

RECORDATION NO. 8231 Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT made as of this first day of March, 1976 between PATAGONIA LEASING COMPANY, an Arizona corporation, as Seller ("Vendor") and PICKENS RAILROAD COMPANY, a South Carolina corporation, as Buyer ("Railroad"):

1. Purchase and Sale.

Railroad hereby agrees to purchase from Vendor, and Vendor hereby agrees to sell to Railroad, the property described on Exhibit "A" hereto ("the Equipment"), pursuant to the terms and conditions hereof.

2. Price.

The Cash Purchase Price for the Equipment is ONE HUNDRED EIGHTY-FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$184,800.00), and shall be paid to Vendor by Railroad in 120 equal consecutive monthly installments of \$2,670.00 each and one final installment of \$37,000.00, (all including principal and interest on the unpaid balance of the Cash Purchase Price at the rate of Fourteen (14%) percent per annum payable in legal tender of the United States, the first of said 120 installments due and payable on March 1, 1976 with the balance of said equal monthly installments due and payable on the first day of each and every succeeding month and said \$37,000.00 installment due and payable March 1, 1986, the aggregate sum of all said installments being \$357,400.00 (the "Conditional Sale Price").

3. Title to the Equipment.

Vendor shall retain full legal title to the Equipment until Railroad shall have paid Vendor the full Conditional Sale Price and shall have performed all Railroad's other covenants herein contained, notwithstanding delivery of the Equipment to and possession and use thereof by Railroad as provided herein. Any and all additions to or replacements of the Equipment or parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions hereof.

When and only when Vendor shall have been paid the full Conditional Sale Price and all of Railroad's obligations herein shall have been performed by Railroad, absolute right to possession of, title to and property in the Equipment shall pass to and vest in Railroad without further action by Vendor; provided that Vendor will at that time, if so requested by Railroad, at Railroad's expense, execute and deliver a Bill of Sale for the Equipment.

4. Use.

Railroad hereby covenants, warrants and represents that the Equipment is intended for use and shall be used in connection with interstate commerce and only within the territorial boundaries of the 48 contiguous United States of America. The equipment shall always remain and be deemed personal property even if attached to realty and Railroad shall not cause or permit the Equipment to be permanently affixed to any realty. Railroad acknowledges

that each unit of the Equipment is numbered with an identifying number and marked with Vendor's name as set forth in Exhibit "A" hereto, and will keep such numbering and marking plainly, permanently and conspicuously displayed on each side of each unit.

5. Prohibition on Encumbrances.

Until Vendor shall have been paid the full Conditional Sale Price, Railroad, at its sole cost and expense, shall maintain the Equipment in good condition and repair, keep it free from all liens, encumbrances, charges and security interests other than the interest owned by Vendor, discharge when due all taxes, license fees, levies and other charges which may be made or become a lien against the Equipment or any part thereof, shall not sell, lease or otherwise dispose of the Equipment or permit it to be or become an accession to other goods without the prior written consent of Vendor, and shall not permit the Equipment or any part thereof to be used in violation of any applicable law, regulation or policy of insurance thereof.

6. Insurance.

So long as any portion of the Conditional Sale Price shall remain unpaid, Railroad shall, at Railroad's sole cost, provide and maintain in full force and effect with respect to the Equipment:

(i) insurance against loss by fire, theft and other risks customarily covered by extended coverage in an amount equal to the stipulated Loss Value of the Equipment set forth in Exhibit "B" hereto; and

(ii) comprehensive general public liability insurance against claims for bodily injury, death or property damage arising out of or in any way connected with the use or non-use of the Equipment, whether or not pursuant to Railroad's authorization, with limits of liability acceptable to Vendor.

Such insurance shall name Vendor and the holder of any other security interest in the Equipment as an additional insured, and Railroad shall supply Vendor and any other person designated by Vendor with copies of the policies or certificates of the insurer satisfactory in form to Vendor, under the terms of which cancellation or alteration of such insurance cannot be effected without 10 days prior written notice to Vendor. When Railroad shall have furnished satisfactory evidence to Vendor of proper repair of damaged Equipment at Railroad's expense, Vendor shall pay to Railroad, or, in its discretion, apply against the outstanding balance of the Conditional Sale Price, any monies received by Vendor with respect to such damage on account of any such insurance policy provided by Railroad. Railroad shall promptly notify Vendor of any accident, loss or damage with respect to the Equipment within 48 hours thereafter and shall cooperate fully in the investigation and defense of all claims and

demands relating to such accident, loss or damage.

7. Taxes.

Railroad shall promptly pay when due all license fees, assessments, registration fees, and sales, use, property, excise and other taxes now or hereafter imposed by any governmental or quasigovernmental authority upon the Equipment, the use thereof or the payments received by Vendor hereunder (excluding Vendor's general income tax).

8. Indemnity.

Railroad shall indemnify and hold harmless Vendor, its agents, successors and assigns from and against any and all losses, damages, claims and expenses (including attorneys' fees) of whatsoever nature arising out of the use, condition (including but not limited to or not discoverable) or operation of any item of the Equipment, regardless of where, how and by whom operated. All advances made by Vendor to preserve the Equipment or to pay insurance premiums for insurance required hereunder or to pay any taxes, liens or encumbrances thereon which, under the terms hereof, are Railroad's responsibility, shall be added to the unpaid balance of the Conditional Sale Price hereunder, shall be secured by the security interest herein granted, and shall be repayable by Railroad to Vendor with interest thereon from date of advance at the highest rate of interest permissible by law. The indemnities and assumptions of liabilities and obligations herein provided for shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Price or the default of Railroad hereunder. Railroad is an independent contractor and nothing contained herein or otherwise shall authorize Railroad or any other person to operate the Equipment so as to incur or impose any liability or obligation on Vendor.

9. Reports.

Upon demand, Railroad shall advise Vendor where the Equipment is located and permit Vendor or its agents to examine same. Not less than annually, Railroad shall deliver to Vendor in form satisfactory to Vendor duplicate copies of Railroad's income statement and balance sheet for the immediately preceding fiscal year, certified by a firm of certified public accountants acceptable to Vendor. Not less than quarterly, Railroad shall furnish Vendor with the names and addresses of those parties who have rented the Equipment from Railroad during the preceding calendar quarter, regardless of whether any accounts receivable remain outstanding from said parties.

10. Late Payments.

In the event any installment due hereunder shall be unpaid when the same is due and payable, Railroad shall pay Vendor, together with said installment, the sum of \$135.00, representing the parties' approximation of Vendor's expenses, costs and fees incurred by Vendor as a result of said default. Such payment shall be in addition to all other remedies which Vendor may have against Railroad hereunder.

11. Security Agreement.

This Conditional Sale Agreement also constitutes a Security Agreement under the Uniform Commercial Code of the States of Arizona and South Carolina (herein called the "Code"), Vendor being the "Secured Party" and Railroad being the "Debtor", and Vendor shall have all the rights of a secured party under Article 9 of the Code, which rights shall be in addition to, and may be exercised cumulatively with all other rights granted to Vendor hereunder. Railroad hereby grants Vendor a security interest in the Equipment, together with all additions, accessions, repairs, products, proceeds, substitutions and replacements thereto or thereof. The rights and obligations of the parties hereto shall be governed and construed according to the laws, and in the Courts of, the State of Arizona.

12. Default.

It shall be an event of default hereunder: (i) if default shall occur in the making of any payment due from Railroad hereunder or in the performance of any obligation of Railroad hereunder; (ii) if Railroad or any guarantor hereof shall: file a petition in bankruptcy or any petition or application for any relief under any provision of the Bankruptcy Act or take advantage of any law pertaining to the reorganization, insolvency or readjustment of debt of persons; make an assignment for the benefit of creditors; admit in writing inability to pay debts as they become due; be adjudicated a bankrupt or insolvent; commit any act of bankruptcy; or answer a petition filed against them in any proceeding under the Bankruptcy Act or any law pertaining to the reorganization, insolvency or readjustment of debt of persons admitting the material allegations thereof; (iii) or if a court of competent jurisdiction shall enter an order, judgment or decree appointing a receiver for the assets or affairs of Railroad or any guarantor hereof.

In the event of any default hereunder, at the option of Vendor, the entire unpaid balance of the Conditional Sale Price shall become due and payable at once, said amount shall thereafter bear interest at the highest rate permitted by law, and Vendor shall have the right, but not the obligation, to exercise any one or more of the following remedies:

(a) to sue for and recover the balance of the Conditional Sale Price and all other amounts then due or thereafter accruing hereunder;

(b) to take possession of any or all of the Equipment wherever it may be located, without demand or notice, without any Court order or other process of law and without incurring any liability to Railroad for any damages occasioned by such taking of possession; (Railroad hereby granting Vendor a license to enter upon any property owned or under the control of Railroad to take such possession);

(c) to sell any or all of the Equipment at public or private sale for cash or on credit and to recover from Railroad all costs of taking possession, storing, repairing and selling the Equipment (Railroad hereby agreeing that should disposition of the Equipment fail to satisfy all amounts owed hereunder or secured hereby, Railroad shall pay to Vendor the amount of any deficiency);

(d) to pursue any other remedy now or hereafter existing at law or in equity.

In addition to the foregoing, Railroad shall pay Vendor all costs and expenses, including reasonable attorneys' fees (which, in the event suit be commenced, shall be fixed by the Court), incurred by Lessor in exercising any of its rights or remedies hereunder, whether or not suit be instituted.

13. Miscellaneous.

Time is of the essence of this agreement, which constitutes the entire agreement between Vendor and Railroad with respect to the Equipment. Whenever the context of this agreement requires, the masculine gender shall include the feminine or neuter, and the singular shall include the plural, and whenever the word "Vendor" is used herein it shall include all assignees of Vendor. If there be more than one Railroad named in this lease, the liability of each shall be joint and several. The word "Equipment" is used herein to refer to all of the personal property described in paragraph 1. hereof and to each particular item of property there described.

No delay or omission to exercise any right, power or remedy accruing to Vendor upon any breach by Railroad hereunder shall impair any such right, power or remedy nor be construed as a waiver of any such breach, or default or of any similar breach or default thereafter occurring. Nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default and all waivers must be in writing. All Vendor's remedies granted under this agreement or provided at law shall be cumulative and not alternative.

This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The headings in this agreement have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions hereof. This agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute one and the same instrument. Any notices required to be given shall be given to the parties hereto in writing by mail at the addresses previously furnished by each party, or at such other addresses as each party may substitute by notice to the other. This agreement and any security therefor may be freely assigned by Vendor, in which event notice shall be given to Railroad with the address of the assignee indicated in the instrument of assignment. Notices shall be effective as of the date received or as of two days after deposit in the mail, correctly addressed and with postage prepaid, whichever date first occurs. Any provision hereof which may be invalid or unenforceable under any applicable law shall be deemed modified to the extent necessary to make same valid or enforceable, or omitted herefrom if such modification is not possible, but such omission or modification shall not invalidate the remaining provisions hereof.

14. DISCLAIMER. -- READ CAREFULLY

RAILROAD REPRESENTS TO VENDOR THAT IT HAS EXAMINED THE EQUIPMENT WHICH IS THE SUBJECT OF THIS AGREEMENT AND IS AWARE OF THE CONDITION THEREOF, AND RAILROAD FURTHER WARRANTS THAT IT IS SKILLED IN THE USE OF THE EQUIPMENT AND UNDERSTANDS THE OPERATION THEREOF. VENDOR, NOT BEING A MANUFACTURER OF ANY OF THE EQUIPMENT, NOR AN AGENT OR SALES REPRESENTATIVE OF ANY MANUFACTURER OF ANY OF THE EQUIPMENT, MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR AGAINST DEFECTS IN MATERIAL OR DEFECTS IN WORKMANSHIP. VENDOR DOES NOT WARRANT THAT THE EQUIPMENT IS SUITABLE FOR ANY PARTICULAR PURPOSE, AND VENDOR DOES NOT WARRANT THAT THE EQUIPMENT WILL MEET THE SAFETY OR OTHER REQUIREMENTS OF ANY CITY, COUNTY, STATE OR COUNTRY. THE EQUIPMENT SOLD HEREBY IS SOLD AS IS AND WITH ALL FAULTS. RAILROAD HEREBY ACKNOWLEDGES THAT VENDOR, ITS AGENTS, EMPLOYEES AND REPRESENTATIVES, HAVE MADE NO REPRESENTATION, AFFIRMATION, PROMISE OR WARRANTY CONCERNING THE EQUIPMENT. RAILROAD WAIVES THE BENEFIT OF ANY RULE THAT DISCLAIMERS OF WARRANTY SHALL BE CONSTRUED AGAINST VENDOR AND AGREES THAT THE DISCLAIMERS IN THIS AGREEMENT SHALL BE CONSTRUED LIBERALLY IN FAVOR OF VENDOR.

IN WITNESS WHEREOF, the parties hereto have executed this Conditional Sale Agreement as of the day and year first above written.

Attest:

James D. Hutten
Its Comptroller

[Corporate Seal]

PATAGONIA LEASING COMPANY

By [Signature]
Its PRESIDENT
VENDOR-SELLER

Attest:

John M. Sterling, Jr.
Its Secretary

[Corporate Seal]

PICKENS RAILROAD COMPANY

By John H. Peas
Its Vice President
RAILROAD-BUYER

EXHIBIT "A"

<u>Type</u>	<u>Quantity</u>	<u>Builder's Specifications and AAR Mechanical Designation</u>	<u>Builder's Plant</u>	<u>Railroad's Nos. (both inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>
70-ton 50-foot 6-inch (box)	6	70-ton 50'6" Steel Single Sheath, Outside Stake Box Cars, with Rigid Underframes; AAR Mechanical Designation -- XF --; to be stenciled on each side with following legend in letters not less than 1" in height:	Pickens, S. C.	PICK 55400-55405	\$30,800	\$184,800	February 1, 1976

PROPERTY OF PATAGONIA
LEASING COMPANY,
OWNER AND LESSOR

Exhibit "B" to
Conditional Sale Agreement
dated March 1, 1976
between Patagonia Leasing Company
and Pickens Railroad Company

STIPULATED LOSS VALUE

Railroad shall maintain insurance on the Equipment in the following amounts pursuant to Section 6(i) of said Conditional Sale Agreement during the periods shown (the amount of such insurance maintained with respect to any one of the six boxcars to be, in any event, not less than 1/6 of the amount shown):

<u>Year</u>	<u>Amount</u>
3/1/76 to 2/28/77	\$230,680
3/1/77 to 2/28/78	\$220,920
3/1/78 to 2/28/79	\$210,706
3/1/79 to 2/28/80	\$197,937
3/1/80 to 2/28/81	\$182,614
3/1/81 to 2/28/82	\$164,736
3/1/82 to 2/29/83	\$144,303
3/1/83 to 2/28/84	\$121,316
3/1/84 to 2/28/85	\$ 95,775
3/1/85 to 2/28/86	\$ 67,678

State of Arizona)
County of Maricopa) ss:

On this 2nd day of March, 1976, before me personally appeared Thomas R. Purcell and James M. Tuton to me personally known or satisfactorily identified, who being by me duly sworn, said that they are the President and Comptroller of Patagonia Leasing Company, an Arizona corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Linda L. Johnson ^{OFF} Linda L. Goodner
Notary Public

My Commission Expires:

My Commission Expires Sept. 11, 1976

State of South Carolina)
County of Greenville) ss:

On this 1st day of March, 1976, before me personally appeared Executive Vice President and Secretary to me personally known, who being by me duly sworn, said that they are the Executive Vice President and Secretary of Pickens Railroad Company, a South Carolina corporation, that the seal 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Elizabeth B. Wood
Notary Public

My Commission Expires:

5/6/81