received a certificate signed by a duly authorized officer of the Debtor, dated the date of such Loan, stating that (w) all the proceeds of such Loan are to be applied in accordance with Section 2(h) hereof; (x) all representations and warranties contained in this Agreement are true and correct in all material respects on and as of the date of such Loan as though made on and as of such date; (y) no event has occurred and is continuing, or would result from such Loan, which constitutes an Event of Default or would constitute an Event of Default but for the requirement that notice be

given or time elapsed or both; and (z) there has been no material adverse change in the financial condition of the Company since the date of this Agreement.

#### 4. Security Interest.

To secure the due payment, performance and observance of all indebtedness, obligations, liabilities and agreements of any kind of the Debtor to the Bank, now existing or hereafter arising, absolute or contingent, due or not, contractual or tortious, liquidated or unliquidated, arising under (i) the Note, or (ii) this Agreement (all of the foregoing being herein referred to as the "Obligations"), the Debtor hereby mortgages, pledges, hypothecates and grants to the Bank, its successors and permitted assigns, a first lien (subject to the provisions of paragraph 5 hereof) upon and security interest in (a) the Equipment described on Schedule B thereto together with all accessories, equipment, parts and appurtenances appertaining or attached to such Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, together with all the rents, issues, income, profits and avails therefrom and the proceeds thereof and (b) Collateral also includes all right, title and interest of the Debtor in and to each and every Lease but to and only to the extent relating to the Equipment (each such Lease relating only to the Equipment or such portion of such Lease relating to the Equipment being an "Equipment Lease"), and all payments due and to become due under any Equipment Lease (the "Equipment Lease Proceeds"), whether as contractual obligations, damages or otherwise to the extent such payments are derived from the Equipment (all of which properties are hereinafter referred to as Collateral"). The Bank shall be entitled to collect and receive the Equipment Lease Proceeds only upon the occurrence of and during the continuance of an Event of Default.

#### 5. Debtor's Title; Liens and Encumbrances.

The Debtor represents and warrants that, except for liens, security interests and encumbrances referred to on Schedule C (if any) annexed hereto and made a part hereof, the Debtor is, or to the extent that this Agreement states that the Collateral is to be acquired after the date hereof, will be, the owner of the Collateral, having good and

marketable title thereto, free from any and all liens, security interests, encumbrances and claims except as permitted by this Agreement. The Debtor will not create or assume or permit to exist any such lien, security interest, encumbrances or claim on or against the Collateral except as created or permitted by this Agreement, and the Debtor will promptly notify the Bank of any such other claim, lien, security interest or other encumbrance made or asserted against the Collateral and will defend the Collateral against any such claim, lien, security interest or other encumbrance.

6. Location of Collateral and Records.

The Debtor represents and warrants that its chief place of business and the offices where its books and records are kept, are, and have been during the four-month period prior to the date hereof, located at the addresses set forth on Schedule D annexed hereto, and covenants that the Debtor will promptly notify the Bank of any change in the foregoing representation. The Debtor shall at all times maintain its records as to the Collateral at its chief place of business at the address referred to on Schedule D or as otherwise reflected on Schedule D with respect to records and at none other.

7. Perfection of Security Interest.

(a) The Debtor will join with the Bank at any time and from time to time in executing one or more financing statements pursuant to the Uniform Commercial Code or other notices appropriate under applicable law in form satisfactory to the Bank and will pay all filing or recording costs with respect thereto, and all costs of filing or recording this Agreement, or any supplement hereto or any other instrument, agreement or document executed and delivered pursuant hereto or to any of the agreements or instruments evidencing any of the Obligations (including the cost of all Federal, state or local mortgage, documentary, stamp, excise or other taxes), in each case, in all public offices where filing or recording is deemed by the Bank, in its reasonable judgment, to be necessary or desirable, upon the Bank's request (including, without limitation, the Interstate Commerce Commission). The Debtor hereby authorizes the Bank to take all reasonable action (including, without limitation, the filing of any Uniform Commercial Code Financing Statements or continuations or

amendments thereto without the signature of the Debtor) which the Bank, in its reasonable judgment, may deem necessary or desirable, upon the Bank's request, to perfect or otherwise protect the liens and security interests created hereunder and to obtain the benefits of this Agreement.

(b) Promptly after the execution, delivery and recording of this Agreement and each supplement hereto, the Debtor will furnish to the Bank an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed with the Interstate Commerce Commission in compliance with the preceding paragraph of this Section 7 and reciting the details of such action. In rendering any such opinion, such counsel may conclusively rely upon an Officer's Certificate as to the location of the Equipment.

#### 8. General Covenants.

While the Commitments are in effect and until payment in full of the Note and the performance of all of its Obligations, the Debtor represents, warrants, covenants and agrees as follows:

(a) The Debtor shall:

(i) furnish the Bank from time to time at the Bank's request written statements and schedules further identifying and describing the Collateral in such detail as the Bank may reasonably require;

(ii) advise the Bank promptly, in sufficient detail, upon learning of any substantial change in the Collateral, and of the occurrence of any event which would have a materially adverse effect on the value of the Collateral or on the Bank's security interest therein;

(iii) comply, and use its best efforts to cause each of the Lessees to comply, in all material respects, with all acts, rules, regulations and orders of any legislative, administrative or judicial body or official applicable to the Collateral or any part thereof to the operation of the Debtor's business (including all laws of the jurisdictions in which operations involving the Equipment may extend, the interchange rules of the Association of American Railroads and all rules of the

Interstate Commerce Commission), provided the the Debtor may contest any acts, rules, regulations, orders and directions of such bodies or officials in any reasonable manner which will not, in the Bank's opinion, materially adversely affect its rights or the priority of its security interest in the Collateral; and

(iv) promptly execute and deliver to the Bank such further reasonable deeds, mortgages, security agreements or other instruments, documents, certificates and assurances and take such further reasonable action as the Bank may from time to time request and may in its sole discretion deem necessary to perfect, protect or enforce its security interest in the Collateral or otherwise to effectuate the intent of this Agreement.

(b) Except as provided herein, the Debtor will not assign, sell, lease, transfer, or otherwise dispose of or abandon, nor will the Debtor suffer or permit any of the same to occur with respect to, any Collateral, without prior written notice to and consent of the Bank, except for the sale or lease from time to time in the ordinary course of business of such items of the Collateral as may constitute inventory, and the inclusion of "proceeds" of the Collateral under the security interest granted herein shall not be deemed a consent by the Bank to any sale or other disposition of any Collateral except as expressly permitted herein.

(c) The Debtor has made, and will continue to make, payment or deposit, or otherwise has provided and will provide for the payment, when due, of all taxes, assessments or contributions or other public or private charges which have been or may be levied or assessed against the Debtor, whether with respect to any Collateral, to any wages or salaries paid by Debtor, to otherwise, except to the extent that any such taxes, assessments or charges are being diligently contest in good faith and the Debtor has established appropriate reserves therefor, and the Debtor will deliver to the Bank, on demand, certificates or other evidence satisfactory to the Bank attesting thereto.

(d) The Bank shall, upon reasonable notice to the Debtor, at all times during normal business hours have free access to and right of inspection of the Collateral (to the extent that the Debtor is allowed such rights under any of the extent that the Debtor is allowed such rights under any

of the Leases applicable thereto) and any records pertaining thereto (and the right to make extracts from and to receive from the Debtor originals or true copies of such records and any papers and instruments relating to any Collateral upon request therefor). Any copies of non-public information shall be kept confidential by the Bank and not disclosed to any third party.

(e) In its discretion, the Bank may, at any time and from time to time, for the account of the Debtor, pay any amount or do any act required of the Debtor hereunder and which the Debtor fails to do or pay, and any such payment shall be deemed an advance by the Bank to the Debtor payable on demand together with interest at the highest rate then payable on any of the Obligations.

(f) The Debtor agrees that if, in the opinion of the Debtor, marking of one or more units of Equipment is required by law to properly protect the rights of the Bank in and to the Equipment, the Debtor will, as soon as practicable after determining that such marking is required, arrange for the marking of each such unit of the 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 one inch in height:

THIS CAR IS MORTGAGED TO NORSTAR BANK UNDER A LOAN, CHATTEL MORTGAGE AND SECURITY AGREEMENT RECORDED UNDER Section 11303 OF THE INTERSTATE COMMERCE ACT.

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

In case, prior to the termination of this Agreement, any of such plates or marks shall at any time be removed, defaced or destroyed, the Debtor shall forthwith cause the same to be restored or replaced. The Debtor shall not change, or permit to be changed, the identifying numbers (as set forth on Schedule B hereto or in any supplement hereto) 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 Bank by the Debtor and also 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 ownership by the Debtor thereof, and may also be lettered in such manner as may be appropriate for convenience of identification of the leasehold interests therein of any of the Lessees under any of the Leases; but the Debtor, during the continuance of this Agreement, will 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 any person other than the Debtor, or as an indication of any lien or other encumbrance thereon (except the interests of the Lessees as aforesaid) other than the lien of this Agreement in favor of the Bank.

(g) Except as otherwise provided herein, the Debtor agrees that it will maintain and keep, or cause to be maintained and kept, all the Equipment in good order and proper repair. The Debtor agrees that it shall maintain the original Equipment Leases at the Debtor's principal office.

(h) The Bank, by its agents, shall have the right, once in each calendar year, during reasonable business hours and upon reasonable notice to the Debtor, to inspect the Equipment at the then existing locations thereof.

(i) The Debtor further covenants and agrees to furnish to the Bank, whenever required by the Bank following and during the continuance of an Event of Default, an Officer's Certificate stating, as to each of the Leases then in effect, the name and address of the Lessee thereunder, the identifying number of each unit of the Equipment subject thereto, and the expiration date thereof, and also stating the identifying number of each unit of the Equipment not then subject to any of the Leases. Such information shall be kept confidential by the Bank and not disclosed to any third party.

(j) Except as provided in this Section 8(j), the Debtor will not assign or transfer its rights hereunder, or sell, assign, lease, transfer or otherwise dispose of, or subject to, or permit to become subject to, any mortgage, lien, pledge, charge, security interest or other encumbrance

(other than the lien of this Agreement or a lien permitted by this Agreement and other than the leasehold interests of the Lessees under the Leases as hereinbelow in this Section 8(j) provided) the Equipment or any part thereof, without the written consent of the Bank first had and obtained, which consent shall not be unreasonably withheld; and the Debtor shall not, without such written consent, except as hereinbelow in this Section 8(j) provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Equipment. For the purposes of this Agreement, a lien permitted by this Agreement shall mean (i) the lien created by this Agreement and the Equipment Leases; (ii) the lien of taxes, assessments or governmental charges or levies which are not at the time delinquent; (iii) the lien of taxes (including without limitation ERISA liens), assessments or governmental charges or levies which are delinquent but the amount or the validity of which is being contested in good faith by appropriate action if the Debtor shall have set aside on its books such reserves as deemed by it appropriate and adequate in accordance with generally accepted accounting principles, provided that such proceeding shall suspend the collection of such taxes, assessments or governmental charges and, the security interest in the Collateral, or any part thereof, would not be adversely affected or forfeited during the period of such contest; (iv) liens incurred and pledges and deposits made in connection with worker's compensation, unemployment insurance, old-age pensions and other social security or retirement benefits or similar legislation or in connection with public or statutory obligations of the Debtor or any of its Subsidiaries; (v) liens imposed by law; (vi) liens (including deposits) in connection with self-insurance; (vii) liens (including deposits) in connection with or to secure performance of bids, tenders, contracts (other than contracts creating or evidencing indebtedness for borrowed money) or leases or to secure statutory obligations, surety or appeal bonds or indemnity, performance or similar bonds; (viii) liens in connection with litigation being contested and judgment liens in proceedings which are being (or which will be) duly appealed and for which stay of execution has been (or is reasonably expected to be) received; (ix) liens arising in connection with advances or progress payments under government contracts; and (x) mechanics', materialmen's, suppliers', warehousemen's and similar liens for services or materials for which payment is not overdue or the payment of which is being contested in good faith by appropriate proceedings.

So long as no Event of Default shall have occurred and is continuing, the Bank shall not interfere with the Debtor's possession and use of the Equipment in accordance with the terms hereof, and the Debtor may also lease or contract to the Lessees under the Leases all or any part of the Equipment, but only upon and subject to all the terms and conditions of this Agreement, and to all rights of the Bank hereunder. Until the occurrence and continuance of an Event of Default, Debtor may exercise all of the Debtor's rights, powers, privileges and remedies under the Equipment Leases, including, without limitation, the right to receive any and all monies due or to become due under the Equipment Leases, and to retain all copies (original or duplicates) of Equipment Leases.

Any of the Leases may provide that the Lessee thereunder, so long as it shall not be in default under such Lease, shall be entitled (subject to the rights of the Bank) to the possession of the Equipment included in such Lease and the use thereof, and, subject to the provisions of Section 8(f) hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such Lessee therein. Every such Lease shall contain provisions which have the effect of subjecting the rights of the Lessee under such Lease to the rights of the Bank in respect of such Equipment, including, without limitation, such rights in the event of the happening of an Event of Default.

(k) The Debtor further covenants and agrees to allow the Bank, at any time and from time to time, upon reasonable prior notice to the Debtor, to review any of the Leases and any and all documentation related thereto, including, without limitation, documentation relating to the financial condition or creditworthiness of the specific Lessees bound thereunder. Such information shall be kept confidential by the Bank and shall not be disclosed to any third party.

#### 9. Insurance.

The Debtor shall 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.

10. Intentionally Deleted.

11. Events of Default.

If any one or more of the following events (herein called "Events of Default") shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), that is to say:

(a) if default shall be made in the due and punctual payment of the principal of, or any premium on, the Note, when and as the same shall become due and payable, whether at maturity or by acceleration or otherwise;

(b) if default shall be made in the due and punctual payment of any installment of interest on the Note, when and as such interest installment shall become due and payable;

(c) if default shall be made in the performance or observance of, or shall occur under, any covenant, agreement or provision contained in any agreement, instrument or document evidencing any of the Obligations and such default shall have continued for a period of 30 days after notice thereof to the Debtor from the Bank or if any such agreement, instrument or document shall terminate or become void or unenforceable without the written consent of the Bank;

(d) if the Debtor or any of its Subsidiaries shall default in the payment of any principal, interest or premium with respect to any indebtedness in the aggregate principal amount in excess of \$10,000,000 for borrowed money or any obligation which is the substantive equivalent thereof (including, without limitation, obligations under conditional sales contracts, finance leases and the like) or under any agreement or instrument under or pursuant to which any such indebtedness or obligation may have been issued, created, assumed or guaranteed by the Debtor or any of its Subsidiaries and such default shall continue for more than the period of grace and shall not have been cured, if any, therein specified and as a result thereof, such indebtedness or obligation shall be declared due and payable prior to the

stated maturity thereof and such indebtedness shall not have been discharged or such acceleration rescinded within 30 days;

(e) if any representation or warranty or any other statement of fact herein or in any writing, certificate, report or statement at any time furnished to the Bank pursuant to or in connection with this Agreement, shall be false or misleading in any material respect;

(f) if the Debtor or any of its Subsidiaries shall generally not be paying its debts as they become due; file a petition or seek relief under or take advantage of any insolvency law; make an assignment for the benefit of its creditors; commence a proceeding for the appointment of a receiver, trustee, liquidator, custodian or conservator of itself or of the whole or substantially all of its property; file a petition or an answer to a petition under any chapter of the Bankruptcy Reform Act of 1978, as amended (11 U.S.C. Section 101 et seq.), or file a petition or seek relief under or take advantage of any other similar law or statute of the United States of America, any state thereof or any foreign country;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree appointing or authorizing a receiver, trustee, liquidator, custodian or conservator of the Debtor or any of its Subsidiaries or of the whole or substantially all of its property, or enter an order for relief against the Debtor or any of its Subsidiaries in any case commenced under any chapter of the Bankruptcy Reform Act of 1978, as amended, or grant relief under any other similar law or statute of the United States of America, any state thereof or any foreign country; or if, under the provisions of any law for the relief or aid of debtors, a court of competent jurisdiction or a receiver, trustee, liquidator, custodian or conservator shall assume custody or control or take possession of the Debtor or any of its Subsidiaries or of the whole or substantially all of its property; or if there is commenced against the Debtor or any of its Subsidiaries any proceeding for any of the foregoing relief or if a petition is filed against the Debtor or any of its Subsidiaries under any chapter of the Bankruptcy Reform Act of 1978, as amended, or under any other similar law or statute of the United States of America or any state thereof or any foreign country and such proceeding or petition remains undismissed for a period of 60 days; or if

the Debtor or any Subsidiary by any act indicates its consent to, approval of or acquiescence in any such proceeding or petition;

(h) if any final judgment against the Debtor or any of its Subsidiaries or any attachment or execution against any of its or their property for any amount in excess of \$100,000 remains unpaid, unstayed or undismissed for a period of more than sixty days;

(i) if the Debtor shall terminate, or permit any Subsidiary to terminate, any employee benefit plan maintained by the Debtor or any Subsidiary so as to incur any liability to the Pension Benefit Guaranty Corporation established pursuant to ERISA if such termination would have a material adverse effect upon the financial condition of the Debtor and its Subsidiaries taken as a whole;

(j) if the Debtor shall make or suffer any unauthorized assignment or transfer of any unit of the Equipment or of the right to possession of any thereof; or

(k) if the Equipment, or any unit thereof, shall be attached, distrained or otherwise levied upon and the Borrower shall fail to either (i) cause such attachment, distraint or levy to be vacated within ten days; or (ii) within ten days, grant to the Bank a lien on other similar railroad rolling stock (by its execution and delivery of the documents and instruments referred to in Section 3(b)(1) hereof) which has a Cost at least equal to that of the Equipment which was attached, distrained or otherwise levied upon; or (iii) within ten days, make a payment in respect of the Loans in an amount not less than 85% of the Cost of the Equipment which was attached, distrained or otherwise levied upon;

Then, in the case of an Event of Default described in clauses (f) or (g) above, the unpaid balance of the Obligations and all interest accrued thereon shall automatically (without any action on the part of the Bank and without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived) forthwith become due and payable, and, in the case of any other Event of Default, then and in any such event, and at any time thereafter if such or any other Event of Default shall then be continuing, the Bank may, at its option, declare all of the Obligations to be due and payable, whereupon the

maturity of the then unpaid balance of all of the Obligations shall be accelerated and the same, and all interest accrued thereon, shall forthwith become due and payable without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding.

12. Collections and Proceeds.

(a) Upon the occurrence and during the continuance of any Event of Default, the Debtor will immediately upon receipt of all checks, drafts, cash or other remittances in payment for any Collateral sold, transferred, leased or otherwise disposed of, or in payment or on account of any Collateral consisting of contracts, contract rights, or general intangibles, deliver any such items to the Bank accompanied by a remittance report in form supplied or approved by the Bank, such items to be delivered to the Bank in the same form received, endorsed or otherwise assigned by the Debtor where necessary to permit collection of items and, regardless of the form of such endorsement, the Debtor hereby waives presentment, demand, notice of dishonor, protest, notice of protest and all other notices with respect thereto. All such remittances shall be applied and credited by the Bank first to satisfaction of the Obligations or as otherwise required by applicable law, and to the extent not so credited or applied, shall be paid over to the Debtor. Upon the occurrence and during the continuance of any Event of Default, any proceeds of the Collateral received by the Debtor shall not be commingled with other property of the Debtor, but shall be segregated, held by the Debtor in trust for the Bank, and immediately delivered to the Bank in the form received, duly endorsed in blank where appropriate to effectuate the provisions hereof, the same to be held by the Bank as additional Collateral hereunder or, at the Bank's option, to be applied to payment of the Obligations, whether or not due and in any order.

(b) In its discretion, the Bank may, at any time and from time to time upon the occurrence and during the continuance of any Event of Default, in its name or the Debtor's or otherwise, notify any obligor of any contract, document, instrument, chattel paper or general intangible included in the Collateral to make payment to the Bank, and demand, sue for, collect or receive any money or property at any time payable or in exchange for, or make any compromise

or settlement deemed desirable by the Bank with respect to, any Collateral, and/or extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, or release, any Collateral or Obligations, all without notice to or consent by the Debtor and without otherwise discharging or affecting the Obligations, the Collateral or the security interest granted herein.

13. Rights and Remedies on Default.

Upon the occurrence and during the continuance of any Event of Default:

(a) the Bank shall at any time thereafter have the right, with or without notice to the Debtor, as to any or all of the Collateral, by any available judicial procedure, or without judicial process, to take possession of the Collateral (other than the original Leases) and without liability for trespass to enter any premises where the Collateral may be located for the purpose of taking possession of or removing the Collateral without notice or demand and with or without judicial procedure (said notice and demand, and also any right or action for trespass or damages hereby being waived), and, generally, to exercise any and all rights afforded to the Bank as a secured party under the Uniform Commercial Code or other applicable law;

(b) without limiting the generality of the foregoing, the Debtor agrees that the Bank shall have the right to sell, lease, otherwise dispose of all or any part of the Collateral, whether in its then condition or after further preparation or processing, either at public or private sale or at any broker's board, in lots or in bulk, for cash or on credit, with or without warranties or representations, by one or more contracts, in one or more parcels, at the same or different times, with or without having the Collateral at the place of sale or other disposition, for cash and/or credit, and upon any terms, at such place(s) and time(s) and to such person(s) as the Bank deems best, all without demand, notice or advertisement whatsoever except that where an applicable statute requires reasonable notice of sale or other disposition the Debtor hereby agrees that the sending of ten days' notice by first class mail, postage prepaid, to any address of the Debtor set forth in this Agreement shall be deemed reasonable notice thereof. If any Collateral is sold by the Bank upon credit or for future delivery, the Bank shall not be liable

for the failure of the purchaser to pay for same and in such event the Bank may resell such Collateral. The Bank may buy and Collateral at any public sale and, if any Collateral is of a type customarily sold in a recognized market or is of the type which is the subject of widely distributed standard price quotations, the Bank may buy such Collateral at private sale and in each case may make payment therefor by any means. If any Collateral shall require rebuilding, repairing, maintenance, preparation, or is in process or other unfinished state, the Bank shall have the right, at its option, to do such rebuilding, repairing, preparation, processing or completion of manufacturing, for the purpose of putting the Collateral in such saleable or disposable form as it shall deem appropriate; and

(c) at the Bank's request, the Debtor shall assemble the Collateral and make it available to the Bank at such reasonable location which the Bank shall select, whether at the Debtor's premises or elsewhere, and make available to the Bank, without rent, all of the Debtor's premises and facilities for the purpose of the Bank's taking possession of, removing or putting the Collateral in saleable or disposable form. The proceeds of any such sale, lease or other disposition of the Collateral shall be applied first, to the expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like, and to the reasonable attorneys' fees and legal expenses incurred by the Bank in attempting to collect the Obligations or enforce this Agreement or in the prosecution or defense of any action or proceeding related to the subject matter of this Agreement, and then to satisfaction of the Obligations, and to the payment of any other amounts required by applicable law, after which the Bank shall account to the Debtor for any surplus proceeds. If, upon the sale, lease or other disposition of the Collateral, the proceeds thereof are insufficient to pay all amounts to which the Bank is legally entitled, the Debtor will be liable for the deficiency, together with interest thereon at the rate prescribed herein, and the reasonable fees of any attorneys employed by the Bank to collect such deficiency. To the extent permitted by applicable law, the Debtor waives all claims, damages and demands against the Bank arising out of the repossession, removal, retention or sale of the Collateral other than those resulting from the willful misconduct or gross negligence of the Bank.

14. Costs and Expenses.

Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Bank, in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of financing statements and other documents (including all taxes in connection herewith) in public offices, the payment or discharge of any taxes, insurance premiums, encumbrances or otherwise protecting, maintaining or preserving the Collateral, the release or partial release of Collateral from the lien of this Agreement, or the enforcing, foreclosing, retaking, holding, storing, processing, selling or otherwise realizing upon the Collateral and the Bank's security interest therein, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to the transaction to which this Agreement relates, shall be borne and paid by the Debtor on demand to the Bank.

15. Power of Attorney.

The Debtor authorizes the Bank and does hereby make, constitute and appoint the Bank, and any officer of the Bank, with full power of substitution, as the Debtor's true and lawful attorney-in-fact, effective as of the date hereof but exercisable only upon the occurrence and during the continuance of any Event of Default, with power, in its own name or in the name of the Debtor, to endorse any notes, checks, drafts, money orders, or other instruments of payment (including payments payable under or in respect of any policy of insurance) in respect of the Collateral that may come into possession of the Bank; to sign and endorse any invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications and notices in connection with accounts, and other documents relating to Collateral; to receive, open and dispose of all mail from Lessees addressed to the Debtor and notify the Post Office authorities to change the address for delivery of mail addressed to the Debtor to such address as the Bank may designate; to execute proofs of claim and loss; to pay or discharge taxes, liens, security interests or other encumbrances at any time levied or place on or threatened against the Collateral; to demand, collect, receipt for, compromise, settle and sue for monies

due in respect of the Collateral or under insurance policies; and, generally, to do, at the Bank's option and at the Debtor's expense, all acts and things which the Bank reasonably deems necessary to protect, preserve and realize upon the Collateral and the Bank's security interest therein in order to effect the intent of this Agreement all as fully and effectually as the Debtor might or could do; and the Debtor hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof other than the willful misconduct or gross negligence of the Bank. This power of attorney being coupled with an interest shall be irrevocable for the term of this Agreement and thereafter as long as any of the Obligations shall be outstanding.

16. Notices.

Unless otherwise specified herein to the contrary, any notice required hereunder shall be deemed duly given when actually delivered, or when mailed by certified or registered mail, return receipt requested, in each case to the address of the Debtor or the Bank specified above or to any other address of such party of which the other party has been notified in like manner.

17. Other Security.

To the extent that the Obligation are now or hereafter secured by property other than the Collateral or by the guarantee, endorsement or property of any other person, firm, corporation or other entity, then the Bank shall have the right in its sole discretion to pursue, relinquish, subordinate, modify or take any other action with respect thereto, without in any way modifying or affecting any of the Bank's rights and remedies hereunder. The Bank's prior recourse of any Collateral shall not constitute a condition of any demand, suit or proceeding for payment of the Obligations.

18. Intentionally Deleted.

19. Representations and Warranties.

In order to induce the Bank to enter into this Agreement and to make the Loans as herein provided for, the Debtor makes the following representations and warranties which shall survive the execution and delivery of this Agreement and the Note:

(a) The Debtor is a duly organized and validly existing corporation in good standing under the laws of the State of New Jersey, with perpetual corporate existence, and has the corporate power and authority to own its properties and to transact the business in which it is engaged or presently proposes to engage. The Debtor is duly qualified as a foreign corporation and in good standing in all states where its failure to so qualify would have a material adverse effect on its business or financial condition.

(b) Schedule 19(b) annexed hereto correctly sets forth the name of each Subsidiary in existence on the date hereof, its state of incorporation and a statement of the outstanding capitalization and the ownership of its stock. Each of the Subsidiaries is a duly organized and validly existing corporation and in good standing under the laws of its state of incorporation, and is duly qualified as a foreign corporation, and in good standing in all states where its failure to so qualify would have a material adverse effect on its business or financial condition.

(c) The Debtor has the corporate power to borrow and to execute, deliver and carry out the terms and provisions of this Agreement, the Note and all instruments and documents delivered by it pursuant to this Agreement, and the Debtor has taken or caused to be taken all necessary corporate action (including, but not limited to, the obtaining of any consent of stockholders required by law or by the Articles or Certificate of Incorporation or bylaws of the Debtor or any Subsidiary) to authorize the execution, delivery and performance of this Agreement, the borrowings hereunder, the making and delivery of the Note, and the execution, delivery and performance of the instruments and documents delivered by it pursuant to this Agreement.

(d) Neither the Debtor nor any Subsidiary is in default in any material respect under any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it may be bound. Neither the execution and delivery of this Agreement, the Note or any of the instruments and documents to be delivered pursuant to this Agreement, nor the consummation of the transactions herein and therein contemplated, nor compliance with the provisions hereof or thereof will violate any law or regulation, or any order or decree of any court or governmental instrumentality, or will conflict with, or

result in the breach of, or constitute a default under, any indenture, mortgage, deed of trust, agreement or other instrument to which the Debtor or any Subsidiary is a party or by which any of them may be bound, or result in the creation or imposition of any lien, charge or encumbrance upon any of the property of the Debtor or any Subsidiary thereunder (except for the liens provided for herein), or violate any provision of the Articles or Certificate of Incorporation, bylaws or any preferred stock provisions of the Debtor or any Subsidiary.

(e) This Agreement, the Note and each of the other instruments and documents executed by the Debtor and delivered to the Bank pursuant to this Agreement constitute the legal, valid and binding obligations of the Debtor and are enforceable in accordance with their respective terms; provided, however, that such enforcement may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights generally.

(f) Except as disclosed in the Debtor's financial statements delivered to the Bank pursuant to Section 18(g) and as disclosed in the Debtor's Form 10-K dated December 31, 1988, there are no actions, suits or proceedings pending, or to the knowledge of the Debtor threatened, against or affecting the Debtor or any Subsidiary before any court, arbitrator or governmental or administrative body or agency which are reasonably likely to result in any material adverse change in the business, operations, properties or assets or in the financial condition of the Debtor and its Subsidiaries taken as a whole. Neither the Debtor nor any Subsidiary is in default in any material respect under any applicable statute, rule, order, decree or regulation of any court, arbitrator or governmental body or agency having jurisdiction over the Debtor or any Subsidiary.

(g) The consolidated balance sheet of the Debtor and its Subsidiaries as at December 31, 1988, and the related consolidated statement of income and surplus account of the Debtor and its Subsidiaries for the fiscal year ended on said date, including in each case the related schedules and notes, certified by Laventhol & Horwath, independent public accountants, and heretofore delivered to the Bank, are all true and correct and present fairly (i) the financial position of the Debtor and its Subsidiaries as at

the date of such balance sheet, and (ii) the results of the operations of the Debtor and its Subsidiaries for said fiscal year. The consolidated balance sheet of the Debtor and its Subsidiaries as at September 30, 1989, and the related consolidated statement of income of the Debtor and its Subsidiaries for the three-month period ended on such date, including in each case the related schedules and notes, certified by the chief accounting officer of the Debtor and heretofore delivered to the Bank, are all true and correct and present fairly, subject to normal recurring year-end audit adjustments, (i) the financial position of the Debtor and its subsidiaries as at such date, and (ii) the results of the operations of the Debtor and its Subsidiaries for such period. Neither the Debtor nor any of its Subsidiaries had any material direct or contingent liabilities as of such dates which are not provided for or reflected in such balance sheets or referred to in the notes thereto. All such financial statements have been prepared in accordance with generally accepted accounting principles applied on a basis consistently maintained throughout the period involved. There has been no material adverse change in the assets, liabilities, properties, business and financial condition of the Debtor and its Subsidiaries since September 30, 1989.

(h) The Debtor and its Subsidiaries have filed all tax returns which are required to be filed, and have, except to the extent such taxes are being diligently contested in good faith and the Debtor has established appropriate reserves therefor, paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by them.

(i) No action of, or filing with, any United States governmental or public body or authority (other than normal reporting requirements or filing of financing statements under the Uniform Commercial Code or the filing of this Agreement under the Interstate Commerce Act) is required to authorize, or is otherwise required in connection with, the execution, delivery and performance of this Agreement, the Note, or any of the instruments or documents to be delivered pursuant to this Agreement.

(j) Neither the Schedules hereto, nor the financial statements referred to in Section 19(g), nor any

certificate, statement report or other document furnished to the Bank by the Debtor in connection herewith or in connection with any transaction contemplated hereby, nor this Agreement contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein not misleading.

(k) The proceeds of the borrowings made pursuant to this Agreement will be used by the Debtor only for the purposes set forth in Section 2 hereof. None of the proceeds will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" as such term is defined in Regulation U, as amended (12 C.F.R. Part 221) issued by the Board of Governors of the Federal Reserve System (the "Board") or for the purpose of reducing or retiring any Indebtedness which was originally incurred to purchase or carry margin stock or for any other purpose which might constitute any of the loans under this Agreement a "purpose credit" within the meaning (and interpretation of) of said Regulation U or Regulation X (12 C.F.R. Part 224) of the Board. Neither the Debtor nor any Subsidiary nor any agent acting in its or on their behalf has taken or will take any action which might cause this Agreement or any of the documents or instruments delivered pursuant hereto to violate any regulation of the Board or to violate the Securities Exchange Act of 1934.

(l) The Debtor is not an "investment company" as such term is defined in the Investment Company Act of 1940, as amended (15 U.S.C. Section 80a1, et seq.).

(m) None of the employee benefit plans maintained at any time by the Debtor or any Subsidiary or the trusts created thereunder have engaged in a prohibited transaction which could subject any such employee benefit plan or trust to a material tax or penalty on prohibited transactions imposed under Code Section 4975 or ERISA which would have a material adverse effect on the financial condition of the Debtor and its Subsidiaries, taken as a whole. None of the employee benefit plans maintained at any time by the Debtor or any Subsidiary which are employee pension benefit plans, or the trusts created thereunder, have been terminated which

termination has a material adverse impact on the financial condition of the Debtor and its Subsidiaries taken as a whole; nor has any such employee benefit plan incurred any liability to the Pension Benefit Guaranty Corporation established pursuant to ERISA, other than for required insurance premiums which have been paid when due, or incurred any accumulated funding deficiency, whether or not waived which has a material adverse impact on the financial condition of the Debtor and its Subsidiaries, taken as a whole; nor has there been any reportable event, or other event or condition, which presents a risk of termination of any such employee benefit plan by such Pension Benefit Guaranty Corporation which has a material adverse impact on the financial condition of the Debtor and its Subsidiaries taken as a whole. The present value of all accrued benefits under the employee benefit plans maintained at any time by the Debtor or any Subsidiary which are employee pension benefit plans did not, as of the most recent valuation date, exceed the then current value of the assets of such employee benefit plans allocable to such accrued benefits by an amount which, in accordance with generally accepted accounting principles, by more than Forty-One Million Dollars based upon the actuarial assumptions used in the plan which has a material adverse impact on the financial condition of the Debtor and its Subsidiaries taken as a whole. The consummation of any of the Loans will not involve any prohibited transaction. As used herein, the terms "employee benefit plan," "employee pension benefit plan," "accumulated funding deficiency," "reportable event," and "accrued benefits" shall have the respective meanings assigned to them in ERISA, and the term "prohibited transaction" shall have the meaning assigned to it in Code Section 4975 and ERISA.

20. Intentionally Deleted.

21. Miscellaneous.

(a) Beyond the safe custody thereof and its obligations as a secured creditor under applicable law, the Bank shall have no duty as to the collection of any Collateral in its possession or control or in the possession or control of any nominee of the Bank, or any income thereon or as to the preservation of rights against parties or any other rights pertaining thereto. The Debtor hereby releases the Bank from any claims, causes of action and demands at any time arising out of or with respect to this Agreement

(except for Section 2 hereof), the Obligations, the Collateral and its use and/or any actions taken or omitted to be taken by the Bank with respect thereto, except for any actions taken or omitted to be taken due to the gross negligence or willful misconduct of the Bank, and the Debtor hereby agrees to hold the Bank harmless from and with respect to any and all such claims, causes of action and demands.

(b) No course of dealing between the Debtor and the Bank, nor any failure to exercise, nor any delay in exercising, on the part of the Bank, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) All of the Bank's rights and remedies with respect to the Collateral, whether established hereby or by any other agreements, instruments or documents or by law shall be cumulative and may be exercised singly or concurrently.

(d) This Agreement shall be governed by the law of the State of New York applicable to contracts made and to be performed in such State. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

(e) This Agreement is subject to modification only by a writing signed by the Bank and the Debtor.

(f) The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Debtor and the Bank; provided, however, that the rights and obligations of the Debtor under this Agreement shall not be assigned or delegated without the prior written consent of the Bank, and any purported assignment or delegation without such consent shall be void. The Bank may assign all or a portion of its rights, interests and obligations under this Agreement and

further may assign, or sell participations in, all or any part of its Loans or any other interest herein to another bank or other entity, in which event (i) in the case of an assignment of the Loans by the Bank, upon notice hereof by the Bank to the Debtor, (x) the assignee shall be a party hereto and have, to the extent of such assignment (unless otherwise provided therein), the same obligations, rights and benefits of the Bank hereunder and the holder of the Note and (y) the Bank shall be released from its obligations under this Agreement (to the extent of such assignment), and (ii) in the case of participation, the participant shall not have any rights under this Agreement or the Note (the participant's rights against the Bank in respect of such participation to be those set forth in the agreement executed by the Bank in favor of the participant relating thereto). The Bank may furnish any information concerning the Debtor in the possession of the Bank from time to time to assignees and participants (including prospective assignees and participants). The Bank shall not disclose any non-public information concerning the Debtor to any prospective assignee or participant unless such prospective assignee or participant shall have first agreed in writing to maintain the confidentiality thereof. The Bank agrees to give the Debtor ten days' prior written notice of any assignment.

(g) In the event that the Bank shall retain or engage an attorney or attorneys to collect or enforce or protect its interest with respect to this Agreement, the Note or any instrument or document delivered pursuant to this Agreement, or to protect the rights of any holder or holders with respect thereto, the Debtor shall pay all of the costs and expenses of such collection, enforcement or protection, including reasonable attorneys' fees, and the Bank or the holder of the Note, as the case may be, may take judgment for all such amounts, in addition to the unpaid principal balance of the Note and accrued interest thereon.

(h) The Debtor hereby waives trial by jury in any litigation in any court with respect to, in connection with, or arising out of this Agreement, or the Note, or any instrument or document delivered pursuant to this Agreement, or the validity, protection, interpretation, collection or enforcement thereof, or any other claim or dispute relating to this Agreement or the transactions contemplated hereby, between the Debtor, or the Bank.

(i) The Debtor represents and warrants that neither the Debtor, nor any agent acting on its behalf, has, either directly or indirectly, offered the Note for sale to, or solicited any offer to buy the Note from, or otherwise negotiated in respect thereof with, anyone other than the Bank, and agrees that no such offer to sell, or to buy the Note, or any solicitation thereof will be made to or with any person so as to bring the issuance or sale thereof within the provisions of Section 5 of the Securities Act of 1933, as amended. The Bank represents and warrants, and each subsequent assignee shall represent and warrant, that it is making the Loan made by it hereunder for its own account and not with any present intention of making any public offering or effecting any distribution of the Note, but the Bank reserves the right to transfer the Note (in accordance with applicable law) if, at any future date, the Bank shall deem it advisable to do so. The representations and warranties contained herein shall survive the execution and delivery of this Agreement and the Note.

(j) The Debtor hereby irrevocably consents to the jurisdiction of the Courts of the State of New York and of any Federal Court located in such State in connection with any action or proceeding arising out of or relating to this Agreement, the Note, or any document or instrument delivered pursuant to this Agreement. In any such litigation the Debtor waives personal service of any summons, complaint or other process and agrees that the service thereof may be made by certified or registered mail directed to the Debtor at ACF Industries, Incorporated, 100 South Bedford Road, Mt. Kisco, New York 10549.

(k) This Agreement may be executed by the parties hereto individually or in any combination, in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same agreement.

## 22. Term of Agreement; Release of Collateral.

(a) The term of this Agreement shall commence on the date hereof and this Agreement shall continue in full force and effect, and be binding upon the Debtor, until all of the Obligations have been fully paid and performed and such payment and performance has been acknowledged in writing by the Bank, whereupon this Agreement shall completely terminate. Upon such payment and performance, the Bank will promptly execute and deliver to Debtor any documents or instruments necessary to evidence the termination of the Bank's interest in the Collateral and

the Bank will promptly deliver to Debtor the written acknowledgment thereof referred to above.

(b) At any time and from time to time so long as an Event of Default is not continuing hereunder, the Bank shall take such actions as may be requested by the Debtor in order to release Collateral consisting of railroad rolling stock from the lien on this Agreement; provided, however, that in no event shall such Collateral be released from the lien hereunder if after such release the outstanding principal balance of the Loans would be greater than 85% of the Cost of Collateral consisting of railroad rolling stock subject to the lien of this Agreement.

23. Eligibility and Replacement of Collateral.

All Collateral shall at all times be satisfactory to the Bank in all respects. To the extent that any of the Collateral consisting of railroad rolling stock subsequently becomes ineligible or is deemed on a reasonable basis by the Bank to be unsatisfactory pursuant to this Section 23, such Collateral shall be replaced with railroad rolling stock which is satisfactory to the Bank in all respects.

WITNESS the execution hereof as of the day and year first above written.

ACF INDUSTRIES, INCORPORATED

[CORPORATE SEAL]

By: Umesh Choksi

Name: Umesh Choksi  
Title: Assistant Treasurer

NORSTAR BANK

By: Nathan Alvar

Name:  
Title: VP

MISSOURI  
STATE OF ~~NEW YORK~~ )  
ST. LOUIS : ss.:  
COUNTY OF ~~NEW YORK~~ )

On this 15<sup>th</sup> day of December, 1989, before me personally came Umesh Choksi, to me known, who being to me duly sworn, did depose and say that he resides at 2031 Schoettler Valley Dr., Chesterfield, Mo. 63017, that he is the Asst. Treasurer of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

[Signature]  
NOTARY PUBLIC, State of Missouri  
No. 41-505173  
Qualified in St. Louis County  
Commission Expires February 23, 1990

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

On this 15 day of December, 1989, before me personally came Jonathan A. Lucas, to me known, who being to me duly sworn, did depose and say that he resides at 56 E 42 St, NY, NY, 10017, that he is the Vice President of NORSTAR BANK, the bank described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said bank.

[Signature]  
REGINA L. EDELMAN  
NOTARY PUBLIC, State of New York  
No. 41-505173  
Qualified in Queens County  
Commission Expires February 23, 1990

SCHEDULE A TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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Intentionally Deleted

20670037

SCHEDULE B TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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The property covered by this Loan, Chattel Mortgage and Security Agreement consists of: (a) all of the railroad rolling stock listed on Annex A hereto and all of the Equipment Leases and all riders, amendments and supplements thereto relating to the railroad rolling stock listed on Annex A; and (b) all products and proceeds of any of the foregoing in whatever form, including, without limitation, any claims against third parties for loss or damage to or destruction of any or all of the foregoing and cash, negotiable instruments and other instruments for the payment of money, chattel paper, security agreements or other documents. The grant effected hereby is not intended to conflict with the terms of the Indenture. To the extent that such a conflict is deemed to exist as to assets of the Debtor other than the Equipment and the Equipment Leases, the terms of the Indenture shall govern.

ANNEX "A"

<u>CARS INITIALED AND NUMBERED</u>	<u>AAR DESIG.</u>	<u>TOTAL CAPS</u>
ACFX 65648 - 65649	C214	2
" 66091	C214	95
" 66094		
" 66231 - 66232		
" 66237		
" 66239 - 66240		
" 66243		
" 66254 - 66255		
" 66261 - 66264		
" 66270 - 66272		
" 66277 - 66278		
" 66291		
" 66294		
" 66293 - 66296		
" 66301 - 66304		
" 66309 - 66312		
" 66317 - 66320		
" 66325 - 66328		
" 66333 - 66367		
" 66372 - 66375		
" 66377 - 66391		
" 66651 - 66652	C214	101
" 66654 - 66656		
" 66658		
" 66660		
" 66665 - 66667		
" 66669		
" 66671 - 66672		
" 66675		
" 66678 - 66680		
" 66690		
" 66695		
" 66712		
" 66740		
" 66743		
" 66745		
" 66747 - 66751		
" 66754 - 66758		
" 66760		
" 66763 - 66792		
" 66797 - 66802		
" 66809 66822		
" 66826		
" 66828		
" 67061		
" 67063 - 67069		
" 67074 - 67075		
" 67077 - 67080		
" 67117		
ACFX 73099 - 73124	T106	26
		<hr/>
	Totals	224

SCHEDULE C TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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Liens

None, except for liens, claims or encumbrances permitted by this Agreement or incurred in the ordinary course of the Debtor's business which do not in the aggregate have a material adverse affect on the business or financial condition of the Debtor.

SCHEDULE D TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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Chief Place of Business of the Debtor;  
Offices where records are kept:

3301 Rider Trail South  
Earth City, Missouri 63045-1393

All of the Collateral shall be stored, used or located within the forty-eight contiguous states of the United States of America; provided, however, that a portion of the Collateral may from time to time temporarily be in use in the Dominion of Canada in the ordinary course of business.

EXHIBIT A TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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PROMISSORY NOTE

\$20,000,000.00

New York, New York  
December \_\_, 1989

FOR VALUE RECEIVED, the undersigned, ACF INDUSTRIES INCORPORATED, a New Jersey corporation (the "Borrower"), promises to pay to the order of NORSTAR BANK, a New York banking corporation (the "Bank"), the principal sum of Twenty Million Dollars and 00/100 Dollars (\$20,000,000.00) (or such lesser amount as shall equal the aggregate unpaid principal amount of the Loans made by the Bank under and pursuant to the Loan Agreement referred to below) in lawful money of the United States of America, on demand, but in any event no later than the Maturity Date as defined in the Loan Agreement (hereinafter defined), and to pay interest on the unpaid outstanding principal amount hereof until maturity in like money at such office or place at a rate equal to one-eighth of one percent (1/8%) per annum in excess of the peg lending rate announced by Norstar Bank from time to time as its peg rate of interest (the "Peg Rate"), which interest rate shall change when and as the Peg Rate shall change, and after maturity (whether by acceleration, demand or otherwise) at a rate equal to two and one-eighth percent (2-1/8%) per annum in excess of the Peg Rate (the "Post Maturity Rate"), which rate shall change as aforesaid; provided, however, that the Post Maturity Rate shall not become applicable hereto until two days after such date of maturity. Interest on this Promissory Note shall be payable in arrears monthly on the first day of each month commencing January 1, 1990, at maturity, and thereafter upon demand, and shall be calculated on the basis of a 360-day year and actual days. In no event shall the rate of interest on this Promissory Note exceed the maximum rate authorized by applicable law.

This Promissory Note is issued pursuant to a Loan, Chattel Mortgage and Security Agreement dated December \_\_, 1989 (the "Loan Agreement"), between , inter alia, the Borrower and the Bank. Reference is made to the Loan

20670037

Agreement for required and optional payments and prepayments and rights of the holder hereof to accelerate the unpaid balance hereof prior to maturity.

This Promissory Note is secured by the Loan Agreement and the assignments and other agreements, instruments and documents referred to in the Loan Agreement, all as more particularly described and provided therein, and is entitled to the benefits thereof.

The Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice.

The Bank has been authorized by the Borrower to record on the schedule annexed to this Promissory Note (or on a supplemental schedule thereto) the amount of each Loan made by the Bank under the Loan Agreement and the amount of each payment or prepayment of principal of each such Loan received by the Bank, it being understood however that failure to make any such notation shall not affect the rights of the Bank or the obligations of the Borrower hereunder or under the Loan Agreement in respect of such Loans.

Payments of both principal and interest on this Promissory Note are to be made to the Bank at its office at 40 Main Street, Hempstead, New York 11511, or such other place as the Bank may from time to time designate, in lawful money of the United States of America in immediately available funds.

This Promissory Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by the party to be charged.

This Promissory Note shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and to be performed in

such State, and shall be binding upon the successors and assigns of the Borrower and inure to the benefit of the Bank and its successors and assigns.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Promissory Note on the date first above written.

ACF INDUSTRIES, INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

SCHEDULE 19B

ACF INDUSTRIES, INCORPORATED  
AND SUBSIDIARIES

Wholly-owned subsidiaries in the rail car business:

	State of Jurisdiction or <u>Incorporation</u>
ACF Canada (1985) Limited	Canada
ACF Industries, Incorporated (Delaware)	Delaware
Shippers Car Line, Inc.	Mississippi
Carweb Inc.	North Carolina
Corbitt Holding Corporation, Inc.	Missouri

EXHIBIT C TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND NORSTAR BANK

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FORM OF  
SUPPLEMENT TO LOAN, CHATTEL MORTGAGE  
AND SECURITY AGREEMENT

SUPPLEMENT NO. \_\_\_\_  
TO  
SCHEDULE B  
ANNEXED TO LOAN, CHATTEL MORTGAGE  
AND SECURITY AGREEMENT  
DATED DECEMBER \_\_, 1989  
BETWEEN  
ACF INDUSTRIES, INCORPORATED  
("DEBTOR")  
AND  
NORSTAR BANK ("BANK")

WHEREAS, Debtor and the Bank entered into a certain Loan, Chattel Mortgage and Security Agreement dated December \_\_, 1989 (the "Loan Agreement") pursuant to which the Bank agreed to lend certain sums to Debtor (the "Loans");

WHEREAS, pursuant to the Loan Agreement, Debtor is obligated from time to time to deliver to the Bank this Supplement to the Loan, Chattel Mortgage and Security Agreement, and it is a condition precedent to the obligation of the Bank of make or maintain the Loans that Debtor shall execute and deliver to the Bank this Supplement to the Loan, Chattel Mortgage and Security Agreement;

NOW, THEREFORE, the parties hereto hereby agree as follows:

Schedule B to the Loan Agreement is hereby amended and supplemented by the addition thereto of the following described Collateral (as defined in the Loan Agreement) with respect thereto, which additional Collateral is to be covered by the Loan Agreement and the liens and encumbrances created thereby:

Car Number

Date Built

As a condition to the making of the Loans by the Bank, Debtor shall execute and deliver appropriate Uniform Commercial Code financing statements which reflect the additional Equipment and Leases referred to above.

IN WITNESS WHEREOF, the parties hereto have caused this Supplement to be duly executed this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ACF INDUSTRIES, INCORPORATED

By: \_\_\_\_\_  
Name:  
Title:

NORSTAR BANK

By: \_\_\_\_\_  
Name:  
Title: