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June 1, 1994

18827

RECORDATION NO. FILED 1425

JUN 1 - 1994 - 11 00 AM

Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

RECORDED  
INDEXED  
JUN 1 1994

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are three (3) executed copies of an Assignment and Security Agreement (Chattel Mortgage), dated as of May 31, 1994, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

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

Debtor: ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, Missouri 63045

Secured Party: Fleet Bank  
56 East 42nd Street  
New York, New York 10017

A description of the railroad equipment covered by the enclosed document is attached to the Security Agreement as Schedule I.

Also enclosed is a check in the amount of \$18.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return two stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

Enclosures

*Counterparts*

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

OFFICE OF THE SECRETARY

JUNE 1, 1994

ROBERT W. ALVORD  
ALVORD & ALVORD  
918 16th ST. NW SUITE 200  
WASHINGTON DC 20006-2973

Dear MR. ALVORD:

The enclosed document(s) was recorded pursuant to the provisions  
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,  
on JUNE 1, 1994 at 11:00AM , and assigned  
recordation number(s). 18827

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. **18827** FILED 1425

JUN 1 - 1994 - 11 00 AM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND SECURITY AGREEMENT (CHATTEL MORTGAGE)

between

ACF INDUSTRIES, INCORPORATED,

and

FLEET BANK

Dated as of May 31, 1994

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Filed and recorded with the Interstate Commerce Commission  
pursuant to Section 11303, Title 49, United States Code on  
, 1994 at , Recordation No.

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ASSIGNMENT AND SECURITY AGREEMENT dated as of May 31, 1994, between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (the "Debtor"), and FLEET BANK, a New York banking corporation (the "Secured Party").

#### RECITALS

A. Pursuant to the Credit Agreement dated as of May 31, 1994 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), between the Debtor and the Secured Party, the Secured Party, in its capacity as the lender thereunder, has agreed to make Loans (as defined therein) to the Debtor on the terms and subject to the conditions set forth in the Credit Agreement, to be evidenced by a promissory note of the Debtor (as endorsed, supplemented for otherwise modified from time to time, the "Note") payable to the order of the Secured Party as provided in the Credit Agreement.

B. It is a condition precedent to the obligation of the Secured Party to make such Loans under the Credit Agreement that the Debtor shall have executed and delivered to the Secured Party this Security Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### ARTICLE I

##### Defined Terms

Section 1.1. Defined Terms. Terms defined in the preamble hereof and the recitals hereto shall have their respective meanings when used herein and, unless otherwise defined herein, the terms defined in the Credit Agreement are used herein as therein defined and the following terms shall have the following meanings, such terms to include in the singular number the plural and in the plural number the singular:

"Assigned Lease Proceeds" is defined in Section 2.3 hereof.

"Damaged Unit" is defined in Section 6.1(b) hereof.

"ICA" shall mean the Interstate Commerce Act, as amended.

"Loan Value" shall mean, with respect to a Damaged Unit or any Item of Equipment assigned pursuant to Section 3.3(b)(ii) hereof, the then Collateral Loan Value (as defined in the Credit Agreement) of such Unit or Item, respectively.

"Maximum Number" is defined in Section 6.2 hereof.

"Mileage Credits" shall mean all mileage earned by the Equipment and received from railroads according to applicable tariff rules.

"Proceeds" is defined in the UCC and, in any event, includes without limitation, (a) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to the Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to the Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any of the Collateral by any governmental authority (or any Person acting under color of governmental authority) and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Replacement Unit" is defined in Section 6.2 hereof.

"UCC" shall mean the Uniform Commercial Code as from time to time in effect in the State of New York or other applicable jurisdiction.

"Value" shall mean with respect to a Damaged Unit the fair market value of such Item of Equipment immediately prior to the time the Casualty Loss occurred with respect to such Item of Equipment.

## ARTICLE II

### Security

Section 2.1. Assignment and Grant of Security.  
For value received and to secure (a) the prompt and complete payment when due (whether at the stated maturity, by prepayment, by acceleration or otherwise) of the unpaid principal of, premium, if any, and interest on, the Note and the Commitment Fee and the other fees and expenses of

the Bank set forth in Section 7.5 of the Credit Agreement and (b) the due and punctual payment and performance by the Debtor of all of its obligations and liabilities arising under, out of or in connection with the Credit Agreement, this Security Agreement, the Note and the other Loan Documents and any other document executed and delivered in connection therewith or herewith, whether on account of principal, interest, fees, indemnities, costs, expenses (including, without limitation, all fees and disbursements of counsel to the Secured Party) or otherwise (all of the foregoing, collectively, the "Obligations"), the Debtor does hereby transfer, convey, warrant, mortgage, deliver, pledge assign and grant to the Secured Party, its successors and assigns, all and singular of the Debtor's rights, title and interest in and to the properties, rights, interests and privileges, now or hereafter existing, set forth in Section 2.2 and 2.3 hereof and any and all Proceeds thereof (all such properties and Proceeds thereof, collectively, the "Collateral"). This is a present and irrevocable assignment as collateral security for all the Obligations. The Debtor has not delegated, nor has the Secured Party assumed, any of the Debtor's obligations under any Assigned Lease. The Debtor shall continue to perform and discharge all duties, covenants, liabilities and obligations under the Assigned Leases. The Debtor shall not be relieved from any duty, debt or obligation to any lessee under an Assigned Lease as a result of such assignment. No performance or assumption by the Secured Party of any obligation of the Debtor under any Assigned Lease shall release the Debtor from that obligation. The Secured Party shall be subrogated to all rights of the Debtor to the extent the Secured Party shall perform or assume any of the Debtor's obligations under any Assigned Lease.

Section 2.2. Equipment Collateral. Collateral shall include all those certain railroad tank cars and covered hopper cars described on Schedule I hereto or hereafter on one or more Schedules to any Supplement hereto (collectively, the "Equipment" and individually, an "Item of Equipment"), together with all accessories, equipment, parts and appurtenances appertaining or attached to such Equipment, whether now owned or at any time hereafter acquired by the Debtor, and all substitutions for, replacements of, and additions, improvements, accessions and accumulations to, any and all of said Equipment, together with all rents, issues, income, profits and avails therefrom, any and all Mileage Credits relating thereto and any and all Proceeds thereof.

Section 2.3. Rental Collateral. Collateral shall also include all right, title and interest of the

Debtor in and to each and every lease (whether or not such lease is in writing or is for a term certain, including without limitation, per diem leases), now or hereafter existing, relating to, but only to the extent relating to, the Equipment, including, without limitation, the leases specified on Schedule I hereto or hereafter on one or more Schedules to any Supplement hereto (each such lease, including all amendments, riders, supplements, other modifications and schedules thereto and renewals thereof, an "Assigned Lease"), and including, without limitation, subject to Section 4.1 hereof, (i) the immediate and continuing right to collect and receive any and all payments due and to become due under any Assigned Lease, whether as contractual obligations, damages or otherwise (to the extent such payments are derived from the Equipment) and all Proceeds of any thereof (such payments, the "Assigned Lease Proceeds") and (ii) the benefits of any representation, warranty, covenant, indemnity and agreement under any Assigned Lease. Subject to Section 3.3 hereof, the Debtor may assign any remaining interest under an Assigned Lease to the extent relating to any railroad tank cars and covered hopper cars not included in the Equipment.

### ARTICLE III

#### Covenants

The Debtor hereby covenants and agrees with the Secured Party that, until the obligations are paid in full:

Section 3.1. Maintenance of Equipment. (a) the Debtor shall maintain and keep, or cause to be maintained and kept, each Item of Equipment in good repair, working order and condition at its own cost and expense, unless and until such Item of Equipment may become worn out, unsuitable for use, lost or destroyed: provided that any such Item of Equipment so worn out, obsolete, lost or destroyed shall be replaced with a Replacement Unit in accordance with the provisions of Sections 3.4 and 6.2 hereof.

Section 3.2. Maintenance of Insurance. (a) the Debtor shall maintain, or cause to be maintained, with responsible insurance companies acceptable to the Secured Party, physical damage insurance and liability insurance, on such of its properties, in such amounts, against such risks and in such form as is customarily maintained by similar businesses, and, in any event, (i) with respect to physical damage insurance, in an amount not less than the aggregate principal balance of the Loans at the time then outstanding; and (ii) with respect to liability insurance, in an amount not less than \$100 million, which insurance

shall at all times include coverage for all liabilities covered under, and shall not include any exclusions other than those set forth in, the Debtor's policies of insurance as in effect on the Closing Date. For purposes of this Section 3.2(a), physical damage insurance may include a program of self-insurance for physical damage exposures and liability insurance may include a program of self-insurance for up to \$5 million of liability exposures; provided that under any such program of self-insurance, the Debtor shall maintain, or cause to be maintained, adequate reserves on its books in accordance with GAAP, if applicable, to cover all risks not otherwise insured by an insurance company.

(b) If the Debtor maintains a program of self-insurance as permitted by Section 3.2(a) hereof, the Debtor shall, within 30 days after the end of each of its fiscal quarters, deliver to the Secured Party a certificate of an Authorized Officer setting forth evidence of the maintenance of such sufficient reserves as required by such Section 3.2(a) and any other financial statements or records as the secured Party may require or request with respect to such program of self-insurance. The Debtor shall cause the Secured Party to be named as an additional insured and loss payee under policies of insurance maintained pursuant to the provisions of Section 3.2(a) and shall deliver to the Secured Party (i) on the Closing Date, evidence in form and substance satisfactory to the Secured Party of such insurance policies and (ii) thereafter, 30 days' prior written notice before any cancellation, expiration, cessation, reduction in amount or change in coverage thereof shall become effective.

Section 3.3. Preservation of Collateral.

(a) The Debtor shall not create, permit, assume or suffer to exist, and shall warrant and defend the title to and defend the Collateral against and take such other action as is necessary to remove, any Lien on the Collateral other than (all of the Liens described in clauses (i) through (iii) below, collectively, "Permitted Liens"):

(i) the Lien and security interest created pursuant to this Security Agreement;

(ii) Liens for governmental charges or assessments arising under, out of or in connection with ERISA liability of the Debtor or any ERISA Affiliate but only to the extent such Liens are junior to the Lien and security interest created pursuant to this Security Agreement (any such Lien, an "ERISA Lien") (other than any such ERISA Lien which is the subject to a release or waiver pursuant to the Settlement Agreement or any other

Settlement Document or Liens for taxes), in each case that are not at the time delinquent or that are delinquent but the amount or validity of which is being contested in good faith by appropriate proceedings and with respect to which reserves in accordance with GAAP have been provided for on the books of the Debtor; provided that such proceeding shall suspend the collection of any such assessments, governmental charges or taxes; and provided further, that the security interest in, or any rights of the Secured Party with respect to, the Collateral, or any part thereof, would not, in the sole opinion of the Secured Party, be adversely affected or forfeited as a result of such Lien; and provided further, that, with respect to any ERISA Lien, (A) the Secured Party shall have the right, immediately upon the creation, attachment or other establishment of such ERISA Lien, to visit and inspect during normal business hours any of the corporate books and financial records of the ERISA Affiliate so liable relevant to the imposition and/or discharge of such ERISA Lien, and to discuss the affairs, finances, accounts and any other information relevant to the imposition and/or discharge of such ERISA Lien that the Secured Party deems necessary, appropriate or advisable with respect to such ERISA Affiliate and (B) such ERISA Affiliate shall furnish immediately upon the request (which need not be in writing) of the Secured Party, its counsel or other agent, any and all information, records and data (financial or otherwise) relevant to the imposition and/or disposition of such ERISA Lien, which information, if not publicly available, shall not be disclosed to any other Person without the consent of the Debtor (except as requested or required by the Secured Party's regulators or by court order); and

(iii) materialmen's, mechanics', repairmen's and other like Liens arising in the ordinary course of business securing obligations that are not more than 30 days overdue; provided that the Debtor shall not be required to discharge any Lien of the type referred to in this Section 3.3(a)(iii) if the amount or validity thereof is being contested by the Debtor in good faith by appropriate proceedings and with respect thereto adequate reserves in accordance with GAAP have been provided for on the books of the Debtor and would not, in the Secured Party's opinion, have an adverse effect on all or any part of the Collateral.

(b) (A) In connection with any assignment of any remaining interest under an Assigned Lease permitted by the last sentence of Section 2.3 hereof, no such assignee shall have the right to exercise any remedies under such Assigned Lease (including, without limitation, any right of

termination) with respect to the Equipment and (B) the Debtor shall not sell, transfer, assign (as collateral security or otherwise) or otherwise dispose of any of the Collateral or attempt or offer to do so, or permit or suffer to be made any unauthorized or involuntary sale, transfer or other disposition, except that, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Debtor may:

(i) with the prior written consent of the Secured Party (which shall not be unreasonably withheld), consent to an assignment by a lessee then party to an Assigned Lease of such Assigned Lease to a third party who has assumed, whether by merger, sale or otherwise, the rights and obligations of the lessee originally party to such Assigned Lease; provided that the Secured Party shall be satisfied, in its reasonable opinion, of the credit-worthiness of the lessee to which such Assigned Lease is to be assigned; and

(ii) in connection with any optional prepayment of any of the Loans pursuant to Section 2.7 of the Credit Agreement, obtain a release from the lien hereof of Equipment having a Loan Collateral Value not to exceed the principal amount of the loans so prepaid (provided, that as required by Section 5.1(s) of the Credit Agreement, the Aggregate Loan Collateral Value of the remaining Equipment is not less than the remaining outstanding principal amount of the Loans), and upon such prepayment, the Secured Party shall, at the request of the Debtor, execute and deliver releases in a form reasonably satisfactory to the Debtor releasing such Item(s) of Equipment from the Lien and security interest of this Security Agreement (without recourse to, or representation or warranty by, the Secured Party).

(c) The Debtor shall advise the Secured Party promptly, in reasonable detail, of any Lien or claim made or asserted against any of the Collateral and of any event affecting the Secured Party's security interest in the Collateral.

Section 3.4. Further Assurances; Supplements.

(a) The Debtor shall, at its sole cost and expense, do, execute, acknowledge and delivery all and every further acts, supplements, memoranda, mortgages, security agreements, deeds, conveyances, transfers and assurances necessary or appropriate for the perfection and preservation of the security interest created hereby in the Collateral, whether now owned or hereafter acquired. The Debtor shall cause this Security Agreement, all Supplements hereto and

UCC financing and continuation statements and similar notices reasonably requested by the Secured Party or required by applicable law (and, if and only to the extent required by applicable law, the Assigned Leases) at all times to be kept, records and filed at no expense to the Secured Party in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Secured Party in any or all of the Collateral hereunder or under any other Loan Document, including, without limitation, the filing of UCC financing statements (and continuations thereof) and the filing, registration and recordation of this Security Agreement or any Supplement hereto (and if and only to the extent required by law, the Assigned Leases) with the ICC and the Registrar General of Canada.

(b) Concurrently with the execution and delivery of any Supplement (whether pursuant to Section 3.2 of the Credit Agreement, Section 6.2 hereof or otherwise), the Debtor shall, at its own expense, furnish to the Secured Party (i) evidence in form and substance satisfactory to the Secured Party that (A) such Supplement shall have been duly filed, registered and recorded with the ICC in accordance with Section 11303, Title 49 of the United States Code, and with the Registrar General of Canada, (B) all UCC financing statements deemed necessary or appropriate by the Secured Party shall have been filed and (C) all fees, expenses and taxes in connection therewith shall have been paid or otherwise provided for; (ii) the executed legal opinions of counsel to the Debtor, addressed to the Secured Party and dated the date of such Supplement, of each of Aird & Berlis and Alvord & Alvord (or other counsel to the Debtor reasonably satisfactory to the Secured Party), which opinions shall cover the matters set forth in Exhibits D-5 and D-6, respectively, to the Credit Agreement with respect to such Supplement and the Collateral covered thereby; (iii) such other corporate certificates or documents as the Secured Party shall reasonably request (including, without limitation, corporate resolutions and incumbency certificates), certified as of the date of such Supplement; and (iv) evidence required pursuant to Section 3.1(a)(viii) of the Credit Agreement with respect to any Assigned Leases covered by such Supplement.

Section 3.5. Marking of Equipment. The Debtor shall not permit the identifying number of any Item of Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been delivered to the Secured Party and filed, recorded and deposited by the Debtor in all public offices where this Security Agreement,

any Supplement hereto shall have been filed, recorded or deposited.

Section 3.6. Indemnity. The Debtor agrees to indemnify, protect and hold harmless the Secured Party and the officers, directors, employees and agents of the Secured Party (collectively called the "indemnitees") from and against any and all liabilities, obligations, losses, injuries, damages, penalties, actions, judgments, demands, suits, claims, costs, interest, expenses and disbursements of any kind or nature whatsoever (including, without limitation, the fees and disbursements of counsel for such indemnitee in connection with any investigative, administrative or judicial proceeding, whether or not such indemnitee shall be designated a party thereto, and the expenses of investigation by engineers, environmental consultants and similar technical personnel (collectively, the "indemnified liabilities"), which may be imposed on, incurred by or asserted against such indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Loan Documents, including, without limitation, as a result of or in connection with the security interests granted under this Security Agreement or any other Loan Document, the Assigned Leases, the ordering, purchase, delivery, rejection, storage or repossession of any Item of Equipment, any claim for personal injury or property damage arising from the operation, use, condition, possession, storage or repossession of any of the Collateral, or any claim relating to any laws, rules or regulations, including, without limitation, environmental control, noise and pollution laws, rules or regulations; provided that the Debtor shall have no obligation to so indemnify any indemnitee for any indemnified liabilities arising from such indemnitee's willful misconduct or gross negligence. The obligations of the Debtor under this Section 3.6 shall survive payment or other satisfaction of the Obligations and termination of this Security Agreement.

#### ARTICLE IV

##### Possession and Use of Equipment; Assigned Leases

Section 4.1. Rights of the Debtor. Unless an Event of Default has occurred and is continuing, (a) the Debtor and each lessee party to an Assigned Lease shall be suffered and permitted to remain in full possession, enjoyment and control of the Item of Equipment covered by such Assigned Lease, and to manage, operate and use such Item of Equipment and each part thereof, with the rights and franchises pertaining to such Item of Equipment and such

Assigned Lease and (b) the Debtor may exercise all of its rights, powers, privileges and remedies under the Assigned Leases, including, without limitation, the right to receive, in accordance with its normal commercial practices, any and all monies due or become due thereunder and to retain all copies (whether original or duplicates) thereof, so long as no such exercise by the Debtor shall materially impair the Secured Party's rights in the Collateral or hereunder or under the Credit Agreement.

Section 4.2. Notices to Lessees. If an Event of Default shall have occurred and be continuing, (a) the Debtor shall, upon the request of the Secured Party, or the Secured Party may, on its own behalf, deliver a notice to each lessee party to an Assigned Lease that all rental payments in respect thereof shall be made directly to the Secured Party and (b) the Secured Party may in its own name or in the name of others communicate with any such lessee and exercise any rights pursuant to any Assigned Lease.

#### ARTICLE V

##### Power of Attorney

Section 5.1. Appointment. The Debtor hereby irrevocably constitutes and appoints the Secured Party, and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact, with full and irrevocable power and authority in the place and stead of the Debtor and in the name of the Debtor or its own name, if an Event of Default shall have occurred and be continuing, to ask, demand, collect receive receipt for, sue for, compound and give acquittance for any and all of the Collateral, with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceeding, in its own name or in the name of the Debtor or otherwise, and generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Secured Party were the absolute owner thereof for all purposes, and to do, at the Secured Party's option and at the Debtor's expense, all acts and things that the Secured Party deems necessary or appropriate to protect, preserve and realize upon the Collateral and the Secured Party's interest therein and afforded hereby. The Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof.

This power of attorney is a power coupled with an interest and shall be irrevocable.

Section 5.2. No Duty. The powers conferred on the Secured Party hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or failure to act, except for its or their own willful misconduct or gross negligence.

## ARTICLE VI

### Casualty Losses

Section 6.1. Casualty Losses; Notices. (a) Any of the following events or conditions with respect to any Item of Equipment shall be a casualty loss hereunder (such event or condition, a "Casualty Loss"):

(i) such Item of Equipment shall become (A) lost for a period in excess of 30 consecutive days or (B) destroyed, stolen or irreparably damaged; or

(ii) title to or use of such Item of Equipment shall be taken, condemned, confiscated, seized or otherwise requisitioned by any governmental authority or any Person acting under color of governmental authority; or

(iii) such Item of Equipment otherwise becomes unusable in the business of the Debtor.

(b) In the event of a Casualty Loss with respect to any Item of Equipment, the Debtor shall promptly after receipt of notice of the same (and, in any event, not more than 10 days after the receipt of such notice) give the Secured Party written notice of such Casualty Loss, which notice shall identify the Item of Equipment that has suffered the Casualty Loss (such Item of Equipment, the "Damaged Unit").

Section 6.2. Replacement Unit; Prepayment of Loan. Upon the occurrence of a Casualty Loss resulting in a Damaged Unit, the Debtor shall, at its option, either (a) replace such Damaged Unit with a replacement unit of the same type and which has a fair market value and utility at least equal to the Loan Value of, and which is in as good condition (in each case determined by the Secured Party in

its sole opinion) as, the Damaged Unit immediately prior to such Casualty Loss (assuming that such Damaged Unit was then in the condition required to be maintained by Section 3.1 hereof) and that is free and clear of all Liens other than Permitted Liens (such unit, the "Replacement Unit"), lease such Replacement Unit to the lessee of the Damaged Unit pursuant to the Assigned Lease under which, and on the same terms as, such Damaged Unit was leased and grant a security interest in the Replacement Unit by executing and delivering a Supplement with respect thereto and taking all other steps necessary to subject such Replacement Unit to the lien and security interest of this Security Agreement in accordance with the provision of the Section 3.4 hereof; or (b) make a prepayment of the Loans in a principal amount equal to the Loan Value of such Damaged Unit in accordance with the provisions of Section 2.6 of the Credit Agreement. So long as no Default or Event of Default has occurred and is continuing, the Debtor shall not be required to comply with the provisions of clause (a) or (b) of this Section 6.2 unless and until ten Items of Equipment have suffered Casualty Losses subsequent to the date of this Security Agreement (such amount, the "Maximum Number"), provided, that at such time or times as the Aggregate Loan Collateral Value is less than \$500,000, the Maximum Number shall be one (1). Within two days after the Maximum Number is reached, the Debtor shall so notify the Secured Party and on the next Borrowing Date or end of a calendar quarter (whichever shall first occur) the Debtor shall complete either of the actions specified in clause (a) or (b) hereof with respect to each of such Items of Equipment. Following compliance by the Debtor with clause (a) or (b) hereof with respect to each of such Items of Equipment, the Debtor shall not be required to comply with the provisions of clause (a) or (b) of this Section 6.2 again until the Maximum Number is again reached, at which time the Debtor shall again comply with the requirements of the immediately preceding sentence. Upon compliance by the Debtor with the provisions of Section 3.4 hereof and Section 6.2(a) with respect to any Replacement Unit, and so long as no Default or Event of Default shall have occurred and be continuing, the Secured Party shall, at the request of the Debtor, execute and deliver releases in a form reasonably satisfactory to the Debtor releasing the Damaged Unit so replaced from the Lien and security interest of this Security Agreement (without recourse to, or representation or warranty by, the Secured Party).

ARTICLE VII

Remedies

Section 7.1. Remedies. If an Event of Default shall have occurred and be continuing, the Secured Party shall have the following remedies:

(a) All payments received by the Debtor in connection with or arising out of any of the Collateral shall be held by the Debtor in trust for the Secured Party, shall be segregated from other funds of the Debtor and shall, forthwith upon receipt by the Debtor, be turned over to the Secured Party, in the same form as received by the Debtor (duly endorsed by the Debtor to the Secured Party, if required); any and all such payments so received by the Secured Party (whether from the Debtor or otherwise) may, in the sole discretion of the Secured Party, be held by the Secured Party as collateral security for the Obligations, and/or then or at any time thereafter applied in whole or in part by the Secured Party against all or any part of the Obligations then due in such order as the Secured Party shall elect. Any balance of such payments held by the Secured Party and remaining after payment in full of all the Obligations shall be paid over to the Debtor or to whomsoever may be lawfully entitled to receive the same.

(b) To the extent not prohibited by applicable law, the Secured Party may exercise, in addition to all other rights and remedies granted to it in this Security Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC of any jurisdiction and under the ICA. Without limiting the generality of the foregoing, the Debtor expressly agrees that in any such event the Secured Party, without demand of performance or other demand, advertisement or notice of any kind (except the notice specified below of time and place of public or private sale) to or upon the Debtor or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived to the fullest extent permitted by applicable law) may, itself or by agents or attorneys, take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and, to the extent permitted by applicable law, the Debtor hereby consenting thereto to the fullest extent permitted by applicable law, may enter any of the premises of the Debtor, with or without notice, demand, process of law or legal procedure, and search for, take possession, remove, keep and store the Collateral, or use and operate or lease the Collateral until sold and may

forthwith collect, receive, appropriate and realize upon the Collateral or any part thereof and may take possession of the Collateral and/or may sell or otherwise dispose of the Collateral as set forth in Section 7.1(c) hereof.

(c) The Secured Party may forthwith sell, assign, give option or options to purchase, or sell, lease or otherwise dispose of and deliver the Collateral, or any part thereof, in any manner permitted by applicable law (or contract to do so) in one or more parcels at public or private sale or sales, at the office of any broker or at any of the Secured Party's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk, with the right of the Secured Party upon the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Debtor (or any Person claiming by or through the Debtor the person claiming by or through the Debtor the Collateral, or any part thereof, so sold), which right or equity of redemption is hereby expressly waived and released to the fullest extent permitted by applicable law. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed reasonably and properly given if mailed at least 10 days before such disposition, postage prepaid, addressed to the Debtor at its address set forth in Section 7.2 of the Credit Agreement. The Debtor further agrees, at the Secured Party's request, to collect and make available to the Secured Party the Equipment as hereinafter provided. Any Collateral repossessed by the Secured Party under or pursuant to this Section 7.1 may be sold, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, in the condition in which the same existed when taken by the Secured Party or after any overhaul or repair and in general in such manner, at such time or times, at such place or places and on such terms as the Secured Party may, in compliance with any applicable law, determine to be commercially reasonable. Any such sale or other disposition that shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' written notice to Debtor specifying the time at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for 10 days after the giving of such notice, to the right of the Debtor or any nominee of the Debtor to acquire the Collateral involved at a price or for such other consideration so specified. Any such disposition that shall be a public sale permitted by such requirements shall be made upon not less than 10 days' written notice to the Debtor specifying

the time and place of such sale and, in the absence of any applicable law, shall be by public auction (which may, at the Secured Party's option, be subject to reserve) after publication of notice of such auction not less than 10 days prior thereto in two newspapers of general circulation in the City of New York. To the extent permitted by any applicable law, the Secured Party may itself bid for and become the purchaser of the Collateral or any part thereof offered for sale in accordance with this Section 7.1(c) without accountability to the Debtor (except to the extent of any surplus received, as hereinafter provided). If, under any applicable law, the Secured Party shall be required to make disposition of the Collateral within a period of time that does not permit the giving of notice to the Debtor as hereinabove specified, the Secured Party need give the Debtor only such notice of disposition as shall be reasonably practicable in view of any applicable law. Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the Collateral sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all Persons claiming the property sold, or any part thereof under, by or through the Debtor, its successors or assigns. The Secured Party may proceed to protect and enforce this Security Agreement by suit or suits or proceedings in equity, at performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral of any part thereof, for the recovery of judgment for the indebtedness hereby secured or for the enforcement of any other legal or equitable remedy available under applicable law.

(d) In the event that the Secured Party shall request that the Equipment be collected as provided in Section 7.1(b) hereof, the Debtor shall, at its own risk and expense, (i) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the AAR and to all railroads to which any Items of Equipment have been interchanged to return the Items of Equipment so interchanged) place such Items of Equipment upon such storage tracks as the Secured Party reasonably may designate; (ii) permit the Secured Party to store such Items of Equipment on such tracks until such Items of Equipment have been sold, leased or otherwise disposed of by the Secured Party; and (iii) transport the same to any connecting carrier for shipment, all as directed by the Secured Party. The assembling, delivery, storage

and transporting of the Equipment as herein provided shall be at the expense and risk of the Debtor and are of the essence of this Security Agreement, and upon application to any court of equity having jurisdiction in the premises the Secured Party shall be entitled to a decree against the Debtor requiring specific performance of the covenants of the Debtor so to assemble, deliver, store and transport the Equipment. During any storage period, the Debtor shall, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Secured Party or any Person designated by it, including the authorized representative or representatives of any prospective purchaser, lessor or manager of any Item of Equipment, to inspect and be advised of the status of maintenance and repair of the same. The Secured Party shall have the right, at its option, at any time during any storage period, to assume control of the storage, maintenance and repair of any or all Items of Equipment. The Debtor hereby expressly waives any and all claims against the Secured Party and its agent or agents for damages of whatsoever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

(e) Beyond the use of reasonable care in the custody thereof, the Secured Party shall not have any duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of it or as to any income thereon.

Section 7.2. Application of Proceeds. The Secured Party shall apply the net proceeds of any collection, recovery, receipt, appropriation, realization or sale as follows:

(a) First, to the payment of all costs and expenses of every kind incurred therein or incidental to the care, safekeeping, storage, maintenance, or repair or otherwise of any or all of the Collateral or in any way relating to the rights of the Secured Party hereunder, including attorneys' fees and expenses, and of all taxes, assessments or liens superior to or pari passu with the Lien and security interest created hereby except any taxes, assessments or other liens subject to which any such collection, recovery, receipt, appropriation, realization or sale may have been made;

(b) Second, to the payment in whole or in part of the Obligations, in such order as the Secured Party may elect, the Debtor remaining liable for any deficiency remaining unpaid after such application;

(c) Third, only after so applying the net proceeds and after the payment made by the Secured Party of any other amount required to be made pursuant to any applicable law, including Section 9-504(1)(c) of the UCC, to the Debtor.

To the fullest extent permitted by applicable law, the Debtor waives all claims, damages and demands against the Secured Party arising out of the repossession, retention or sale of the Collateral. The Debtor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which the Secured Party is entitled, the Debtor also being liable for the fees of any attorneys employed by the Secured Party to collect such deficiency. The Debtor hereby waives presentment, demand, protest and any notice (to the fullest extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

Section 7.3. Discontinuance of Remedies. In case the Secured Party shall have proceeded to enforce any right under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor and the Secured Party shall be restored to their former positions and rights hereunder with respect to the Collateral.

#### ARTICLE VIII

##### Miscellaneous

Section 8.1. Binding Effect. This Security Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective successors and assigns.

Section 8.2. No Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of the Secured Party, any right, power or privilege under this Security Agreement, any Supplement or any other Loan Document or any of the Collateral 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. The rights and remedies provided herein and therein are cumulative and not exclusive of any rights or remedies provided by law.

Section 8.3. Severability. In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provisions in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected.

Section 8.4. Notices, Etc. All notices, requests and demands to or upon the respective parties hereto, except as shall be otherwise expressly provided herein, shall be effective as set forth in Section 7.2 of the Credit Agreement.

Section 8.5. Release and Termination. At the sole expense of the Debtor, the Secured Party shall release the lien and security interest created pursuant to this Security Agreement by proper instrument or instruments upon payment in full, or other satisfaction of, the Obligations and termination of the Commitment, whereupon this Security Agreement shall terminate.

Section 8.6. Governing Law. This Security Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York; provided that the parties hereto shall be entitled to all rights conferred by Section 11303, Title 49 of the United States Code and such additional rights arising out of the filing, registration, recording or deposit of this Security Agreement or any Supplement hereto pursuant thereto.

Section 8.7. Counterparts. This Security Agreement may be executed in any number of counterparts, each executed counterpart constituting an original, but all of such counterparts all together shall be deemed to constitute one and the same instrument.

Section 8.8. Headings. The headings of the sections of this Security Agreement are for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed and delivered by their proper and duly authorized officers as of the date first above written.

ACF INDUSTRIES, INCORPORATED

By *Umesh Choudhary*  
Title: UMESH CHOUDHARY  
ASSISTANT TELLER  
FLEET BANK

By *Juan M. Gonzalez*  
Title: Senior Vice President

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

On this 31<sup>st</sup> day of May, 1994, before me, personally appeared Unesh Choksi to me personally know, who being by me duly sworn, says that he is the Assistant Treasurer of ACF Industries, Incorporated; that said instrument was signed on behalf of said corporation by authority of its Board of Directors on May, 31, 1994; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NORMA R. BROOKS  
NOTARY PUBLIC, State of New York  
No. 31-4722510  
Qualified in New York County  
Commission Expires November 30, 1994

  
\_\_\_\_\_  
Notary Public

(SEAL)

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

On this 31<sup>st</sup> day of May, 1994, before me, personally appeared Juan M. Csillagi to me personally known, who being by me duly sworn, says that he is the Senior Vice President of Fleet Bank; that said instrument was signed on behalf of said corporation by authority of its Board of Directors on May 31, 1994; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

NORMA R. BROOKS  
NOTARY PUBLIC, State of New York  
No. 31-4722510  
Qualified in New York County  
Commission Expires November 30, 1994

  
\_\_\_\_\_  
Notary Public

(SEAL)

SCHEDULE I  
 [to Security Agreement]  
 EQUIPMENT AND LEASES

<u>Lessee</u>	<u>Contract/ Rider</u>	<u>Car Identification</u>
A. E. STALEY MANUFACTURING COMPANY	46870004	ACFX045855 ACFX045856 ACFX045857 ACFX045858 ACFX045859 ACFX045860 ACFX045861 ACFX045862 ACFX045863 ACFX045864 ACFX045865 ACFX045866 ACFX045867 ACFX045868 ACFX045869 ACFX045870 ACFX045871 ACFX045872 ACFX045873 ACFX045874 ACFX045875 ACFX045876 ACFX045877 ACFX045878
<u>BORDEN PACKAGING &amp; INDUSTRIAL PRD</u>	<u>99660141</u>	ACFX095026 ACFX095029 ACFX095030 ACFX095031 ACFX095032 ACFX095033 ACFX095034
<u>BORDEN PACKAGING &amp; INDUSTRIAL PRD</u>	<u>99660143</u>	ACFX095038 ACFX095039 ACFX095040 ACFX095043 ACFX095044 ACFX095048 ACFX095049 ACFX095051 ACFX095053 ACFX095055 ACFX095056 ACFX095057

<u>Lessee</u>	<u>Contract/ Rider</u>	<u>Car Identification</u>
BORDEN PACKAGING & INDUSTRIAL PRD	99660143	ACFX095058 ACFX095059 ACFX095060 ACFX095061 ACFX095062 ACFX095063 ACFX095064 ACFX095065
GP CHEMICALS	5938	ACFX095098 ACFX095099 ACFX095100
<u>JIN BEAM</u>	5908	ACFX095086 ACFX095087 ACFX095088 ACFX095089
PEINFORD PRODUCTS CO.	5931	ACFX045826 ACFX045827 ACFX045828 ACFX045829 ACFX045830 ACFX045831 ACFX045832 ACFX045833 ACFX045834 ACFX045835 ACFX045836 ACFX045837 ACFX045838 ACFX045839 ACFX045840 ACFX045841 ACFX045842 ACFX045843 ACFX045844 ACFX045845 ACFX045846 ACFX045847

<u>Lessee</u>	<u>Contract/ Rider</u>	<u>Car Identification</u>
PENFORD PRODUCTS CO.	5931	ACFX045848 ACFX045849 ACFX045850 ACFX045851 ACFX045852 ACFX045853 ACFX045854

PPG INDUSTRIES INCORPORATED	31266052	ACFX069191 ACFX069192 ACFX069193 ACFX069194 ACFX069195 ACFX069196 ACFX069197 ACFX069198 ACFX069199 ACFX069200 ACFX069201 ACFX069202 ACFX069203 ACFX069204 ACFX069205 ACFX069206 ACFX069207 ACFX069208 ACFX069209 ACFX069210 ACFX069211 ACFX069212 ACFX069213 ACFX069214 ACFX069215 ACFX069216 ACFX069217 ACFX069218 ACFX069219 ACFX069220 ACFX069221 ACFX069222 ACFX069223 ACFX069224 ACFX069225 ACFX069226 ACFX069227 ACFX069228
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Lessee

Contract/  
Rider

Car  
Identification

PPG INDUSTRIES INCORPORATED

3126052

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ACFX069230  
ACFX069231  
ACFX069232  
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ACFX069242  
ACFX069243  
ACFX069244

TERRA INTERNATIONAL, INC

5963

ACFX095111  
ACFX095112  
ACFX095113  
ACFX095114  
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ACFX095128  
ACFX095129  
ACFX095130  
ACFX095131  
ACFX095132  
ACFX095133  
ACFX095134  
ACFX095135

<u>Lessee</u>	<u>Contract/ Rider</u>	<u>Car Identification</u>
TERRA INTL	5963	ACFX095136 ACFX095137 ACFX095138 ACFX095139 ACFX095140 ACFX095141 ACFX095142 ACFX095143 ACFX095144 ACFX095145 ACFX095146 ACFX095147 ACFX095148 ACFX095149 ACFX095150 ACFX095151 ACFX095152 ACFX095153 ACFX095154 ACFX095155 ACFX095156 ACFX095157 ACFX095158 ACFX095159 ACFX095160
ZENEGA	4507035	ACFX095240 ACFX095241 ACFX095242 ACFX095243 ACFX095244 ACFX095245 ACFX095246 ACFX095247 ACFX095248 ACFX095249 ACFX095250