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RECORDATION NO. **18816** FILED 1425

MAY 24 1994 -11 00 AM

INTERSTATE COMMERCE COMMISSION

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

OF COUNSEL  
URBAN A. LESTER

May 24, 1994

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

RECEIVED  
OFFICE OF THE  
SECRETARY  
MAY 24 10 58 AM '94  
LICENSING BRANCH

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) executed copies and one certified copy of a Loan, Chattel Mortgage and Security Agreement, dated as of May 24, 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: European American Bank  
335 Madison Avenue  
New York, New York 10017

A description of the railroad equipment covered by the enclosed document is

One hundred and six (106) railcars bearing ACFX reporting marks and numbers 69091 through 69190, inclusive, and 95010 through 95015, inclusive.

*Spencer*

*counterparts*

Mr. Sidney L. Strickland, Jr.  
May 2, 1994  
Page 2

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 one stamped copy of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/bg  
Enclosures

**Interstate Commerce Commission**

Washington, D.C. 20423

May 24, 1994

OFFICE OF THE SECRETARY

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 MAY 24, 1994 at 11:00AM, and assigned  
recordation number(s). 18816

Sincerely yours,

Secretary  
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

District of Columbia : SS

I, ROBERT W. ALVORD, being duly sworn, do hereby certify that the attached "Loan, Chattel Mortgage and Security Agreement," dated as of May 24, 1994 between ACF Industries, Incorporated and European American Bank consisting of fifty (50) pages (and Exhibits), is a true and complete copy of the original thereof.



ROBERT W. ALVORD

Subscribed and sworn to before me this 23rd day of May, 1994.

  
NOTARY PUBLIC

My Commission expires: August 14, 1997

RECORDATION NO. **18816** FILE 1425

MAY 24 1994 -11 00 AM

INTERSTATE COMMERCE COMMISSION

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LOAN, CHATTEL MORTGAGE

AND

SECURITY AGREEMENT

Between

ACF INDUSTRIES, INCORPORATED

And

EUROPEAN AMERICAN BANK

Dated

as of May 24, 1994

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WM: I4133JMGAG

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LOAN, CHATTEL MORTGAGE AND SECURITY AGREEMENT

AGREEMENT, made as of this 24th day of May, 1994, 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

EUROPEAN AMERICAN BANK, a New York banking corporation, having an office at 335 Madison Avenue, New York, New York 10017 (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 \$5,000,000 upon and subject to the terms and conditions set forth herein;

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:

"Affiliate" shall mean, with respect to any designated Person, any other Person, directly or indirectly, through one or more intermediaries, controlling or controlled by or under direct or indirect common control with such designated Person. For purposes of this definition, "control" (including, without limitation, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether (a) through the ownership of capital stock of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or persons performing similar functions of such corporation) or (b) by contract or otherwise.

"Agreement" shall mean this Agreement as it may from time to time be amended, modified, supplemented or restated in the manner provided herein.

"Assignment Notice" shall have the meaning set forth in Section 3(a)(vii) hereof.

"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 \$5,000,000, as such amount shall be reduced from time to time in accordance with the terms hereof.

"Commitment Fee" shall have the meaning set forth in Section 2(j) hereof.

"Cost" shall mean, (a) with respect to any item of railroad rolling stock built by the Debtor or an Affiliate of 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 or Affiliate of the Debtor's corporate headquarters and any manufacturing profit, and (b) with respect to any item of rolling stock not built by the Debtor in connection with the replacement of Collateral pursuant to Section 2(d) only, the price of such item as shown on the invoice for such item, 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.

"December 1993 Balance Sheet" shall have the meaning set forth in Section 10(g) hereof.

"Default" shall mean any event or circumstance that, with the giving of notice or the passage of time, or both, would constitute an Event of Default.

"Eligible Equipment" shall mean all Equipment (a) for which the Debtor has good and marketable title, (b) which is not subject to any lien, claim, charge or encumbrance other than the lien granted under this Agreement or Permitted Liens, if any, (c) which is subject to an Eligible Lease, (d) which is insured by insurance in such amounts and against such risks as is customarily maintained by similar businesses, (e) which was new at the time of the commencement of the current Lease corresponding to such Equipment, and (f) which is manufactured by the Debtor

or any Affiliate of the Debtor or by another builder of railroad rolling stock in connection with the replacement of Collateral pursuant to Section 2(d) only.

"Eligible Lease" shall mean each Lease (a) which is a Lease of Eligible Equipment, (b) which is in full force and effect, (c) which is assignable by the Debtor without notice to or consent by the Lessee thereunder, (d) which is not subject to any lien, claim, charge or encumbrance, other than Permitted Liens, (e) which is in form and substance satisfactory to the Bank, (f) under which no payments by the Lessee thereunder is more than ninety (90) days past due, and (g) under which there is no default of any provision thereof by the Debtor or the Lessee other than non-payment.

"Equipment" shall mean all of the railroad rolling stock described on Schedule "A" annexed hereto which is intended for use in interstate commerce, together with all parts, attachments, accessions, accessories, equipment, appurtenances and additions that are at any time appertaining, attached, affixed or related thereto, and all substitutions, renewals or replacements thereof and additions, improvements, accessions and accumulations thereto, wherever located, and together with any standard gauge rolling stock (other than locomotives or passenger or work equipment) subject 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.

"Lease(s)" shall mean the lease agreements or relevant portions thereof entered into and to be entered into by the Debtor with the Lessee(s), which lease agreement, lease schedule or relevant portion thereof provides for the leasing of one or more units of the Equipment by the Debtor to the Lessee(s), at the respective rentals and upon the other terms and conditions therein provided, but only to the extent such lease relates to the Equipment.

"Lessee(s)" shall mean various industrial shippers and others who, with the Debtor, are parties to the Leases.

"Loan(s)" shall mean each and all loans made at any time prior to the Maturity 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 outstanding principal balance of all such loans is not greater than 85% of the aggregate Cost of all such Collateral securing such loan.

"Margin Stock" shall have the meaning set forth in Section 10(k) hereof.

"Maturity Date" shall mean May 24, 1995, unless otherwise extended for a one-year period pursuant to Section 2(k) of this Agreement.

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

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

"Officer's 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. 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.

"Permitted Liens" shall have the meaning set forth in Section 8(j) hereof.

"Person" shall mean 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.

"Post Maturity Rate" shall have the meaning set forth in Section 2(c) hereof.

"Subsidiary" shall mean any corporation engaged primarily in the business of owning, leasing and/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;

provided however, that, with respect to Section 10(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.

"TWA" shall have the meaning set forth in Section 10(m) hereof.

2. Amount and Terms of Loans; Prepayment.

(a) Subject to and upon the terms and conditions herein set forth, the Bank may make Loans to the Debtor on or before the Maturity 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 \$1,000,000 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 the maximum principal amount equal to the Commitment or such lesser amount of the Loans then outstanding hereunder, 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, no later than the Maturity Date. 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, which notation shall constitute prima facie evidence of such Loans, payments and prepayments; 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-half of one percent (1/2%) per annum in excess

of the "prime rate" announced by the Bank from time to time as its prime rate (the "Prime Rate"), which interest rate shall change when and as the Prime Rate shall change (which rate the Bank acknowledges may not necessarily be the lowest rate charged by the Bank to its customers), and at all times during the continuance of an Event of Default and after maturity (whether by acceleration, demand or otherwise) at a rate equal to three percent (3%) per annum in excess of the Prime Rate (the "Post Maturity Rate"), which rate shall change as aforesaid. Interest on the outstanding unpaid principal amount under the Note shall be payable in arrears monthly on the first day of each month, commencing June 1, 1994, 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) If any of the Equipment shall be worn out, lost, stolen, destroyed, rendered permanently unfit for the intended use, or irreparably damaged, from any cause whatsoever, returned to the manufacturer pursuant to any patent indemnity or warranty settlement, or taken or requisitioned by condemnation or otherwise by any government agency, then the Debtor shall, at its option, either (i) 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) and Section 7 hereof) which has a Cost at least equal to that of the Equipment substantially destroyed, or (ii) prepay the Note in an amount equal to not less than 85% of the Cost of such destroyed Equipment.

(e) Upon not less than three (3) 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 \$100,000 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 on the amount so to be prepaid 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 19 hereof.

(f) If at any time the unpaid principal balance outstanding under the Note shall exceed 85% of the aggregate Cost of all Collateral constituting Eligible Equipment, then the Debtor shall immediately notify the Bank in writing of such fact (detailing the reasons therefor) and (i) prepay the Note in an amount equal to the amount outstanding under the Note which exceeds 85% of the aggregate Cost of all Collateral constituting Eligible Equipment, or (ii) grant to the Bank a lien or liens in accordance with Section 7 of this Agreement on such additional railroad rolling stock constituting Eligible Equipment so that, immediately after giving effect to the granting of such lien or liens in favor of the Bank, the aggregate unpaid principal balance of the Loans outstanding under the Note shall be equal to or less than 85% of the aggregate Cost of all Collateral constituting Eligible Equipment. Each such prepayment made pursuant to this Section 2(f) shall be accompanied by an Officer's Certificate of the Debtor stating (x) the prepayment is being made pursuant to this Section 2(f) and (y) after giving effect to the prepayment the subject of such notice, the amount outstanding under the Note does not exceed 85% of the aggregate Cost of Collateral constituting Eligible Equipment and demonstrating in sufficient detail all calculations in making such determination. In the event the Debtor shall grant to the Bank additional lien or liens pursuant to clause (ii) of this Section 2(f), the Debtor shall deliver to the Bank an Officer's Certificate that (1) states that the Officer's Certificate is being delivered pursuant to this Section 2(f), (2) describes the additional rolling stock on which the Debtor has granted the Bank a lien or liens, (3) shall be accompanied by all appropriate documentation in order to effectuate such grant, including (without limitation) supplements to this Agreement, and (4) shows in reasonable detail all calculations necessary to demonstrate the Debtor is in compliance with this Section 2(f).

(g) 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.

(h) The Debtor shall make each payment or prepayment hereunder and under the Note not later than 3:00 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 335 Madison Avenue, New York, New York 10017, or at such other place as the Bank may from time to time designate, in immediately available funds for the account of the Bank.

(i) The Debtor agrees that the proceeds of all borrowings hereunder shall be used solely to bridge finance the long term financing of Eligible Equipment subject to noncancelable Eligible Leases including, in connection therewith, working capital.

(j) 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 monthly in arrears on the first day of each month, commencing June 1, 1994 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.

(k) Each year the Debtor may, upon sixty (60) Business Days' written notice prior to the Maturity Date then in effect for the Loans, request the Bank to extend the Maturity Date then in effect for an additional year. The Bank shall respond within forty-five (45) Business Days after receipt of the Debtor's request, and if the Bank agrees in its absolute and sole discretion to such an extension, then the Maturity Date 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 (A) 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 (B) 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 and attaching true, correct and complete copies of the corporate charter and by-laws of the Debtor;

(v) the Bank shall have received favorable Opinions of Counsel for the Debtor as to all matters specified in subsections (a), (c), (d), (e), (f), (i), (k) and (l) of Section 10 hereof, 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 under, as the case may be, the laws of the United States of America and under the laws of Canada and reciting the details of all such action taken, as the case may be, 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;

(vi) the Debtor shall have either (A) delivered to the Bank original executed copies of each Eligible Lease constituting Collateral, or (B) made a notation on each such original Eligible Lease clearly describing the Bank's security interest therein and shall have delivered to the Bank a true and correct copy of each such Eligible Lease;

(vii) the Debtor shall have executed and delivered to the Bank a Notice of Assignment in substantially the form of Exhibit "C" hereto (each, an "Assignment Notice") with respect to each Lease. The Bank agrees that it shall hold the originally executed Assignment Notice in escrow for so long as no Event of Default shall have occurred;

(viii) all representations and warranties of the Debtor contained in this Agreement or otherwise made in writing by or on behalf of the Debtor in connection with the transactions contemplated hereby shall be true and correct when made and (except as affected by the consummation of such transactions) as of the time of the making of the initial Loan;

(ix) the Debtor shall have performed all agreements and complied with all conditions contained herein required to be performed or complied with by it prior to or at the time of the making of the initial Loan, and at the time of the making of the initial Loan (and after giving effect to the making of such Loan and the application of the proceeds thereof) no Event of Default or Default shall have occurred and be continuing; and

(x) the Debtor shall have delivered to the Bank an Officer's Certificate, dated the date of the making of the initial Loan, certifying that the conditions specified in Sections 3(a) (viii) and 3(a)(ix) hereof have been fulfilled.

(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 pursuant to 49 U.S.C. §11303 and/or deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette), pursuant to Section 90 of the Railway Act of Canada, including (without limitation) supplements to this Agreement in substantially the

forms annexed hereto as Exhibit "B", 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 duly certified as being true and correct by a duly authorized officer of the Debtor;

(ii) there shall have been no material adverse change in the financial condition of the Debtor since the date of this Agreement; and

(iii) the Bank shall have received a certificate signed by a duly authorized officer of the Debtor, dated the date of such Loan, stating that, after giving effect to such Loan, the aggregate unpaid principal balance of the Loans outstanding under the Note on such date does not exceed 85% of the Cost of all Equipment constituting Collateral;

(iv) the Debtor shall have either (A) delivered to the Bank originally executed copies of each Eligible Lease constituting Collateral, or (B) made a notation on each such original Eligible Lease clearly describing the Bank's security interest therein and shall have delivered to the Bank a true and correct copy of each such Eligible Lease;

(v) the Debtor shall have executed and delivered to the Bank an Assignment Notice with respect to each Eligible Lease. The Bank agrees that it shall hold the originally executed Assignment Notice in escrow for so long as no Event of Default shall have occurred;

(vi) the Bank shall have received favorable Opinions of Counsel for the Debtor as to all matters specified in subsections (a), (c), (d), (e), (f), (i), (k) and (l) of Section 10 hereof (in each case as of the date of such Loan), 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 under, as the case may be, the laws of the United States of America and under the laws of Canada and reciting the details of all such action taken, as the case may be, which opinions shall be dated

the date of the making of such Loan, addressed to the Bank and otherwise be in form and substance satisfactory to the Bank;

(vii) all representations and warranties of the Debtor contained in this Agreement or otherwise made in writing by or on behalf of the Debtor in connection with the transactions contemplated hereby shall be true and correct when made and as of the time of the making of such Loan with the same effect as though such representations and warranties had been made on and as of the time of the making of such Loan;

(viii) the Debtor shall have performed all agreements and complied with all conditions contained herein required to be performed or complied with by it prior to or at the making of such Loan, and at the time of the making of such Loan (and after giving effect to the Loan and the application of the proceeds of such Loan) no Event of Default or Default shall have occurred and be continuing; and

(ix) the Debtor shall have delivered to the Bank an Officers' Certificate, dated the date of the making of such Loan, certifying that the conditions specified in Sections 3(b)(ii), 3(b) (vii) and 3(b) (viii) have been fulfilled.

#### 4. Security Interest.

To secure the prompt and 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 the Note or this Agreement (all of the foregoing being herein referred to as the "Obligations"), the Debtor hereby mortgages, pledges, sets over, hypothecates, assigns and grants to the Bank, its successors and permitted assigns, a perfected first priority lien (subject to the provisions of paragraph 5 hereof) upon and security interest in: (a) the Equipment, whether now owned or hereafter acquired, together with all rents, issues, income, profits and avails therefrom and the proceeds thereof; (b) all right, title and interest of the Debtor in and to each and every Lease (but only to the extent relating to the Equipment), and all payments due and to become due under any such Lease but only to the extent relating to the Equipment (the "Lease Proceeds"), whether as contractual obligations, damages or otherwise to the extent such payments are derived from the Equipment (all of the foregoing are hereinafter referred to as "Collateral"); and (c) 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 Bank shall be entitled to collect and receive the 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 "B" (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 for Permitted Liens. 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 "C" 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 "C" or as otherwise reflected on Schedule "C" with respect to records and at none other.

7. Perfection of Security Interest.

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, without limitation, the cost of all Federal, state or local mortgage, documentary, stamp, excise or other taxes), in each case, in all public offices where filing, recording or depositing is deemed by the Bank to be necessary or desirable, upon the Bank's request (including, without limitation, the Interstate Commerce Commission and the Registrar General of Canada). 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 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.

8. General Covenants.

So long as the Commitment is in effect and until payment and the performance of all of the 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) and the Registrar General of Canada; provided, however, that 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 sole

opinion of the Bank, materially adversely affect the Bank's rights or the priority of its security interest in the Collateral;

(iv) as soon as available and in any event within sixty (60) days after the end of each quarterly fiscal period in each fiscal year of the Debtor, consolidated balance sheets of the Debtor and its Subsidiaries as of the end of such quarterly fiscal period and the related consolidated statements of income, shareholders' equity and cash flows of the Debtor and its Subsidiaries for such quarterly fiscal period and (except in the case of the first such quarterly fiscal period), for the portion of the fiscal year ended with the last day of such quarterly fiscal period, setting forth in each case in comparative form the respective figures as of and for the corresponding period of the previous fiscal year, all in reasonable detail and certified by the principal financial officer of the Debtor as complete and correct in all material respects, subject to changes resulting from normal year-end audit adjustments;

(v) provide the Bank as soon as available, and in any event within 120 days after the end of each fiscal year of the Debtor (but in no event later than the earliest date on which the same or similar statements are furnished to any holder of debt of the Debtor), a consolidated balance sheet of the Debtor and its Subsidiaries as of the end of such fiscal year and the related consolidated statements of income, shareholders' equity and cash flows of the Debtor and its Subsidiaries for such fiscal year, setting forth in each case in comparative form the respective figures as of the end of and for the previous fiscal year, all in reasonable detail and accompanied by a report thereon of KPMG Peat Marwick or other independent certified public accountants of recognized national standing selected by the Debtor and reasonably satisfactory to the Bank, which report shall not be made in reliance upon the opinion of any other accountant, shall be made without qualification or modification, shall comply with generally accepted auditing standards at the time in effect and shall state that such financial statements present fairly, in all material respects, the consolidated financial position of the Debtor and its Subsidiaries as at the dates indicated and the results of their operations and cash flows for the periods indicated and have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years (except for changes in application in which such accountants concur and which are noted in such financial statements) and that the examination of such accountants was conducted in accordance with generally accepted auditing standards and accordingly included

such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(vi) provide the Bank, not later than the third (3rd) day of each calendar month, an Officer's Certificate certifying, as of the date of such certificate, (A) if, since the date of the certificate most recently delivered pursuant to this Section 8(a)(vi), or, if no such certificate has been delivered, since the date of this Agreement, any Collateral has been added, replaced or changed, a list of all Eligible Equipment the subject of the Collateral, (B) the Cost of such Equipment, (C) that all Equipment constituting Collateral meets the requirements of clauses (a) through (f) of the definition of "Eligible Equipment" contained in Section 1 hereof, (D) that each Lease constituting Collateral meets the requirements of clauses (a) through (g) of the definition of "Eligible Lease" contained in Section 1 hereof, (E) the amount outstanding under the Note and (F) that the outstanding amount under the Note does not exceed 85% of the aggregate Cost of all Eligible Equipment constituting Collateral;

(vii) 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;

(viii) within 30 days after the end of each quarterly fiscal period in each fiscal year of the Debtor, a certificate of an authorized financial officer of the Debtor setting forth the agings of any accounts receivable of the Debtor constituting Collateral;

(ix) as soon as available, and in any event within 30 days after the end of each calendar month in each fiscal year of the Debtor, consolidated balance sheets of the Debtor and its Subsidiaries in any business in connection with the manufacture, sale and lease of railroad rolling stock and parts as of the end of such calendar month and the related consolidated statements of income and cash flows of the Debtor and such Subsidiaries for such calendar month, all in reasonable detail and certified by the principal financial officer of the Debtor as complete and correct in all material respects;

(x) if, since the date of the certificate most recently delivered pursuant to this Section 8(a)(x), or, if

no such certificate has been delivered, since the date of this Agreement, any Collateral has been added, replaced or changed, provide the Bank, not later than the fifth (5th) Business Day following such addition, replacement or change, a certificate of an authorized officer of the Debtor containing a "portfolio report" of Equipment and Leases constituting Collateral.

(xi) promptly upon request therefor (and in any event within ten (10) Business Days thereafter), such other information as to the business, operations, assets, properties, earnings, condition (financial or other) or reasonable foreseeable prospects of the Debtor or its Subsidiaries; and

(xii) if at any time the Debtor shall replace Collateral pursuant to Sections 2(d) or 8(n), then the Debtor shall forthwith deliver to the Bank (A) an Officer's Certificate stating (aa) the Officer's Certificate is being delivered pursuant of this Section 8(a)(xii) and (bb) describing the replacement Collateral and all Collateral that had been replaced and (B) if the Collateral shall be replaced pursuant to Section 2(d) and such replacement Collateral is not built by the Debtor, a copy of the invoice for such replacement Collateral, certified by an authorized officer of the Debtor as being a true, correct and complete copy of such invoice.

(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. 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 the Debtor, or otherwise, except to the extent that any such taxes, assessments or charges are being diligently contested in good faith and the Debtor has established appropriate reserves therefor. The Debtor will deliver to the Bank, on demand,

certificates or other evidence satisfactory to the Bank attesting to compliance with this Section 8(c).

(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 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).

(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) If, in the opinion of the Debtor or the Bank, 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 the Debtor or the Bank has determined 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 EUROPEAN AMERICAN  
BANK UNDER A LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT RECORDED UNDER Section 11303  
OF THE INTERSTATE COMMERCE ACT AND UNDER SECTION  
90 OF THE RAILWAY ACT OF CANADA."

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 "A" 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; provided, however, that 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 operating order and proper repair. The Debtor agrees that it shall maintain the original Leases at the Debtor's principal office.

(h) The Bank, by its agents, shall have the right 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.

(j) Except for Permitted Liens, 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, "Permitted Liens" shall mean (i) the lease of the Equipment pursuant to the Leases, (ii) liens created by this Agreement and the Leases; (iii) liens of taxes, assessments or governmental charges or levies which are not at the time delinquent; (iv) liens 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; (v) 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; (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; provided in connection with any lien described in this Section 8(j) the security interest of the Collateral granted under this Agreement, or any part thereof, would not be materially adversely affected or forfeited by the existence thereof.

(k) 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 Leases, including (without limitation) the right to receive any and all monies due or to become due under the Leases, and to retain all copies (original or duplicates) of the Leases.

(l) 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.

(m) The Debtor further shall also:

(i) perform and observe all of the warranties, duties and obligations, if any, required of it under each Equipment Lease and nothing contained herein or in any other document nor any action taken shall be deemed to relieve the Debtor from, or cause the Bank to assume, or be liable for, the performance or observance of any of such warranties, duties or obligations;

(ii) immediately upon obtaining knowledge thereof, notify the Bank in writing of each default, or any circumstances which might lead to a default pursuant to the provisions of any Lease, or the damage, destruction, loss or theft of, or any dispute or claim with respect to, the Equipment, the subject of such Lease;

(iii) execute and deliver to the Bank, at the Debtor's sole cost and expense, such security agreements, UCC financing statements, amendments and other documents or instruments, in form and substance satisfactory to the Bank, as the

Bank may request, from time to time, to evidence, perfect, maintain and enforce the Bank's rights in each Equipment Lease; and the Debtor agrees that the Bank may, where permitted by law, file such UCC financing statements without the signature of the Debtor appearing thereon;

(iv) keep proper books and records with respect to each Lease and Collateral covered thereby;

(v) not modify, amend, accept any payment from any Lessee under, or make any payments on behalf of or to any Lessee for the purpose or with the result, whether or not intended, of concealing or preventing an event of default under, any Lease, and the Debtor agrees that if any payment is received by it under a Lease during the continuance of an Event of Default, such payment shall be held in trust for the sole benefit of the Bank and shall promptly be remitted by the Debtor to the Bank; and

(vi) not permit any of the Equipment to at any time be operated or located outside of the United States or Canada.

(n) 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 ceases to be Eligible Equipment or is deemed on a reasonable basis by the Bank to be unsatisfactory pursuant to this Section 8(n), such Collateral shall be replaced with railroad rolling stock which is satisfactory to the Bank in all respects.

(o) At least once during each period of twelve (12) calendar months ending each May 24 of each year commencing with the period ending May 24, 1995, the Debtor shall reduce the principal balance outstanding under the Note to zero for a period of at least thirty (30) consecutive days.

#### 9. Insurance.

The Debtor shall maintain with responsible insurance companies, such insurance on the Collateral and on such of its other properties, in such amounts and against such risks as is customarily maintained by similar businesses.

#### 10. 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 corporation duly organized and validly existing and 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 or hold under lease 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 the Collateral or the business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor or the Debtor and its Subsidiaries taken as a whole.

(b) Schedule "10(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 the Collateral or on its business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects.

(c) The Debtor has the corporate power to borrow an amount equal to the Commitment 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. Each of this Agreement, the Note and all instruments and documents to be delivered by the Debtor pursuant to this Agreement have been duly authorized, executed and delivered by the Debtor.

(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 or administrative body or agency, 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.

(f) Except as disclosed in the Debtor's financial statements delivered to the Bank pursuant to Section 10(g), 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 would result in any material adverse change in the business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor or 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, 1993, and the related consolidated statement of income and cash flows of the Debtor and its Subsidiaries for the fiscal year ended on said date, including in each case the related schedules and notes (including, without limitation, Note 17 thereto), certified by KPMG Peat Marwick, independent public accountants, and heretofore delivered to the Bank (collectively, the "December 1993 Balance

Sheet"), 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. 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 business, operations, assets, properties, earnings, condition (financial or other) or reasonable foreseeable prospects of the Debtor and its Subsidiaries from that reflected on the December 1993 Balance Sheet.

(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 by appropriate proceedings and with respect to which Debtor has established appropriate reserves as required by generally accepted accounting principles) 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 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 or the Railway Act of Canada) 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 this Agreement, the schedules or other attachments hereto, nor the financial statements referred to in Section 10(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, contains any untrue statement of a material fact or omits 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(i) 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 G or U issued by the Board of Governors of the Federal Reserve System of the United States (the "Board"), as applicable ("Margin Stock"), or to extend credit to any other person for the purpose of purchasing or carrying any Margin Stock. The Debtor is not engaged principally, or as one of its important business activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. 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 as amended.

(l) The Debtor is not an "investment company" as such term is defined in the Investment Debtor Act of 1940, as amended.

(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 is not exempt under the Code or ERISA 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 business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor or 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 affect on the business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor or 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 (other than plans maintained for employees of Trans World Airlines, Inc., a Delaware corporation ("TWA"), and all subsidiaries required to be consolidated with TWA under generally accepted accounting principles) which are employee pension benefit plans subject to Title IV of ERISA 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 Eighty-two Million Eight Hundred Eighty Four Thousand Dollars (\$82,884,000), which has a material adverse impact on the business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor or of the Debtor and its Subsidiaries, taken as a whole. The consummation of any of the Loans will not involve any prohibited transactions. 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.

(n) Each copy of each Eligible Lease delivered to the Bank shall be (i) the original fully executed copy thereof or (ii) a true and correct copy of the originally executed copy of such Eligible Lease containing a notation clearly describing the Bank's security interest therein pursuant to Sections 3(a)(vi) and 3(b)(iv) hereof.

(o) Each Eligible Lease will be valid and enforceable in accordance with its terms, all sums payable thereunder will be payable in the amounts and at the times stated therein without defense, offset or counterclaim, and no part thereof will have been prepaid, released or modified, or encumbered or disposed of by the Debtor; any and all sums of money previously paid by any Lessee thereunder as advance payments or deposit of security shall have been fully disclosed to the Bank; each Eligible Lease shall have been entered into by the Debtor in the ordinary course of business, shall be duly authorized and executed by bona fide, legally competent Lessees, which Lessees were approved by the Debtor with respect to the Lease to which it is a party based upon the Debtor's normal credit practices, will be the entire agreement with each such Lessee relating to the Equipment covered thereby, will not have been modified, cancelled or waived in any respect, and none of the Bank's rights thereunder will have been released, modified, encumbered or disposed of; any consent, approval, authorization

of, or registration, declaration or filing with, any governmental authority (federal, state or local, domestic or foreign) required in connection with the execution, delivery or performance of any Eligible Lease by the Debtor shall have been obtained; the Equipment covered by any Eligible Lease shall have been delivered, shall be equipment in good working order and shall have been accepted by the Lessee of such Equipment as being in a condition which complies with the terms and conditions of such Lease; in case any Eligible Lease shall be construed as a security agreement, the Debtor will have perfected its security interest in the Equipment covered thereby by due filing of financing statements, acknowledged copies of which will be delivered to the Bank; each Eligible Lease is in full force and effect and, at the time such Eligible Lease is assigned to the Bank, the Lessee shall not be in default thereunder; and all financial and credit information that the Debtor may at any time furnish to the Bank relating to the Lessee under each Eligible Lease will, to the best of the Debtor's knowledge, be true, complete and not misleading.

(p) Upon the completion of the recordation and filing of this Agreement with the Interstate Commerce Commission pursuant to and in compliance with the provisions of 49 U.S.C. Section 11303(a) and the deposit, registration and filing of this Agreement at the office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada, the Bank will have a first priority perfected security interest in the Collateral, subject only to Permitted Liens.

#### 11. Events of Default.

If any one or more of the following events (each an "Event 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 (i) interest on the Note, when and as such interest installment shall become due and

payable, or (ii) the Commitment Fee when and as such Commitment Fee installment shall become due and payable;

(c) if default shall be made in the performance or observance of any agreement or covenant contained in Sections 2(f) or 8(o) hereof and such default shall have continued unremedied for a period of at least five (5) Business Days after the Debtor first has knowledge of such default;

(d) if default shall be made in the performance or observance of, or shall occur under, any other 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 thirty (30) days or if any such agreement, instrument or document shall terminate or become void or unenforceable without the written consent of the Bank;

(e) if the Debtor or any of its Subsidiaries shall default in the payment of any principal, interest or premium with respect to any indebtedness for borrowed money aggregating more than \$10,000,000 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, 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;

(f) 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, incorrect, misleading or breached in any material respect;

(g) 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;

(h) 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 sixty (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;

(i) 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 (60) days;

(j) if any of the following shall have occurred and be continuing: (a) the failure of any Plan (defined as any qualified plan maintained by the Debtor or by a member of the Debtor's "controlled group" as defined in Section 414(b), (c), (m) or (o) of the Code, including the TWA pension plans existing on or prior to the date on which TWA ceased to be a member of the same "controlled group" as the Company) to meet the minimum funding standard (whether or not waived) under Section 412 of the Code or Section 302 of ERISA by an amount in excess of \$10.0 million which continues for 10 days or more; (b) the termination of any Plan under Section 4041(c) or 4042 of ERISA that would result in liability to, and would require payments from, the Debtor or one or more of its Subsidiaries or the Debtor and one or more of its Subsidiaries (giving effect to the provisions of the Settlement Agreement, dated as of January 5, 1992, among TWA, the Pension Benefit Guaranty Corporation, Carl C. Icahn, the Icahn Sponsor and the other Icahn Entities (as defined therein), the Unions (as defined therein) and the Official

Unsecured Creditors' Committee of Trans World Airlines, Inc., and the documents executed in connection therewith) of an amount in excess of \$10.0 million; (c) the imposition of a lien, charge or encumbrance on the assets of the Debtor or any of its Subsidiaries in favor of the Pension Benefit Guaranty Corporation or any other entity with respect to the funding of any Plan under ERISA or the Code; (d) any person shall engage in any non-exempt "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan;

(k) 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;

(l) if any of the Collateral, 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 (10) days; or (ii) if such Collateral consists of Equipment, within ten (10) 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) and Section 7 hereof) which has a Cost at least equal to that of the Collateral which was attached, distrained or otherwise levied upon; or (iii) if such Collateral consists of Equipment, within ten (10) 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; or

(m) if there shall have occurred a material adverse change in the business, operations, assets, properties, earnings, condition (financial or other) or reasonably foreseeable prospects of the Debtor, or the Debtor and its Subsidiaries as a whole, from that described in the December 1993 Balance Sheet;

then, in the case of an Event of Default described in clauses (g) or (h) 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, deliver the respective Assignment Notice to the Lessee under each Eligible Lease and 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, including (without limitation) delivering any and all Assignment Notices to the Lessees under the Leases.

(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 five (5) 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 any 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 Post Maturity Rate, 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 postal 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 placed 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 (i) when actually delivered, (ii) when mailed by certified or registered mail, return receipt requested, (iii) when sent by overnight courier, or (iv) when sent by confirmed telefax transmission

(confirmed by hand-delivered, mailed or overnight courier copy), in each case to the address of the Debtor or the Bank specified in the initial paragraph hereof 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 Obligations 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. 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 without regard to principles of conflicts of law or choice of law. 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, (A) 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 (B) 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).

(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 hereto or 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 AND THE BANK EACH 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 for investment and not with a view to, or for sale in connection with the distribution (as defined in Section 2(11) of the Securities Act of 1933, as amended) of any part thereof, 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 exclusive jurisdiction and venue of the courts of the State of New York and of any Federal court located in New York County, New York 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.

19. 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 indefeasibly paid and performed and such payment and performance has been acknowledged in writing by the Bank, whereupon this Agreement shall completely terminate. Upon such indefeasible 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.

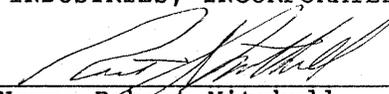
(b) At any time and from time to time so long as an Event of Default is not continuing hereunder, the Bank shall take such actions as may be requested by the Debtor in order to release Collateral consisting of railroad rolling stock from the lien on this Agreement; provided, however, that in no event 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.

20. Confidentiality. Any written documentation provided to the Bank by the Debtor pursuant to the terms of this Agreement shall be kept confidential by the Bank in accordance with the Bank's standard internal procedures; provided that the Bank may disclose such information (a) as may be required or appropriate pursuant to or in connection with any action, suit or proceeding by, or any statute, rule or regulation of, any governmental body or as otherwise required by law, (b) pursuant to any order, writ, injunction, decree, judgment, award, determination, direction or demand of any court, arbitrator or administrator or governmental body or as otherwise required by law, (c) to the Bank's regulators, auditors and attorneys, (d) to any prospective or actual assignee of the Bank or any prospective or actual participant in any part of the Loans pursuant to Section 18(f) who have agreed to hold such information in confidence pursuant to an agreement containing substantially the terms of this Section 20, and (e) to the extent that the Bank in good faith believes it necessary in the enforcement of the Bank's

rights under this Agreement, during the continuance of an Event of Default.

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

ACF INDUSTRIES, INCORPORATED

By: 

Name: Robert Mitchell

Title: Treasurer and Secretary

EUROPEAN AMERICAN BANK

By: \_\_\_\_\_

Name: Robert G. Maichin

Title: Assistant Vice  
President



rights under this Agreement, during the continuance of an Event of Default.

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

ACF INDUSTRIES, INCORPORATED

By: \_\_\_\_\_  
Name: Robert Mitchell  
Title: Treasurer and Secretary

EUROPEAN AMERICAN BANK

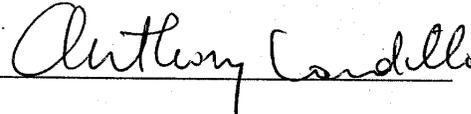
By:  \_\_\_\_\_  
Name: Robert G. Maichin  
Title: Assistant Vice  
President

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

On this 20th day of \_\_\_\_\_, 19\_\_, before me personally came Robert J. Mitchell, to me known, who being to me duly sworn, did depose and say that he resides at 3 Woodland Drive, Woodbury, NY 11797, that he is the Treasurer of ACF INDUSTRIES, INCORPORATED, the corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation on the date recited above.

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

On this 20th day of May, 1994, before me personally came Robert G. Maichin, to me known, who being to me duly sworn, did depose and say that he resides at 205 West Hudson Street, Long Beach, New York 11561, that he is the Vice President of EUROPEAN AMERICAN BANK, the bank described in and which executed the foregoing instruments; and that he signed his name thereto by order of the board of directors of said bank on the date recited above.



ANTHONY CARDILLO  
Notary Public, State of New York  
No. 03-4860234  
Qualified in Bronx County  
Commission Expires May 27, 1996

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

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The property covered by this Loan, Chattel Mortgage and Security Agreement consists of the following, whether now owned or hereafter acquired, and wherever located: (a) all of the railroad rolling stock and standard gauge rolling stock listed on Annex A hereto together with all accessories, accessories, equipment, parts, additions, attachments and appurtenances that are at any time appertaining, attached, affixed or related thereto, and all substitutions, renewals or replacements thereof and additions, improvements, accessories and accumulations thereto together with all rents, issues, income, profits and avails therefrom and the proceeds thereof; (b) all of the lease agreements, lease schedules or relevant portions thereof and all riders, amendments and supplements thereto entered into and to be entered into by the Debtor with the lessee(s) thereunder, which lease agreement, lease schedule or relevant portion thereof provides for the leasing of one or more units of any of the items listed in the preceding clause (a), to the extent but only to the extent relating to the items listed in the preceding clause (a), including (without limitation) (i) Car Service Contract No. 8-5896, dated June 3, 1993, between the Debtor and Marsulex Inc., and (ii) Master Service Contract No. MSC 4-5347, dated April 3, 1991 ("Lease No. MSC 4-5347"), between Lyondell Polymers Corporation and the Debtor, including Rider No. 28 to Lease No. MSC 4-5347 and Amendment to Car Service Contract No. MSC 4-5347, Rider 28, and all payments due and to become due under any such lease but only to the extent relating to any of the items listed in the preceding clause (a), whether as contractual obligations, damages or otherwise to the extent such payments are derived from any of the items listed in the preceding clause (a); and (c) 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.

Annex A

<u>AAR CODE</u>	<u>RPTG MARK</u>	<u>FROM</u>	<u>TO</u>	<u>TOTAL CARS</u>
C214	ACFX	69091	69190	<u>100</u>
C214				100
T054	ACFX	95010	95015	<u>6</u>
T054				6
			TOTAL	<u>106</u>

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

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Liens

None.

SCHEDULE C TO LOAN, CHATTEL MORTGAGE AND SECURITY  
AGREEMENT BETWEEN ACF INDUSTRIES, INCORPORATED  
AND EUROPEAN AMERICAN 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.

SCHEDULE 10 (b)

SUBSIDIARIES  
OF  
ACF INDUSTRIES, INCORPORATED

<u>NAME OF SUBSIDIARY</u>	<u>STATE OF INCORPORATION</u>	<u>OUTSTANDING CAPITALIZATION<sup>1</sup></u>
ACF Railcar Acquisition Corporation	Delaware	ACF Industries, Incorporated
Carweb Inc.	North Carolina	ACF Industries, Incorporated <sup>2</sup>
ACF Lease Administrators Inc.	Delaware	ACF Industries, Incorporated
Unicorn Associates Corporation	New York	ACF Industries, Incorporated
Icahn Group, Inc.	Delaware	ACF Industries, Incorporated
Turtle Investors Corp.	New York	ACF Industries, Incorporated
ACF Canada Limited	Canada	ACF Industries, Incorporated
ACF Industries, Incorporated	Delaware	ACF Industries, Incorporated
Corbitt Holding Corporation, Inc.	Missouri	ACF Industries, Incorporated
Shippers Car Line, Inc.	Mississippi	ACF Industries, Incorporated
ACF Investment Plan Inc.	Delaware	ACF Industries, Incorporated
Chelonian Corp.	New York	Unicorn Associates Corporation
Hare Investors Plan Inc.	Delaware	Unicorn Associates Corporation

<sup>1</sup>Unless otherwise noted, each subsidiary is wholly-owned by its parent.

<sup>2</sup>ACF Industries, Incorporated, Carl C. Icahn and the Carl C. Icahn Foundation own approximately 92.58%, 7.37% and .05% respectively of the outstanding stock.

<u>NAME OF SUBSIDIARY</u>	<u>STATE OF INCORPORATION</u>	<u>OUTSTANDING CAPITALIZATION</u>
Testudo Corp.	New York	Chelonian Corp.
Karabu Corp.	Delaware	Chelonian Corp.
Pichin Corp.	Delaware	Chelonian Corp.
Twocan Corp.	New York	Chelonian Corp.
Tortoise Corp.	New York	Chelonian Corp.
Geraph Inc.	New York	Chelonian Corp.
Ghelu Corp.	New York	Tortoise Corp.

EXHIBIT A TO LOAN,  
CHATTEL MORTGAGE AND  
SECURITY AGREEMENT

PROMISSORY NOTE

\$5,000,000.00

New York, New York  
May \_\_, 1994

FOR VALUE RECEIVED, the undersigned, ACF INDUSTRIES INCORPORATED, a New Jersey corporation (the "Borrower"), promises to pay to the order of EUROPEAN AMERICAN BANK, a New York banking corporation (the "Bank"), the principal sum of Five Million Dollars and 00/100 Dollars (\$5,000,000.00) (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-half of one percent (1/2%) per annum in excess of the "prime rate" announced by European American Bank from time to time as its prime rate (the "Prime Rate"), which interest rate shall change when and as the Prime Rate shall change (which rate the Borrower acknowledges may not necessarily be the lowest rate charged by the Bank to its customers), and upon the continuance of any Event of Default and after maturity (whether by acceleration, demand or otherwise) at a rate equal to three percent (3%) per annum in excess of the Prime Rate (the "Post Maturity Rate"). Interest on this Promissory Note shall be payable in arrears monthly on the first day of each month commencing June 1, 1994, 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 as of May 24, 1994 (the "Loan Agreement"), between, inter alia, the Borrower and the Bank. Reference is made to the Loan 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 (as defined in the Loan Agreement) 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 335 Madison Avenue, New York, NY 10017, 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:

EXHIBIT B TO LOAN,  
CHATTEL MORTGAGE AND  
SECURITY AGREEMENT

FORM OF  
SUPPLEMENT TO LOAN, CHATTEL MORTGAGE  
AND SECURITY AGREEMENT

SUPPLEMENT NO. \_\_\_  
TO  
SCHEDULE A  
ANNEXED TO LOAN, CHATTEL MORTGAGE  
AND SECURITY AGREEMENT  
DATED MAY \_\_, 1994  
BETWEEN  
ACF INDUSTRIES, INCORPORATED  
("DEBTOR")  
AND  
EUROPEAN AMERICAN BANK ("BANK")

WHEREAS, Debtor and the Bank entered into a certain Loan, Chattel Mortgage and Security Agreement dated May \_\_, 1994 (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 to 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 "A" 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 instruments to be recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada and 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:

EUROPEAN AMERICAN BANK

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

EXHIBIT C  
TO  
LOAN, CHATTEL MORTGAGE  
AND SECURITY AGREEMENT

FORM OF  
NOTICE OF ASSIGNMENT

Re: [Schedule No. \_\_\_ to Master Lease] dated \_\_\_\_\_ 199\_\_  
(the "Lease") between \_\_\_\_\_  
(the "Lessee") and ACF Industries, Incorporated  
(the "Lessor")

Gentlemen:

This is to advise the Lessee that the Lessor has assigned to European American Bank ("EAB") all of the Lessor's rights (but not its obligations) under the Lease, including all rental payments and other sums due and to become due thereunder and has granted to EAB a perfected, first priority security interest in the Equipment (as such term is defined in the Lease).

This Notice of Assignment in no way affects the Lessor's obligations under the Lease, which it will continue to perform.

Accordingly, the Lessee is hereby directed to make all payments under the Lease directly to EAB at the following address:

European American Bank  
1 EAB Plaza, Unit # \_\_\_\_\_  
Uniondale, New York 11555

Please acknowledge receipt of this Notice of Assignment by signing it in the space provided and returning the same to EAB in the self-addressed, stamped envelope enclosed for your convenience.

Dated: \_\_\_\_\_, 199\_\_

ACF INDUSTRIES, INCORPORATED

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

EUROPEAN AMERICAN BANK

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

RECEIPT ACKNOWLEDGED:

\_\_\_\_\_  
(Lessee)

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