

THACHER, PROFFITT & WOOD
40 WALL STREET
NEW YORK, N.Y. 10005

JOHN W. WHEELER
EDWARD C. KALAJDIAN
KURT W. LORE
JOHN B. McCUBBIN
STEPHEN B. WILSON
CORNELIUS S. VAN REES
PHILLIP C. BROUGHTON
EARL L. MARSHALL
ROBERT S. STITT
DWIGHT B. DEMERITT, JR.
O. GERARD GJERTSEN
RICHARD A. IKLE
ALBERT J. CARDINALI
LAWRENCE W. GOLDE
OMER S. J. WILLIAMS
STUART H. PRINGLE, JR.
CHARLES D. BROWN
JANET M. WHITAKER
DANIEL E. KIRSCH
RAYMOND S. JACKSON, JR.
THOMAS N. TALLEY
FRANCIS X. SÜLGER
STEPHEN T. WHELAN

TELEPHONE (212) 483-5800

J. FRANK WOOD
CHARLES W. LEWIS
JOHN D. BEALS, JR.
JOHN F. DAVIDSON
COUNSEL

10868

RECORDATION NO. _____ Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

CABLE "WALLACES NEW YORK"
ITT TELEX 422532
TWX 710 581 2634
TELECOPIER (212) 483-5854

10868 *A*
RECORDATION NO. _____ Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

10868 *C*
RECORDATION NO. _____ Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

October 5, 1979

10868 *A*
RECORDATION NO. _____ Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

Agatha L. Merges
Secretary of the Interstate
Commerce Commission
12th Street and Constitution
Avenue, N.W.
Washington, D.C.

10868 *B*
RECORDATION NO. _____ Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

OCT 5 1979

110.00

CC Washington, D.C.

Dear Madam:

I enclose for filing with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303, the following documents:

1. CONDITIONAL SALE AGREEMENT dated as of September 1, 1979 between:

PURCHASER: FIRST SECURITY BANK OF UTAH, N.A., *
79 South Main Street
Salt Lake City, Utah 84111

*NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE PURSUANT TO A TRUST AGREEMENT DATED AS OF SEPTEMBER 1, 1979

VENDOR: FMC CORPORATION
(Marine and Rail Equipment Division)
4700 Northwest Front Avenue
Portland, Oregon 97208

RECEIVED
OCT 5 4 19 PM '79
I.C.C.
FEE OPERATION BR.

Agatha L. Merges

2. AGREEMENT AND ASSIGNMENT OF CONDITIONAL SALE IN-
DEBTEDNESS dated as of September 1, 1979

ASSIGNOR: FMC CORPORATION

ASSIGNEE: DOLLAR SAVINGS BANK OF NEW YORK
2530 Grand Concourse
Bronx, New York

3. LEASE OF RAILROAD EQUIPMENT dated as of September
1, 1979

LESSEE: INTERPOOL LIMITED
630 Third Avenue
New York, New York

LESSOR: FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee as aforesaid

4. ASSIGNMENT OF LEASE AND AGREEMENT dated as of
September 1, 1979

ASSIGNEE: FIRST SECURITY BANK OF UTAH, N.A.,
as Trustee as aforesaid

ASSIGNOR: DOLLAR SAVINGS BANK OF NEW YORK

5. *LEASE AGREEMENT dated October 3, 1979

SUBLESSEE: SAN LUIS CENTRAL RAILROAD COMPANY
Monte Viste, Colorado

SUBLESSOR: INTERPOOL LIMITED

*This document will be filed at a later date following
execution by the parties.

6. ASSIGNMENT OF APPROVED MANAGEMENT AGREEMENT AND APPROVED SUBLEASE dated as of September 1, 1979

ASSIGNOR: INTERPOOL LIMITED

ASSIGNEE: DOLLAR SAVINGS BANK OF NEW YORK

The documents listed above cover the railroad equipment described in Exhibit A attached hereto (the "Equipment"). The Equipment was manufactured and sold by FMC Corporation (Rail and Marine Equipment Division) (the "Vendor") to First Security Bank of Utah, N.A., as Trustee (the "Trustee"), pursuant to the Conditional Sale Agreement (the "CSA"). The rights of the Vendor under the CSA were assigned to Dollar Savings Bank of New York (the "Investor") pursuant to the Agreement and Assignment of Conditional Sale Indebtedness. The Equipment will be leased by the Trustee to Interpool Limited (the "Lessee") pursuant to a Lease of Railroad Equipment (the "Lease") and leased by the Lessee to San Luis Central Railroad Company pursuant to a Lease Agreement (the "Sublease"). The rights of the Trustee under the Lease and the rights of the Lessee under the Sublease have been assigned to the Investor.

In addition, I enclose a check in the amount of \$110.00 to cover the cost of recordation with the Secretary's Office.

Please return the stamped copies of the above documents to the bearer of this letter.

Very truly yours,

Thacher, Proffitt & Wood

Thacher, Proffitt & Wood,
as Agent for Dollar Savings
Bank of New York

10868-A

RECORDATION NO. Filed 1425

OCT 5 1979 -4 20 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS

Dated as of September 1, 1979

between

FMC CORPORATION
(MARINE AND RAIL EQUIPMENT DIVISION)

as Builder

and

DOLLAR SAVINGS BANK OF NEW YORK,

as Investor

Filed with the Interstate Commerce Commission pursuant to
49 U.S.C. § 11303 on _____, at _____, recordation
number _____.

AGREEMENT AND ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS dated as of September 1, 1979, between FMC CORPORATION (MARINE AND RAIL EQUIPMENT DIVISION) (the "Builder") and DOLLAR SAVINGS BANK OF NEW YORK, acting as investor (the "Investor") under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Trustee (as hereinafter defined), the Owners (as hereinafter defined), Interpool Ltd. (the "Lessee") acting through its Railpool Division and the Investor.

WHEREAS the Builder and FIRST SECURITY BANK OF UTAH, N.A., acting as Trustee (the "Trustee") under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with The First National Bank of Denver and Seafirst Leasing Corporation (collectively defined to be the "Owners" and individually an "Owner"), have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery by the Builder and the purchase by the Trustee of the railroad equipment described in Annex B to the CSA (the "Equipment"); and

WHEREAS the Trustee and Lessee have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT OF CONDITIONAL SALE INDEBTEDNESS (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Investor to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Investor, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Trustee, subject to payment by the Investor and the Owners through the Trustee to the Builder of the amounts required to be paid pursuant to Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the obligation to construct and deliver the Equipment and the right to receive the payments specified in Paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid, in and to any and all amounts which may be or become due or owing to the Builder under the CSA on account of the indebtedness in respect of the Purchase Price (as defined in Paragraph 4.1 of the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the

Trustee under the CSA, other than those hereinabove excluded;
and

(c) except as limited by subparagraph (b) of this Section, all the Builder's rights, titles, powers, privileges and remedies under the CSA;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Trustee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the CSA or with respect to its warranties and agreements referred to in Article 14 of the CSA or relieve the Trustee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the CSA, it being agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Trustee with respect to the Equipment shall be and remain enforceable by the Trustee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Investor in the Investor's own name, or in the name of the Investor's nominee, or in the name of and as attorney, hereby irrevocably constitutes, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Investor is or may become entitled under this Assignment and compliance by the Trustee with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Investor. The Builder reserves a purchase money security interest in the Equipment in the amount of the Purchase Price until such time as the Builder shall have received such Purchase Price.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the CSA and will deliver the same upon completion to the Trustee in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Investor and the Trustee that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Builder except only the rights of the Trustee under the CSA and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims arising from, through or under the Builder originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of

the Trustee thereunder. The Builder will not deliver any of the Equipment to the Trustee under the CSA until the CSA, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 (the Builder and its counsel being entitled to rely on advice from counsel for the Investor that such filing has occurred).

SECTION 3. The Builder agrees with the Investor that in any suit, proceeding or action brought by the Investor under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Investor from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Trustee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof. The Builder's obligation so to indemnify, protect and hold harmless the Investor is conditional upon (a) the Investor's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Trustee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defence, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Investor's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Investor's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Trustee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the CSA, to indemnify, protect and hold harmless the Investor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Investor or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Investor will give prompt notice to the Builder of any claim actually known to the Investor which is based upon any such alleged infringement and will give to the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Trustee or the Lessee with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Investor, shall not be secured by any lien, charge or security interest upon such Equipment or any unit thereof.

SECTION 4. The Investor, on the Funding Date fixed as provided in Paragraph 4.2 of the CSA with respect to the Equipment of the Builder, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of Paragraph 4.3(b) of the CSA, is payable in installments, provided that the Trustee shall have paid to the Builder its portion of the Purchaser Price set forth in Paragraph 4.3(a) of the CSA and the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Investor (with a copy to the Trustee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Thacher, Proffitt & Wood, counsel to the Investor, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill or bills of sale from the Builder to the Investor transferring to the Investor the security interest of the Builder in such units, warranting to the Investor and to the Trustee that, at the time of delivery of such units under the CSA, the Builder had legal title to such units and good and lawful right to sell such units and such units were free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Builder except only the right of the Trustee under the CSA and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Paragraph 3.4 of the CSA and § 2.1 of the Lease;

(c) an invoice of the Builder for the units of the Equipment accompanied by or having endorsed thereon a certification by the Trustee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder, dated as of the Closing Date, addressed to the Investor and the Trustee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Investor the security interest of the Builder in the units of the Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the CSA and the rights of the Lessee under the Lease) arising from, through or under the Builder and to the effect that, subject to said security interests, good and lawful title to the units of Equipment passed to the Trustee upon delivery and acceptance thereof under the CSA; and

(e) a receipt from the Builder for any payment (other than the payment being made by the Investor pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Builder's Equipment, unless such payment is made by the Investor with funds furnished to it for that purpose by the Trustee.

In the event that the Investor shall not make its payment pursuant to Paragraph 4.3(b) of the CSA, the Investor shall reassign to the Builder, without recourse to the Investor, all right, title and interest of the Investor in and to the units of Equipment with respect to which payment has not been made by the Investor.

SECTION 5. The Investor may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Trustee thereunder. In the event of any such assignment, any such subsequent or successive Investor or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the CSA, enjoy all the rights and privileges and be subject to all the obligations of the Investor hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Investor, the Trustee and their successors and assigns, that the CSA and this Assignment has been duly authorized, executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Trustee, the CSA and this Agreement are, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with their respective terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Investor or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Investor or intended so to be; and

(c) agrees that, upon request of the Investor, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. 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 49 U.S.C. § 11303, such additional rights arising out of the filing, recording or depositing of the CSA and this Assignment as shall be conferred by the laws of the several jurisdictions in which the CSA or this Agreement shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Investor shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

FMC CORPORATION
(Marine and Rail Equipment
Division)

By Daniel C. Smith
Vice President

[Corporate Seal]

Attest:

A. R. Smith
Assistant Secretary

DOLLAR SAVINGS BANK OF NEW YORK
as Investor

By Federick J. Pant
Senior Vice President-Investments

[Seal]

Attest:

Dennis J. Smith
Authorized Officer

STATE OF *Illinois*)
COUNTY OF *Cook*) ss.:

On this *3rd* day of *October* 1979, before me personally appeared *Daniel C. Smith*, to me personally known, who being by me duly sworn, says that he is a Vice President of FMC CORPORATION (MARINE AND RAIL EQUIPMENT DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judith A. Zeman

Notary Public

[Notarial Seal]

My Commission Expires *My Commission Expires Dec. 29, 1982*

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

On the *4* day of *October*, 1979, before me personally came *FREDERICK J. PARENT*, to me known, who being by me duly sworn, did depose and say that *he* resides at *2530 GRAND CONCOURSE, BRONX, N.Y. 10458* that *he* is a Senior Vice President of Dollar Savings Bank of New York, the corporation described in and which executed the foregoing instrument; that *he* knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the By-Laws of said corporation, and that *he* signed *his* name thereto by like order.

Thomas E. Gunther

Notary Public

[Notarial Seal]

THOMAS E. GUNTHER
Notary Public, State of New York
No. 24-6704823
Qualified in *Westchester* County
Term Expires March 30, 1980



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of September 1, 1979.

FIRST SECURITY BANK OF UTAH, N.A.,
not in its individual capacity but
solely in its capacity as Trustee

By



Authorized Officer