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 - Lord Carlson

RECEIVED
DEC 5 1 06 PM '77
I.C.C.
FEE REGISTRATION BR.

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

AGREEMENT AND ASSIGNMENT ("this Assignment") made as of this 22nd day of November, 1977, between FMC Corporation, a Delaware corporation (hereinafter called "Builder"), and Citibank, N.A. (hereinafter called "Assignee");

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INTERSTATE COMMERCE COMMISSION

W I T N E S S E T H:

Whereas, 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, Builder has delivered and SSI has accepted the Equipment; and

WHEREAS, the parties anticipated that the Conditional Sale Agreement and the right, title and interest of Builder in and to the Equipment would be sold and assigned to Assignee;

NOW, THEREFORE, in consideration of the premises and the sum of one million three hundred twenty-five thousand two hundred sixty-six dollars and eighty cents ($1,325,266.80) paid to Builder by Assignee, the receipt and sufficiency of which are hereby acknowledged, and of the covenants herein set forth, the parties agree as follows:

1. Builder hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns, the following:

(a) All the right, title and interest of Builder in and to the Equipment subject to the Conditional Sale Agreement; and

(b) All right, title, interest, powers, privileges and remedies of Builder in, to and under the Conditional Sale Agreement (except payments heretofore made by SSI to Builder) including all amounts which may be or become due or owing under the Conditional Sale Agreement on account of the purchase price for the Equipment and the interest thereon and any other sums becoming due from SSI under the Conditional Sale Agreement;

without any recourse, however, against Builder for or on account of the failure of SSI to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject Assignee to or transfer or pass or in any way affect or modify the obligations and warranties of Builder under the Conditional Sale Agreement or relieve SSI of its obligations to Builder under article 8 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment all obligations of Builder to SSI shall remain enforceable by SSI against and only against Builder. In furtherance of the foregoing assignment and transfer, Builder hereby authorizes and empowers Assignee in the Assignee's own name, or in the name of and as attorney for Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may be entitled under this Assignment and compliance by SSI with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of Assignee.

2. Builder hereby warrants to Assignee that it owns all the right, title, interest, powers, privileges and remedies of Builder in, to and under the Conditional Sale Agreement free from all claims, liens, security interests or prior assignment, and that it has a good right to assign and transfer the same as herein done. Builder hereby warrants to Assignee and SSI that it has legal title to the Equipment and good and lawful right to sell the same and that its title to the Equipment is free of all claims, liens, security interests or other encumbrances of any nature created by the act of the Builder, except only the rights of SSI under the Conditional Sale Agreement; and Builder does further covenant with Assignee and SSI that it will warrant and defend the title to the Equipment against the demands and claims of all persons, subject only to the rights of SSI under the Conditional Sale Agreement; and Builder further warrants that no unit of Equipment was delivered to SSI

under the Conditional Sale Agreement prior to the time that such unit was numbered and marked as provided in Section 6 of the Conditional Sale Agreement or prior to the time the Conditional Sale Agreement was filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act.

3. Builder agrees with Assignee that in any suit, proceeding or action brought by Assignee under the Conditional Sale Agreement for any amount due thereunder or to enforce any provision thereof, Builder will indemnify, protect and hold harmless Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by SSI arising out of a breach or alleged breach by Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any other indebtedness or liability at any time owing to SSI by Builder or by reason of any act or omission of Builder. Builder's obligation so to indemnify, protect and hold harmless Assignee is conditioned upon (a) the Assignee's timely motion to strike any such defense, setoff, counterclaim or recoupment asserted by SSI, and (b) if the court or other body having jurisdiction denies such motion or other action and accepts such a defense, setoff, counterclaim or recoupment, Assignee's prompt notification to Builder and Assignee's giving Builder the right, at Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

4. Except in cases of articles, materials and designs furnished or specified by SSI and not manufactured by Builder, Builder agrees to indemnify, protect and hold harmless Assignee from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against Assignee because of the use in or about the construction or operation of any unit of Equipment of any such articles, materials and designs which infringes or is claimed to infringe on any patent or other right. Assignee will give prompt notice to Builder of any claim actually known to Assignee which is based upon any such alleged infringement and will give Builder the right, at Builder's expense, to compromise, settle or defend against such claim.

5. Builder agrees that any amount payable to it by SSI with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, and not hereby assigned to Assignee, shall not be secured by any lien, charge or security interest upon the Equipment.

6. Builder hereby represents and warrants to Assignee that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it and insofar as Builder is concerned is a legal, valid and existing agreement binding upon Builder in accordance with its terms and is now in full force without further amendment or modification thereto.

7. Builder hereby agrees that it will from time to time at the Request of Assignee make, execute and deliver all such future instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate to give effect to the provisions set forth herein and more perfectly confirm the right, title and interest hereby assigned and transferred to Assignee or intended so to be.

8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of California, provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to Assignee shall be deemed to be the original counterpart.

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

FMC CORPORATION

By William R. Goldsmith
Its Div. V.P. Sales

ATTEST:

Its Asst. Sec.
[CORPORATE SEAL]

CHEMICAL BANK

By Paul Fitzgerald
Its Vice President

ATTEST:

Its Ass't. Secretary
[CORPORATE SEAL]

STATE OF OREGON)
) SS:
COUNTY OF MULTNOMAH)

On this 30th day of November, 1977, before me personally appeared William R. Galbraith, to me personally known, who, being by me duly sworn, says that he is Division V.P., Sales, of FMC Corporation, that one of the seals affixed to the aforegoing 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.

Sadie Parsons
Notary Public

[Notarial Seal]

My Commission expires: November 4, 1981

STATE OF NEW YORK)
) SS:
COUNTY OF New York)

On this 2nd day of ~~November~~ December, 1977, before me personally appeared Paul Fitzgerald, to me personally known, who, being by me duly sworn, says that he is Vice President of Chemical Bank, that one of the seals affixed to the aforegoing 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.

Sophie LaDue
Notary Public

[Notarial Seal]

SOPHIE LA DUE
Notary Public, State of New York
No. 30-7401525
Qualified in Nassau County
Commission Expires March 30, 1978

My Commission expires:

ACKNOWLEDGMENT OF NOTICE AND CONSENT TO ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment between FMC Corporation and Chemical Bank and the terms and conditions set forth therein is hereby acknowledged and consented to as of November 22, 1977.

SSI RAIL CORP.

By: _____
Donald H. Gleason
Vice President