

RECORDATION NO. 8374-C
Filed & Recorded
JUL 1 1977-11 25 AM
INTERSTATE COMMERCE COMMISSION



June 28, 1977

RECORDATION NO. 8374-D
Filed & Recorded

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

182-1043
JUL 1 1977
Date
Fee \$
CC Washington, D. C.

RE: Conditional Sale Agreement made as of June 15, 1976,
filed with the ICC on June 18, 1976, at 2:10 p.m. and
assigned recordation number 8374.

Dear Sir:

Enclosed for filing with and recording by the Interstate
Commerce Commission are eight (8) executed counterparts of a
Second Amendment and Supplement dated as of June 24, 1976 to
the above referenced Conditional Sale Agreement dated as of
June 15, 1976, between SSI Rail Corp., Two Embarcadero
Center, San Francisco, California, 94111, Buyer, and Citibank,
N. A., 399 Park Avenue, New York, New York, 10022, covering
the following railroad equipment:

50 70-ton, 50'6", general service, single sheath boxcars
built by FMC Corporation, numbered APA 1800 through
APA 1849, inclusive.

Identifying marks on all of the foregoing equipment:
The words, "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20C,"
printed on each side of each unit.

Also enclosed are eight (8) executed counterparts of an
Agreement and Assignment assigning the interest of The Bank
of California, 400 California Street, San Francisco, California,
94104 (which was previously assigned to such bank by FMC
Corporation) to Citibank, N. A. The Conditional Sale
Agreement, as amended, is guaranteed by ITEL Corporation,
One Embarcadero Center, San Francisco, California, 94111,
the parent company of SSI Rail Corp.

David M. Schwartz

Mr. Homme
June 28, 1977
Page 2

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.

Please return all additional copies of the enclosed counterparts (with recordation data stamped thereon) not required by the Interstate Commerce Commission to the representative of the office of Sullivan and Worcester, Attorneys at Law, Washington, D. C., who will be delivering this letter on our behalf.

Very truly yours,



Martin D. Goodman
Secretary

MDG:md

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

July 1, 1977

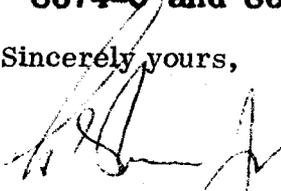
Martin D. Goodman
SSI Rail Corp.

Two Embarcadero Center
San Francisco, CA 94111

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **7/1/77** at **11:35 AM**, and assigned recordation number(s) **8374-C and 8374-D.**

Sincerely yours,



H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

JUL 1 1977-11 35 AM

SECOND AMENDMENT AND SUPPLEMENT TO CONDITIONAL SALE
AGREEMENT made as of June 24, 1977. INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H:

WHEREAS, FMC Corporation, a Delaware corporation (hereinafter called "Builder"), and SSI Rail Corp., a Delaware corporation (hereinafter called "Railroad,") heretofore entered into a conditional sale agreement made as of June 15, 1976, filed and recorded with the Interstate Commerce Commission and assigned Recordation No. 8374 (hereinafter called "the Conditional Sale Agreement,") providing for the construction, sale and delivery by Builder and the purchase by Railroad of fifty (50) 50' 6" 70-ton capacity, general service, single sheath boxcars numbered APA 1800 through APA 1849 inclusive (hereinafter called "the Equipment"):

WHEREAS, pursuant to a First Amendment and Supplement to Conditional Sale Agreement dated July 2, 1976, filed and recorded with the Interstate Commerce Commission on July 6, 1976 at 11:55 a.m. and assigned Recordation No. 8374-B (the "First Amendment") (the Conditional Sale Agreement and the First Amendment are hereinafter referred to collectively as the Conditional Sale Agreement, as amended), the Conditional Sale Agreement was amended; and

WHEREAS, pursuant to an Agreement and Assignment dated as of July 2, 1976, filed and recorded with the Interstate Commerce Commission on July 6, 1976 at 11:55 a.m. and assigned Recordation No. 8374-A (the Assignment"), The Bank of California, N.A. ("Bank") was assigned Builder's interest in the Conditional Sale Agreement, as amended; and

WHEREAS, Citibank, N. A., a Delaware corporation, ("Assignee") has agreed to accept an assignment of the Conditional Sale Agreement, as amended and as hereinafter further amended and supplemented and to pay Bank the consideration for such assignment on the condition that the Conditional Sale Agreement, as amended, be so further amended and supplemented; and

WHEREAS, as an inducement to Assignee to accept the assignment of the Conditional Sale Agreement, as amended and to pay Bank the consideration for such assignment, Railroad and Assignee have agreed to amend and supplement the Conditional Sale Agreement concurrently with the execution of the Assignment from Bank to Assignee as hereinafter set forth; and

WHEREAS, SSI has entered into a Lease Agreement with The Apache Railway Company dated as of June 1, 1976 (the "Lease Agreement"), pursuant to which SSI has supplied and The Apache Railway Company has leased the Equipment.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements hereinafter set forth, Builder and Railroad hereby agree as follows:

(1) Section 3 of the Conditional Sale Agreement, as amended, entitled Purchase Price and Payment, is hereby deleted in its entirety and the following added in lieu thereof:

"3. Purchase Price and Payment. The total purchase price for the Equipment shall be \$1,675,613.00 Railroad hereby acknowledges itself to be indebted to Builder in the amount of such total purchase price for the purchase of the Equipment and hereby promises to pay said amount and interest thereon in cash to Builder at such place as Builder may designate as follows:

(a) \$335,122.60 on July 6, 1976; and

(b) \$1,340,490.40 ("the Conditional Sale Indebtedness") together with interest thereon or on so much thereof as from time to time remains unpaid at the rate per annum of 120% of the Assignee's Prime Rate, such interest rate to change on the day the said Prime Rate changes, interest payable monthly on the first day of each month with the Conditional Sale Indebtedness due and payable on June 30, 1978.

"All payments 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. All payments made pursuant to (b) above shall be applied first to accrued interest at the rate herein specified and the balance to the Conditional Sale Indebtedness. Railroad has the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due. Railroad agrees at any time upon request by Builder to execute a promissory note evidencing the then unpaid balance of the Conditional Sale Indebtedness and the interest thereon and the payments to be made thereunder as herein set forth."

(2) Section 11 of the Conditional Sale Agreement, as amended, entitled Remedies, is hereby amended and supplemented by deleting the following:

"(f) ITEL makes default in its obligations under its take out commitment dated July 2, 1976."

and substituting in lieu thereof the following:

"(f) ITEL makes default in its obligations under its Take Out Commitment to Citibank, N. A. dated as of June 24, 1977 and Continuing Guaranty dated as of June 24, 1977."

(3) Section 14 of the Conditional Sale Agreement, as amended, entitled Law of Governing, is hereby deleted in its entirety and the following added in lieu thereof:

"14. Governing Law. Railroad warrants that its chief place of business and its chief executive offices are located in the state of California. The terms of this agreement and all rights and obligations hereunder shall be governed by the state of New York, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and any rights arising out of the marking on the units of the Equipment as herein provided."

(4) Section 19 of the Conditional Sale Agreement, as amended, entitled Reports and Inspections is hereby deleted in its entirety and the following is added in lieu thereof:

"19. Reports and Inspections. On or before March 31, in each year, commencing with the year 1978, Railroad shall furnish to Builder an accurate statement (a) setting forth as at the preceding December 31, the amount, description and numbers of all units of Equipment then subject to this Agreement, the amount, description and numbers of any unit of Equipment that has suffered a Casualty Occurrence or has been withdrawn from use and such other information regarding the condition, use and state of repair of the Equipment as Builder may reasonably request, and (b) stating that the numbers and markings required by section 6 of the Conditional Sale Agreement have been preserved or replaced. Builder shall have the right to as inspect the Equipment and Railroad's records with respect thereto at any reasonable time. Railroad will furnish to Builder (c) as soon as available and in any event within ninety (90) days after the end of the first, second and third quarterly accounting periods in each fiscal year of Railroad, copies of the balance sheet as of the end of such accounting period and copies of the related statements of income and retained earnings of Railroad for the portion of its

fiscal year ending with the last day of such quarterly accounting period, all in reasonable detail and stating in comparative form the figures for the corresponding period in the previous fiscal year; and (d) as soon as available and in any event within 120 days after the end of each fiscal year of Railroad copies of the balance sheet of Railroad and of the related statements of income and retained earnings for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year, and certified by Railroad's independent and public accountants."

(5) Section 20 of the Conditional Sale Agreement, as amended, entitled Prohibition Against Liens, is further amended and supplemented by deleting from the eleventh line on page 9 of the First Amendment the word "Railroad" and substituting in lieu thereof the word "Builder."

(6) Section 22 of the Conditional Sale Agreement, as amended, entitled Notices is hereby supplemented by deleting section 22(c) thereof and substituting the following:

(c) To Assignee at:

399 Park Avenue
New York, New York 10022

(7) The Conditional Sale Agreement, as amended, is hereby supplemented by adding as section 23 thereof the following:

"23. Assignment. SSI shall, in order to provide security for the obligations of SSI under this Agreement, grant to Builder, upon request, an assignment of the Lease Agreement in a form satisfactory to Builder, as and only to the extent that the Lease Agreement relates to Equipment. SSI represents and warrants that it has not made any assignment with respect to such Equipment and it shall not make any assignment with respect to the Lease Agreement of such Equipment to any party other than Builder."

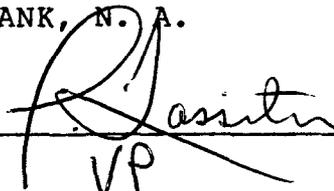
(8) The Conditional Sale Agreement as hereby amended and supplemented is hereby ratified and confirmed.

(9) This instrument may be executed in any number of counterparts all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument to be executed under the respective seals of the undersigned all as of the date first above written.

CITIBANK, N. A.

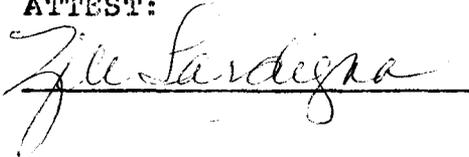
By



Title

VP

ATTEST:



SSI RAIL CORP.

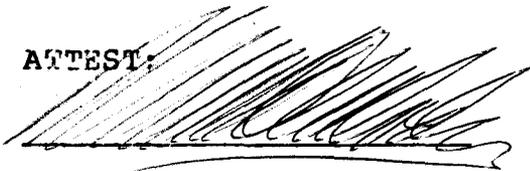
By



Title

Vice President

ATTEST:



State of New York)
County of New York)

SS:

On this 30th day of June, 1977, before me personally appeared Phillip B. Lassiter, to me personally known, who, being by me duly sworn, says that he is Vice President of Citibank, N. A., 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.

Rosemary Ferguson
Notary Public

[Notarial Seal]

My Commission Expires:

ROSEMARY FERGUSON
Notary Public, State of New York
No. 01FE7874785
Qualified in Queens County
Commission Expires March 30, 1978

STATE OF CALIFORNIA)

) SS:

CITY AND COUNTY)
OF SAN FRANCISCO)

On this 28th day of June, 1977, before me personally appeared Donald H. Gleason, to me personally known, who, being by me duly sworn, says that he is Vice President of SSI Rail Corp., 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.

Terry L. Russell
Notary Public

[Notarial Seal]

My Commission Expires:

May 10, 1980

