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RECORDATION NO. 9032-B Filed & Recorded
OCT 31 1977 -2 55 PM
INTERSTATE COMMERCE COMMISSION

SSI RAIL CORP.

7-304A157
NO.

Date OCT. 31, 1977
Fee $ 20

RECORDATION NO. 9032-A Filed & Recorded
OCT 31 1977 -2 55 PM
INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Hon. H. G. Homme
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RE: Conditional Sale Agreement dated as of September 15, 1977 between SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111, and FMC Corporation, 200 East Randolph Drive, Chicago, Illinois, 60601, filed and recorded with the Interstate Commerce Commission on October 11, 1977 at 10:55 a.m. and assigned recordation number 9032.

Dear Sir:

Enclosed for filing with and recording by the Interstate Commerce Commission are six copies each of the following documents:

1. First Amendment and Supplement dated as of October 21, 1977 to the above referenced Conditional Sale Agreement covering the boxcars numbered PHD 2000 through PHD 2199, both inclusive; and

2. Agreement and Assignment dated as of October 21, 1977 between FMC Corporation and Manufacturers Hanover Trust Company, 350 Park Avenue, New York, New York, 10022, covering the boxcars numbered PHD 2000 through PHD 2199, both inclusive.

Also enclosed is our check in the sum of $20.00, payable to the Interstate Commerce Commission, being the prescribed fee for filing and recording the foregoing documents.

The obligations of SSI to make the payments required by the Conditional Sale Agreement, as amended, are guaranteed by the parent company of SSI, ITEL Corporation, One Embarcadero Center, San Francisco, California, 94111.

David M. Schwartz
Counsel

TWO EMBARCADERO CENTER SAN FRANCISCO, CALIFORNIA 94111 (415) 983-0123
TELEX 34-234 CABLE SSI
SUBSIDIARY OF THE ITEL CORPORATION

We respectfully request that the documents submitted herein be cross-referenced to the aforementioned Conditional Sale Agreement and First Amendment and be assigned recordation numbers 9032-A and B.

Please return all additional copies of the enclosed counterparts not required by the Interstate Commerce Commission to the party delivering this letter on our behalf.

Very truly yours,

Martin D. Goodman
Secretary

MDG:md
Enc.

AGREEMENT AND ASSIGNMENT ("this Assignment") made as of this 21st day of October, 1977, between FMC Corporation, a Delaware corporation (hereinafter called "Builder"), and Manufacturers Hanover Trust Company (hereinafter called "Assignee");

RECORDATION NO. 9032-B Filed & Recorded

OCT 31 1977 -2 55 PM

INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H:

Whereas, Builder and SSI Rail Corp., a Delaware corporation (hereinafter called "SSI,") heretofore entered into a conditional sale agreement made as of September 15, 1977, filed and recorded with the Interstate Commerce Commission on October 11, 1977 at 10:55 a.m. and assigned Recordation No. 9032, as amended by the First Amendment and Supplement and Second Amendment and Supplement to Conditional Sale Agreement (hereinafter called "the Conditional Sale Agreement,") providing for the construction, sale and delivery by Builder and the purchase by SSI of two hundred (200) 50'6", 70-ton capacity, general purpose, single sheath boxcars, AAR Mechanical Designation XM, numbered PHD 2000 through 2199, inclusive (hereinafter called "the Equipment");

WHEREAS, Builder has delivered and SSI has accepted the Equipment; and

WHEREAS, the parties anticipated that the Conditional Sale Agreement and the right, title and interest of Builder in and to the Equipment would be sold and assigned to Assignee;

NOW, THEREFORE, in consideration of the premises and the sum of five million sixty-six thousand three hundred twenty-three dollars and twenty cents ($5,066,323.20) paid to Builder by Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants herein set forth, the parties agree as follows:

1. Builder hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns, the following:

(a) All the right, title and interest of Builder in and to the Equipment subject to the Conditional Sale Agreement; and

(b) All right, title, interest, powers, privileges and remedies of Builder in, to and under the Conditional Sale Agreement (except payments heretofore made by SSI to Builder) including all amounts which may be or become due or owing under the Conditional Sale Agrement on account of the purchase price for the Equipment and the interest thereon and any other sums becoming due from SSI under the Conditional Sale Agreement;

without any recourse, however, against Builder for or on account of the failure of SSI to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject Assignee to or transfer or pass or in any way affect or modify the obligations and warranties of Builder under the Conditional Sale Agreement or relieve SSI of its obligations to Builder under article 8 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment all obligations of Builder to SSI shall remain enforceable by SSI against and only against Builder. In furtherance of the foregoing assignment and transfer, Builder hereby authorizes and empowers Assignee in the Assignee's own name, or in the name of and as attorney for Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may be entitled under this Assignment and compliance by SSI with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of Assignee.

2. Builder hereby warrants to Assignee that it owns all the right, title, interest, powers, privileges and remedies of Builder in, to and under the Conditional Sale Agreement free from all claims, liens, security interests or prior assignment, and that it has a good right to assign and transfer the same as herein done. Builder hereby warrants to Assignee and SSI that it has legal title to the Equipment and good and lawful right to sell the same and that its title to the Equipment is free of all claims, liens, security interests or other encumbrances of any nature created by the act of the Builder, except only the rights of SSI under the Conditional Sale Agreement; and Builder does further covenant with Assignee and SSI that it will warrant and defend the title to the Equipment against the demands and claims of all persons, subject only to the rights of SSI under the Conditional Sale Agreement; and Builder further warrants that all units of Equipment delivered to SSI

were numbered and marked as provided in Section 6 of the Conditional Sale Agreement.

3. Builder agrees with Assignee that in any suit, proceeding or action brought by Assignee under the Conditional Sale Agreement for any amount due thereunder or to enforce any provision thereof, Builder will indemnify, protect and hold harmless Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by SSI arising out of a breach or alleged breach by Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to SSI by Builder or by reason of any act or omission of Builder. Builder's obligation so to indemnify, protect and hold harmless Assignee is conditioned upon (a) the Assignee's timely motion to strike any such defense, setoff, counterclaim or recoupment asserted by SSI, and (b) if the court or other body having jurisdiction denies such motion or other action and accepts such a defense, setoff, counterclaim or recoupment, Assignee's prompt notification to Builder and Assignee's giving Builder the right, at Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

4. Subject to the terms and conditions of this Assignment, Assignee will pay to Builder an amount equal to the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement), under the terms of subparagraph (b) of the first paragraph of Section 3 of the Conditional Sale Agreement.

The obligation of Assignee to make the payment provided for in the preceding paragraph shall be subject to the conditions precedent that Assignee shall have received the following documents, which shall be in form and substance satisfactory to Assignee and its counsel:

(a) A bill of sale from Builder to Assignee transferring to Assignee title to the Equipment, warranting to the Assignee and to SSI that, at the time of delivery of the Equipment under the Conditional Sale Agreement, Builder had good and marketable title to each unit of the Equipment and good and lawful right to sell the same and that such title was free from all claims, liens, security interests and encumbrances whatsoever, except for the rights of SSI under the Conditional Sale Agreement and the rights of the Lessee (as defined in the Conditional

Sale Agreement) and covenanting to defend such title against the demands of all persons whomsoever based on claims originating prior to delivery of the Equipment by Builder to SSI pursuant to the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to all of the Equipment as contemplated by Section 2 of the Conditional Sale Agreement;

(c) An invoice of the Builder, addressed to SSI, covering all of the units of the Equipment, accompanied by or having endorsed thereon a certification of SSI as to the correctness of the prices of such units as set forth in said invoice;

(d) A Take-Out Commitment (the "Take-Out Commitment") and the Debt Servicing Agreement duly executed and delivered by ITEL Corporation ("Itel");

(e) An opinion of counsel for SSI and Itel, addressed to Assignee;

(f) Evidence satisfactory to Assignee that payment to the Builder of the amount required under the terms of subparagraph (a) of the first paragraph of Section 3 of the Conditional Sale Agreement has been made;

(g) Certified or other copies of all documents (including, without limitation, resolutions of SSI and Itel) that Assignee may reasonably request in connection with the transactions contemplated by the Conditional Sale Agreement, this Assignment, the Lease, the Take-Out Commitment, the Debt Servicing Agreement and of all corporate proceedings taken in connection therewith by the respective parties to the aforesaid instruments;

(h) Certificate of Insurance evidencing compliance with the requirements of Section 13 of the Conditional Sale Agreement.

(i) Recorded copies of the Conditional Sale Agreement and notification that the First Amendment thereto and the Assignment filed with the Interstate Commerce Commission.

Assignee shall not be obligated to make payment hereunder at any time while a Default (as defined in the Conditional Sale Agreement), or an event which with notice or lapse of time or both would constitute a Default, shall be in existence.

5. Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from SSI thereunder. In the event of any such assignment, each subsequent assignee shall, to the extent of such assignment, enjoy all of the rights and privileges and be subject to all of the obligations of Assignee hereunder.

6. Except in cases of articles, materials and designs furnished or specified by SSI and not manufactured by Builder, Builder agrees to indemnify, protect and hold harmless Assignee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against Assignee because of the use in or about the construction or operation of any unit of Equipment of any such articles, materials and designs which infringes or is claimed to infringe on any patent or other right. Assignee will give prompt notice to Builder of any claim actually known to Assignee which is based upon any such alleged infringement and will give Builder the right, at Builder's expense, to compromise, settle or defend against such claim.

7. Builder agrees that any amount payable to it by SSI with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, and not hereby assigned to Assignee, shall not be secured by any lien, charge or security interest upon the Equipment.

8. Builder hereby represents and warrants to Assignee that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it and insofar as Builder is concerned is a legal, valid and existing agreement binding upon Builder in accordance with its terms and is now in full force without further amendment or modification thereto.

9. Builder hereby agrees that it will from time to time at the Request of Assignee make, execute and deliver all such future instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions set forth herein and more perfectly confirm the right, title and interest hereby assigned and transferred to Assignee or intended so to be.

10. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

11. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Assignee shall be deemed to be the original counterpart.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be executed in their respective corporate names by their duly authorized officers, and their respective corporate seals to be hereunto affixed and attested, all as of the date first above written.

FMC CORPORATION

By _____
Its VICE PRESIDENT

ATTEST:

_____
Its ASSISTANT SECRETARY
[CORPORATE SEAL]

MANUFACTURERS HANOVER TRUST COMPANY

By Michael P. Zarrilli
Its Assistant Vice President

ATTEST:

Donald Keynton
Its Asst. Sec'y
[CORPORATE SEAL]

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this 31st day of October, 1977, before me personally appeared Bart R. van Eck, to me personally known, who, being by me duly sworn, says that he is Vice President of FMC Corporation, that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sherry A. Martin
Notary Public

[Notarial Seal]

My Commission expires: My Commission Expires December 10, 1980

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

On this 31st day of October, 1977, before me personally appeared Michael P. Zarrilli, to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of Manufacturers Hanover Trust Company, that one of the seals affixed to the aforegoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret R. Hayes
Notary Public

[Notarial Seal]

MARGARET R. HAYES
Notary Public, State of New York
No. 44-01HA 4635135
Qualified in Rockland County
Certificate filed in New York County
Commission Expires March 30, 1978

My Commission expires:

ACKNOWLEDGMENT OF NOTICE AND CONSENT TO ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment between FMC Corporation and Manufacturers Hanover Trust Company and the terms and conditions set forth therein is hereby acknowledged and consented to as of October 21, 1977.

SSI RAIL CORP.

By: _____
Joseph M. Costello, Jr.
President