RECORDATION NO. 9085-B Filed & Recorded
DEC 5 1977 - 1 10 PM
INTERSTATE COMMERCE COMMISSION

SSI RAIL CORP.

7-339A070

Date DEC 5 1977
Fee $ 20-
ICC Washington, D. C.

November 22, 1977

RECORDATION NO. 9085-A Filed & Recorded
DEC 5 1977 - 1 10 PM
INTERSTATE COMMERCE COMMISSION

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

Dear Sir:

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

First Amendment and Supplement dated as of November 22, 1977 to the Conditional Sale Agreement made as of November 9, 1977 between FMC Corporation, 200 East Randolph Drive, Chicago, Illinois, 60601, and SSI Rail Corp., Two Embarcadero Center, San Francisco, California, 94111.

Agreement and Assignment made as of November 22, 1977 between FMC Corporation and Chemical Bank, 20 Pine Street, New York, New York, 10015.

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.

These documents relate to that certain Conditional Sale Agreement made as of November 9, 1977, filed and recorded with the Interstate Commerce Commission on November 15, 1977 at 12:50 p.m. and assigned recordation number 9085. Therefore, we respectfully request that the documents submitted herein be cross-referenced to the aforementioned Conditional Sale Agreement and assigned recordation numbers 9085 A and B.

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.

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

Counterpart - Ronald Carlson

DEC 5 1 05 PM '77
FEE
RECEIVED
I.C.C.
FEE DIVISION BR.

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

Interstate Commerce Commission

Washington, D.C. 20423

12/5/77

OFFICE OF THE SECRETARY

Martin D. Goodman
Two Embarcadero Center
San Francisco, Calif. 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 12/5/77 at 1:10pm, and assigned recordation number(s) 9085-A & 9085-B

Sincerely yours,

H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

FIRST AMENDMENT AND SUPPLEMENT TO CONDITIONAL SALE AGREEMENT made as of November 22, 1977.

RECORDATION NO. 9085-A Filed & Recorded

DEC 5 1977 - 1 40 PM

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 "SSI"), heretofore entered into a conditional sale agreement made as of November 9, 1977, filed and recorded with the Interstate Commerce Commission on November 15, 1977 at 12:50 p.m. and assigned Recordation No. 9085 (hereinafter called "the Conditional Sale Agreement,") providing for the construction, sale and delivery by Builder and the purchase by SSI of fifty (50) 50'6", 70-ton capacity general purpose, single sheath boxcars, AAR Mechanical Designation XM, numbered VTR 3501 through 3550, inclusive (hereinafter called "the Equipment"):

WHEREAS, Chemical Bank ("Assignee") has agreed to accept an assignment of the Conditional Sale Agreement as hereinafter amended and supplemented and to pay Builder the consideration for such assignment on the condition that the Conditional Sale Agreement be so amended and supplemented; and

WHEREAS, as an inducement to Assignee to accept the assignment of the Conditional Sale Agreement and to pay Builder the consideration for such assignment, Builder and SSI have agreed to amend and supplement the Conditional Sale Agreement as hereinafter set forth; and

WHEREAS, SSI has entered into a Lease Agreement (the "Lease") with Vermont Railway, Inc. (the "Lessee") dated as of December 4, 1975, pursuant to which SSI has agreed to supply, and Lessee has agreed to lease, the Equipment;

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

(1) Section 3 of the Conditional Sale Agreement, 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 $1,656,583.50. SSI hereby acknowledges itself to be indebted to Builder in the amount of the total purchase price for 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) $331,316.70 prior to or upon the filing of this Agreement with the Interstate Commerce Commission and the assignment of the Conditional Sale Agreement to Assignee; and

(b) $1,325,266.80 ("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 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 December 30, 1977.

"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 accured interest at the rate herein specified and the balance to the Conditional Sale Indebtedness. SSI has the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due. SSI 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 4 of the Conditional Sale Agreement, entitled Taxes, is hereby supplemented by adding at the end thereof the following:

"SSI will also pay promptly all such taxes, fees, assessments, charges, fines or penalties which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon Builder solely by reason

of its ownership thereof. If any such taxes, fees, assessments, charges, fines or penalties shall have been charged or levied against Builder directly and paid by Builder, SSI shall reimburse Builder upon the presentation of an invoice therefor and any amounts so paid by Builder shall be secured by and under this Agreement."

(3) Section 8 of the Conditional Sale Agreement, entitled Indemnities, is hereby deleted in its entirety and the following added in lieu thereof:

"8. Indemnities. SSI shall indemnify, protect and hold harmless Builder from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by Builder of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any unit of Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any unit of Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains subject to this Agreement or the transfer of title to the Equipment by Builder pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness and the conveyance of title to the Equipment, or the termination of this Agreement in any manner whatsoever. SSI will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment."

(4) Section 10 of the Conditional Sale Agreement, entitled Assignments, is hereby further amended and supplemented by deleting from the second paragraph thereof the following:

"shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder."

and adding in lieu thereof the following:

"as well as any other rights under the Conditional Sale Agreement which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, or exception of Builder from any indemnity made by SSI, arising out of any breach of any obligation of Builder, including any obligation of Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to SSI by Builder or by reason of any act or omission on the part of Builder. Any such obligation, howsoever arising, shall be and remain enforceable by SSI against and only against Builder."

(5) Section 11 of the Conditional Sale Agreement, entitled Remedies, is hereby deleted in its entirety and the following added in lieu thereof:

"11. Defaults and Remedies. Any one or more of the following events shall constitute an event of default under this Agreement:

(a) Failure to pay in full any installment of the Conditional Sale Indebtedness and the interest thereon or any other sum payable by SSI hereunder as provided in this Agreement within five (5) days after the payment thereof shall be due hereunder; or

(b) Failure to observe and perform any other covenant or agreement to be observed or performed by SSI hereunder which failure continues for thirty (30) days after written notice of such failure is given to SSI by Builder;

(c) Institution of bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the

relief of debts, against SSI or ITEL Corporation ("ITEL"), and if instituted against SSI or ITEL, are consented to or are not dismissed within sixty (60) days after such institution;

(d) A trustee or receiver is appointed for SSI or ITEL for the substantial part of its respective property and not dischaged within sixty (60) days after such appointment;

(e) SSI or ITEL becomes insolvent or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors or applies or consents to the appointment of a trustee or receiver for it or a major part of its respective property; or

(f) ITEL makes default in its obligations under its Debt Servicing Agreement or Take-out Letter to Assignee, each of which is dated as of November 22, 1977.

SSI shall promptly notify Builder of any event which has come to its attention which constitutes or with the giving of notice or the lapse of time or both would constitute an event of default under this Agreement.

"At any time during which an event of default has occurred and is continuing, Builder may, at its option, exercise any one or more of the following rights and remedies:

(a) Declare the entire unpaid Conditional Sale Indebtedness together with interest thereon to be immediately due and payable without further demand and cause any lease of the Equipment then in effect to be immediately terminated, and upon such declaration, Builder shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness with interest thereon and expenses in connection therewith (including attorneys' fees), and to collect such judgment out of any assets of SSI wherever situated;

(b) Take immediate possession of the Equipment or any one or more units thereof without liability to return to SSI any sums theretofore paid and free from all claims whatsoever, and may remove the same from possession and use of SSI or any other person, and for such purpose

may enter upon the premises of SSI or other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage or other facilities of SSI. If Builder shall designate a reasonable point or points for the delivery of the Equipment to Builder, SSI shall at its own expense and risk, forthwith in the usual manner cause the Equipment to be moved to and assembled at such location and shall there deliver the Equipment to Builder; and furnish for a period not to exceed 150 days, without charge or rent for storage, the necessary facilities at any point or points reasonably selected by Builder to store the Equipment until it has been disposed of by Builder. The agreements set forth in this subparagraph (b) are of the essence of this Agreement, and upon application to any court having equity jurisdiction, Builder shall be entitled to a decree of specific performance of such provisions. SSI hereby expressly waives any and all claims against Builder for damages of whatsoever nature in connection with any retaking of any unit of Equipment in a reasonable manner;

(c) Builder may elect to retain the Equipment in satisfaction of the unpaid Conditional Sale Indebtedness and interest thereon and dispose of the Equipment as Builder shall deem best. Builder shall give SSI written notice of its election to retain the Equipment at least thirty (30) days prior to any disposal of the Equipment by Builder;

(d) Builder may at its election and upon reasonable notice to SSI, with or without retaking possession of the Equipment, sell the Equipment or any one or more units thereof in one lot or in separate lots without the necessity of gathering at the place of sale the property to be sold free from any and all claims of SSI at public or private sale, provided that if SSI shall tender full payment of the total unpaid Conditional Sale Indebtedness together with interest thereon and expenses incurred by Builder in arranging for such sale (including reasonable attorneys' fees) the possession of and title to the Equipment shall pass to SSI. Builder may bid for or become the purchaser of the Equipment, or any unit thereof, so offered for sale.

The proceeds of any such sale or other disposition, less the attorneys' fees and any other expense incurred by Builder in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to Builder under the provisions of this Agreement;

(e) Builder shall have and may exercise any of the rights and remedies of a secured party under the Uniform Commercial Code of California (regardless of whether such code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted);

(f) Builder may exercise such one or more other rights it may have at law or in equity or otherwise to enforce its rights hereunder.

"SSI will pay all reasonable expenses, including attorneys' fees, incurred by Builder in enforcing its remedies under this Agreement.

"If after applying all sums of money realized by Builder under the remedies herein provided, there shall remain any amount due it under the provisions of this Agreement, SSI shall pay the amount of such deficiency to Builder upon demand, and if SSI shall fail to pay such deficiency, Builder may bring suit therefore and shall be entitle to recover a judgment therefore against SSI. If after applying the aforesaid all sums realized by Builder, there shall remain a surplus in the possession of Builder, such surplus shall be paid to SSI or to such person as may be entitled thereto.

"Each and every power and remedy hereby specifically given to Builder shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by Builder. All such powers and remedies shall be cumulative and the exercise of any one shall not be deemed a waiver of the right to exercise any other. No delay or omission of Builder in the exercise of any such power or remedy and no renewal or extension of payment hereunder

shall impair any such power or remedy or shall be construed to be a waiver of any default hereunder. Builder's acceptance of any payment after it shall become due shall not be deemed to alter or affect SSI's obligations hereunder with respect to any subsequent payments."

(6) Section 13 of the Conditional Sale Agreement, entitled Insurance, is hereby supplemented by adding at the end thereof the following:

"Such insurance shall name Builder as an additional insured and loss payee and shall provide that it cannot be canceled except upon thirty (30) days prior written notice to Builder."

(7) Section 14 of the Conditional Sale Agreement, entitled Governing Law, shall be supplemented by adding at the end thereof the following:

"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."

(8) The Conditional Sale Agreement is hereby supplemented by adding as Section 18 thereof the following:

"18. Casualty Occurence and Prepayment. In the event that any unit of Equipment shall be worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurences being herein called "Casualty Occurences"), SSI shall promptly after it shall have determined that such unit has suffered a Casualty Occurence, notify Builder fully as to the details thereof. On the next succeeding date upon which a quarterly installment becomes due, SSI shall promptly pay to Builder a sum equal to that portion of the purchase price of such unit remaining unpaid on the date of such payment plus interest accrued thereon as of such date. For the purpose of this section, each payment made in respect of the Equipment pursuant to Section 3 of this Agreement shall be deemed to be a payment on each unit of the Equipment in like proportion as the original purchase price of such unit bears to the aggregate original purchase price of the Equipment. Any money paid

to Builder pursuant to this section shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness. Any condemantion payments or insurance proceeds received by Builder in respect of a unit of Equipment suffering a Casualty Occurence shall be deducted from the amount payable by SSI to Builder in respect of such Casualty Occurence. Upon the Payment by SSI to Builder of the sum required to be paid pursuant to this section with respect to a unit of Equipment suffering a Casualty Occurence, title to such unit and the absolute right to possession thereof shall pass to SSI without further action on the part of Builder."

(9) The Conditional Sale Agreement is hereby supplemented by adding as section 19 thereof the following:

"19. Reports and Inspections. On or before March 31, in each year, commencing with the year 1979, SSI 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 Occurence 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 inspect the Equipment and SSI's records with respect thereto at any reasonable time.

"SSI 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 SSI, 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 SSI 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 SSI copies of the balance sheet of SSI 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 SSI's independent public accountants."

(10) The Conditional Sale Agreement is hereby supplemented by adding as section 20 thereof the following:

"20. Prohibition Against Liens. SSI will pay or discharge all sums claimed by any party from, through or under SSI which if unpaid might become a lien, charge or security interest on or with respect to the Equipment or any unit thereof equal or superior to Builder's security interest therein, provided that SSI shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings and the non-payment does not adversely affect the security interest of Builder in or to the Equipment."

(11) The Conditional Sale Agreement is hereby supplemented by adding as Section 21 thereof the following:

"21. Possession and Use. SSI, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled to the use and possession of the Equipment, but only upon and subject to all the terms and conditions of this Agreement. SSI shall not permit any unit of Equipment to be used in any service involving the regular operation and maintenance thereof outside the continental United States."

(12) The Conditional Sale Agreement is hereby supplemented by adding as section 22 thereof the following:

"22. Assignment. SSI shall, if requested, in order to provide security for the obligations of SSI under this Agreement, grant to Builder, upon request, an assignment of the Lease in a form satisfactory to Builder, as and only to the extent that the Lease relates to the 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 of such Equipment to any party other than Builder."

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

"23. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be propertly served if delivered or mailed as follows:

(a) To Builder at:

200 East Randolph Drive
Chicago, Illinois 60601

(b) To SSI at:

Two Embarcadero Center
San Francisco, California 94111
ATTN: President

(c) To Assignee at:

20 Pine Street
New York, New York 10015

or to such other address as may have been furnished in writing by such party to the other parties hereto."

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

(15) 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.

FMC CORPORATION

By William R. Gallenzeth
Title Div. V. P. Sales

ATTEST:
K. K. Knutzen

SSI RAIL CORP.

By [signature]
Title Vice President

ATTEST:
[signature]