

RECORDATION NO. 11079

# Arent, Fox, Kintner, Plotkin & Kahn

NOV 21 1979 - 4 10 PM

Federal Bar Building  
1815 H Street, N.W.  
Washington, D.C. 20006

INTERSTATE COMMERCE COMMISSION  
Cable: ARFOX COMMISSION  
Telephone: (202) 857-6000  
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Writers Direct Dial Number

Telex: WU892672 • ITT440266

(202) 857-6290

November 21, 1979

3-325A112

NOV 21 1979

HAND DELIVERED

Date \_\_\_\_\_  
Fee \$ 50.00

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

ICC Washington, D. C.

Dear Madam:

Enclosed are the original and nine (9) fully executed and notarized copies of a Purchase Agreement (Conditional Sale Agreement) granting and reserving a security interest to Whittaker Corporation (Berwick Forge and Fabricating Division) the "Builder" by Operating Lease Services, Inc., dated as of October 23, 1979.

- Document: Purchase Agreement dated October 23, 1979
- Secured Party: Whittaker Corporation
- Party Granting Security Interest: Operating Lease Services, Inc.
- Equipment: Sixty 70-ton 50' 6" special purpose XF Railroad Box Cars bearing Serial Nos. DM 20270-20299, and DM 20240-20269

I respectfully request that the original of this document be recorded under the provisions of 49 U.S.C. §11303. I would also appreciate your stamping additional copies of the above documents which are not required for your filing purposes and returning them to me.

The undersigned certifies that he is acting as counsel to Hillman Manufacturing Company, and that he has knowledge of the matters set forth in the above described documents.

Sincerely yours,  
*John D. Hushon*  
John D. Hushon

Enclosure

NOV 21 4 02 PM '79  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

*Scott B. White*  
*County Seat*

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

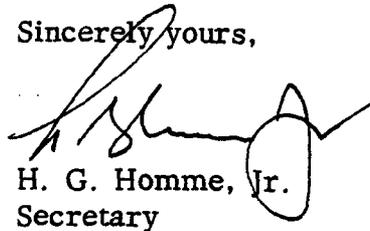
**OFFICE OF THE SECRETARY**

John A. Hushon  
Federal Box Building  
1815 H. Street, N. W.  
Washington, D. C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/21/79 at 4:10PM, and assigned recordation number(s). 11079.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'H. G. Homme, Jr.', written over a circular stamp or mark.

H. G. Homme, Jr.  
Secretary

Enclosure(s)

SE-30  
(3/79)

REGISTRATION NO. 11079  
NOV 21 1979 4 10 PM  
11/7/79  
INTERSTATE COMMERCE COMMISSION

PURCHASE AGREEMENT

DATED AS OF OCTOBER 23, 1979

BETWEEN

WHITTAKER CORPORATION  
BERWICK FORGE AND FABRICATING DIVISION  
BUILDER

OPERATING LEASE SERVICES, INC.  
VENDEE

(COVERING UP TO 60 SPECIAL PURPOSE BOXCARS)

Filed and recorded with the Interstate Commerce Commission  
pursuant to 49 U.S.C. 11303 on \_\_\_\_\_, 1979  
at \_\_\_\_\_, Recordation No. \_\_\_\_\_.

PURCHASE AGREEMENT dated as of October 23, 1979 between WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION), a California corporation (hereinafter called the "Vendor" or "Builder") and OPERATING LEASE SERVICES, INC., a Connecticut corporation (hereinafter called the "Vendee").

WHEREAS, the Builder will construct, sell and deliver to the Vendee, and the Vendee will purchase, the railroad equipment described in the Annex A hereto (hereinafter called collectively the "Equipment" or "Units" and individually a "Unit") which Equipment shall be constructed in accordance with the specifications referred to in certain letter agreements between the Vendee and the Builder, dated August 8, 1978, and August 17, 1978, respectively, the terms of which letter agreements and specifications attached thereto are included herein by this reference thereto; and

WHEREAS, the Vendee, prior to or simultaneously with the execution of this Agreement, will enter into a Boxcar Agreement dated as of the date hereof (hereinafter called the "Boxcar Agreement") with Detroit & Mackinac Railway Company (hereinafter called the "Railroad").

NOW, THEREFORE, in consideration of the mutual covenants, and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment set forth in Annex A hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided) the Equipment, each Unit of which shall be constructed in accordance with the specifications referred to in the first Recital of this Agreement and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Vendee (which specifications, and modifications, if any, are hereinafter called the "Specifications"). The design, quality, and component parts of each Unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission (hereinafter called the "ICC") requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called "AAR") reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit will be new and unused railroad equipment.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the Units of the Equipment to the Vendee during the delivery period specified in Annex A hereto at the Builder's Berwick, Pennsylvania plant, freight charges, if any, prepaid.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's

reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before the Cut-Off Date (as defined in Article 3 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of the sample Unit and each Unit of the Equipment, such Unit or Units shall be presented to an authorized inspector of the Vendee (who may be an employee of the Railroad) for inspection at the place specified for delivery of such Unit or Units, and if each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance") in the form annexed hereto as Annex B stating that such Unit or Units have been delivered, inspected and accepted on behalf of the Vendee on the date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date").

On delivery and acceptance of each such Unit hereunder at the place specified for delivery, title to each Unit shall pass to the Vendee and the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 5 hereof and the Builder shall retain a purchase money security interest in each Unit until it has received payment in full for such Unit in accordance with Articles 3 and 4 hereof.

ARTICLE 3. Purchase Price and Payment. The base price or prices per Unit of the Equipment are set forth in Annex A hereto. Such base price or prices may be increased as is agreed to by the Builder and the Vendee. The term "Invoiced Purchase Price" as used herein shall mean that base price or prices as set forth in Annex A as so increased.

The Units shall be settled for reasonably promptly after delivery and acceptance thereof in one group of Sixty (60) Units, or if less than Sixty (60) Units are delivered and accepted by March 31, 1980, then such lesser number of Units as are delivered and accepted by such date. Settlement for the group of Units shall occur on a Closing Date (as hereinafter defined) within eleven (11) business days after delivery and acceptance of the last Unit in such group. The Term "Closing Date" with respect to such group shall mean such date not later than March 31, 1980, (hereinafter called the "Cut-Off Date") as shall be fixed by the Vendee by written notice delivered to the Builder, at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and any other day on which banking institutions in New York, New York are authorized or obligated to remain closed.

On the Closing Date, the Vendee shall pay or cause to be paid to the Builder in cash the Invoiced Purchase Price with respect to the Units for which settlement is then being made. Such payment provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

ARTICLE 4. Title to the Equipment. The Builder shall and hereby does retain a purchase money security interest in each Unit until the Vendee shall have made or caused to be made payment of the Invoiced Purchase Price of such Unit in accordance with the preceding Article of this Agreement. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any Unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement.

When the Builder shall have been paid the full Invoiced Purchase Price in respect of each Unit, absolute right to the possession of, title to and property in each such Unit shall pass to and vest in the Vendee without further transfer or action on the part of the Builder and all security interest of the Builder in and to such Unit shall terminate without further action by the Builder; provided, however, the Vendee shall not be obligated to make payment to the Builder of the Invoiced Purchase Price until and unless the Builder, shall at that time, (a) execute a bill or bills of sale for such Units in the form annexed hereto as Annex C confirming the earlier transfer to the Vendee of beneficial title to the Units, free of all liens, security interests, and other encumbrances created or retained by, through, or under the Builder, (b) execute and deliver at the same place, for filing, recording, or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or

appropriate, if any, in order then to make clear upon the public records the title of the Vendee to the Equipment, and (c) deliver an opinion of its counsel addressed to the Vendee and Manufacturers Hanover Leasing Corporation to the effect that (i) the Builder is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to own its property and to conduct its business as presently conducted; (ii) this Agreement has been duly authorized, executed and delivered by the Builder and constitutes a legal, valid and binding obligation of the Builder enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, moratorium and similar laws affecting the enforcement of creditors' rights generally; (iii) at the time of delivery thereof by the Builder to the Vendee, the Units for which settlement is then being made are free and clear of all claims, liens and encumbrances of any kind except the security interest retained by the Builder hereunder, the rights of the Railroad under the Boxcar Agreement, and the rights of Manufacturers Hanover Leasing Corporation under a certain Loan and Security Agreement between the Vendee and Manufacturers Hanover Leasing Corporation; and (iv) the Builder's bill of sale relating to the Units described therein for which settlement is then being made has been duly authorized, executed and delivered by the Builder and is effective to confirm the transfer to the Vendee of good and marketable title to such Units.

ARTICLE 5. Warranties. Builder warrants to the Vendee that each Unit will be built in accordance with the Specifications and that each Unit delivered will be free under normal use and service from (i) all defects in material and workmanship (except as to items specified by Vendee and not manufactured by Builder or except items furnished or supplied by Vendee); and (ii) all defects in design (other than designs furnished by Vendee). Builder's obligations under this warranty shall be limited to repairing or replacing any part or parts of any of the Units which shall within one (1) year after delivery of any such Unit be returned to the Builder's manufacturing plant or delivered to such other repair facilities as Builder may designate with transportation charges prepaid and which part or parts the Builder shall be reasonably satisfied, upon Builder's examination, are defective or were not in conformity with the applicable specifications when shipped; provided, that Vendee notifies Builder in writing promptly, after discovery of such defect, and before delivery of such Unit.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND BUILDER SHALL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY FAILURE TO MEET THE AFOREMENTIONED WARRANTY.

The Builder agrees that on the Closing Date it will warrant to the Vendee that at the time of delivery of each Unit of Equipment the Builder had at such time legal title to such Unit, and it was at such time free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee hereunder, the rights of the Railroad under the Boxcar Agreement and such rights, if any, as the Vendee may have granted to any third party lender in the nature of a lien or security interest in the Units; at the Closing Date each such Unit is free and clear of all claims, liens, security interests and other encumbrances claimed or created by, through or under the Builder; and the Builder agrees that it will defend such title to each such Unit against the demands of all persons whomsoever.

Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in this Agreement, to indemnify, protect and hold harmless the Vendee 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 Vendee, its assigns or the users of the Equipment (i) because of the use in or about the construction 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 or (ii) arising out of any accident or tort during the construction, possession or storage by such Builder of any Unit of Equipment resulting in damage to property or injury or death to any person. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Vendee every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Vendee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Vendee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Vendee of any claim known to the Vendor from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder hereby:

(a) represents and warrants to the Vendee its successors and assigns, that this Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, this Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Vendee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do 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 Vendee or intended so to be; and

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

ARTICLE 6. Default. The occurrence of any of the following events shall be deemed a default hereunder with respect to a Unit, in which event the Builder shall be entitled, with respect to such Unit, to such rights and remedies as are provided under the Uniform Commercial Code of the Commonwealth of Pennsylvania.

(a) Failure of the Vendee to pay to the Builder when due any amount due the Builder hereunder, with respect to such Unit; or

(b) the occurrence of an Event of Default (as defined in the Loan and Security Agreement between the Vendee and Manufacturers Hanover Leasing Corporation dated the date hereof) prior to settlement for such Unit pursuant to Article 3 hereof.

ARTICLE 7. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, 47 Locust Hill Road, Darien, Connecticut 06820

(b) to the Builder, Post Office Box  
188, West Ninth Street, Berwick, Pennsylvania  
18603, Attention: Comptroller;

or at such other address as may have been furnished in writing by  
such party to the other parties to this Agreement.

ARTICLE 8. Law Governing. The terms of this Agreement and  
all rights and obligations hereunder shall be governed by the  
laws of the Commonwealth of Pennsylvania.

ARTICLE 9. Execution. Although for convenience this  
Agreement 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 have executed or  
caused this instrument to be executed all as of the date first  
above written.

WITNESSES:

OPERATING LEASE SERVICES, INC.

Louis E. Morham

BY: Paul E. Tierney, Jr.

WHITTAKER CORPORATION (Berwick  
Forge and Fabricating Division)

Charles J. Emery

BY: Peter C. Bayer



Description of Equipment

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Road Numbers (Inclusive)</u>	<u>Builder's Base Price</u>	
			<u>Unit</u>	<u>Aggregate</u>
70 Ton, 50'-6" Special Purpose XF Boxcars	30	DM 20270- DM 20299	\$41,000	\$1,230,000
70 Ton, 50'-6" Special Purpose XF Boxcars	<u>30</u>	DM 20240- DM 20269	\$39,000	<u>\$1,170,000</u>
	<u>60</u>			<u>\$2,400,000</u>

Delivery

October 1, 1979 to  
March 31, 1980 at  
Builder's Plant

Certificate of Acceptance No. \_\_\_\_\_

Reference is made to (i) the Boxcar Agreement dated October 23, 1979 between Operating Lease Services, Inc. ("Owner") and Detroit & Mackinac Railway Company ("Railroad"); (ii) the Purchase Agreement between the Owner and Whittaker Corporation (Berwick Forge and Fabricating Division) ("Builder") referred to in the Boxcar Agreement; (iii) the Loan and Security Agreement dated as of October 23, 1979 between the Owner and Manufacturers Hanover Leasing Corporation ("Lender"), all relating to up to Sixty (60) Special Purpose XF Boxcars ("Units").

The undersigned hereby certifies that:

1. He is an employee of the Railroad duly authorized to receive delivery of, inspect and accept the Units on behalf of the Railroad and the Owner;

2. The Units whose Serial Numbers are listed below (i) have been delivered by the Builder, (ii) have been inspected by the undersigned, (iii) conform to the specifications for the Units referred to in the Purchase Agreement, (iv) conform to all requirements and interchange standards of the Association of American Railroads, the Interstate Commerce Commission, and the Department of Transportation, (v) conform to all other specifications and requirements of the Boxcar Agreement, and (vi) are marked in accordance with the requirements of Section 8 of the Boxcar Agreement and Section 6.18 of the Loan and Security Agreement.

The undersigned hereby accepts the Units whose Serial Numbers are listed below on behalf of (a) the Owner pursuant to the Purchase Agreement, and (b) the Railroad pursuant to the Boxcar Agreement.

Dated: \_\_\_\_\_

Detroit & Mackinac Railroad Company

BY: \_\_\_\_\_

Total Number of Units:

Serial Numbers of Units:

BILL OF SALE

WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (the "Builder"), in consideration of the sum of One Dollar and other good and valuable consideration paid by Operating Lease Services, Inc. (the "Buyer"), receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the Buyer, its successors and assigns, the following described equipment which has been delivered by the Builder to the Buyer, to wit:

<u>Number of Units</u>	<u>Description</u>	<u>Serial Numbers</u>
------------------------	--------------------	-----------------------

TO HAVE AND TO HOLD all and singular the equipment above described to the Buyer, its successors and assigns, for its and their own use an behoof forever.

And the Builder hereby warrants to the Buyer, its successors and assigns, that at the time of delivery to the Buyer the Builder was the lawful owner of said equipment; that title to said equipment is free from all claims, liens, and encumbrances and demands suffered by, through, or under the Builder and that the Builder has good right to sell the same as aforesaid; and the Builder covenants that it will warrant and defend such title against all such claims, liens, encumbrances and demands whatsoever.

WHITTAKER CORPORATION  
(BERWICK FORGE AND  
FABRICATING DIVISION)

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

Dated: \_\_\_\_\_, 19