

DEC 29 1988 7.5 JPM
RECORDATION NO. 7230 FROM 1485

6104

BILL OF SALE, ASSIGNMENT AND ASSUMPTION

BILL OF SALE, ASSIGNMENT AND ASSUMPTION dated as of December 29, 1988 ("Agreement") between BWAC SUB TWO, INC., a Delaware corporation ("Seller"), and WESTINGHOUSE CREDIT CORPORATION, a Delaware corporation (the "Purchaser").

W I T N E S S E T H:

WHEREAS, pursuant to a Purchase Agreement dated as of December 29, 1988 (the "Purchase Agreement") Seller has agreed to sell, and Purchaser has agreed to purchase, certain assets and beneficial interests;

WHEREAS, Purchaser has agreed to assume related liabilities; and

WHEREAS, Seller and Purchaser desire to complete as of the date hereof the sale of the assets identified on Schedule A hereto (such beneficial interests being hereinafter referred to as the "Assets").

NOW, THEREFORE, in consideration of the mutual premises herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereby agree as follows:

ARTICLE I

Sale, Assignment and Assumption

Section 1.01. Sale and Assignment. Except as set forth in Section 1.02 with respect to insurance matters, Seller, as of the date hereof, hereby unconditionally and irrevocably assigns, transfers, sells and conveys to the Purchaser all of its right, title and interest (i) in and to the Assets, and (ii) in, to and under the documents and agreements listed on Schedule B hereto (the "Lease Transaction Documents").

TO HAVE AND TO HOLD all of Seller's right, title and interest in and to the Assets unto Purchaser, its successors and assigns, to its and their own use forever.

AND IN FURTHER CONSIDERATION as aforesaid, Seller and Purchaser, respectively each for itself, its successors and assigns, has covenanted, bargained and agreed and by this Bill of Sale hereby covenants, bargains and agrees each to and with the other, its successors and assigns, as follows:

1. Seller hereby covenants and warrants that as of the date of this Bill of Sale it is the true and lawful owner and has good title to the properties, assets, rights and interests sold, conveyed, assigned and transferred by this Bill of Sale, free and clear of all liens, security interests and encumbrances of any kind whatsoever ("Liens") (excepting only Liens which the Lessee under the applicable Lease Transaction Documents is required to discharge thereunder and Liens as are created by or permitted

(other than Liens created by or through Seller) under the Lease Transaction Documents); and Seller hereby covenants that it has full power, good right, title and lawful authority as to all persons to sell, convey, assign and transfer the Assets to the Purchaser.

2. Upon written request of Purchaser, Seller at any time and from time to time will promptly execute and deliver to Purchaser, without further consideration but without expense to Seller, such other and further instruments of conveyance, assignment and transfer and other documents, and take such further action, as Purchaser may reasonably request for the more effective conveyance, assignment and transfer to Purchaser of any of the right, title and interest sold hereby or in order to obtain the full benefits of this instrument.

Section 1.02. Insurance. Seller hereby assigns to Purchaser all proceeds of insurance against loss or damage to the right, title and interest sold hereby to which it is entitled under insurance policies required to be maintained under the Lease Transaction Documents, except insurance proceeds payable in connection with any losses arising out of or based upon any act or event occurring and relating to any period ending prior to the Closing Date (other than insurance proceeds payable in connection with a casualty loss with respect to the Assets which Purchaser has purchased without diminution of the purchase price therefor on account of such casualty loss).

Seller hereby agrees that in the event that the Purchaser shall suffer any such loss as to which Purchaser shall be entitled to insurance proceeds, Seller will cooperate with Purchaser in obtaining the insurance proceeds payable in respect of such loss, and that to the extent that such proceeds are paid by the insurance carrier to Seller, Seller will promptly pay over the same to Purchaser, and Purchaser hereby agrees that any insurance proceeds received by the Purchaser in excess of such loss incurred by it shall be refunded promptly to Seller.

The sale and assignments described in Section 1.01 and Section 1.02 are hereinafter referred to as the "Assignment".

Section 1.03. Assumption. Purchaser, as of the date hereof, hereby (i) accepts the Assignment, (ii) agrees to be bound by all the terms of the Lease Transaction Documents, and (iii) unconditionally and irrevocably undertakes, accepts and assumes all of Seller's obligations and liabilities contained in or pursuant to the Lease Transaction Documents (the "Assumption").

Section 1.04. Confirmation. Purchaser hereby confirms and agrees that it shall be deemed to be (i) a party to the Lease Transaction Documents to which Seller was a party and (ii) the party named as the Company in the Lease Transaction Documents.

ARTICLE II

Representations and Warranties of Seller

Section 2.01. Seller hereby represents and warrants as follows as of the date hereof:

(a) Valid Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the corporate power and authority to enter into and perform the transactions contemplated hereby.

(b) Execution. The execution, delivery and performance of this Agreement by Seller have been duly authorized by all necessary corporate action on the part of Seller and this Agreement constitutes the legal, valid and binding obligation of Seller enforceable against it in accordance with its terms, except as enforceability may be limited by (A) applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws, now or hereafter in effect, affecting the enforceability of creditors' rights generally or (B) general principles of equity.

ARTICLE III

Representations and Warranties of Purchaser

Section 3.01. Purchaser hereby represents and warrants as follows as of the date hereof:

(a) Valid Organization. Purchaser is a corporation

duly organized, validly existing and in good standing under the laws of the State of Delaware, and has the corporate power and authority to enter into and perform the transactions contemplated by each of the Lease Transaction Documents and hereby.

(b) Authorization. The execution, delivery and performance of this Agreement and the performance of the duties under each of the Lease Transaction Documents by Purchaser have been duly authorized by all necessary corporate action on the part of Purchaser and this Agreement has been duly executed and delivered by Purchaser and each of this Agreement and each of the Lease Transaction Documents constitutes the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

(c) Purchaser's Net Worth. Purchaser is a solvent corporation and has a net worth in excess of \$100,000,000, determined in accordance with generally accepted accounting principles consistently applied.

ARTICLE IV

Miscellaneous

Section 4.01. Further Assurances. Upon written request of Purchaser, Seller at any time and from time to time will promptly execute and deliver to Purchaser, without further

consideration but without expense to Seller, such other and further instruments of conveyance, assignment and transfer and other documents, and take such further action, as Purchaser may reasonably request for the more effective conveyance, assignment and transfer to Purchaser of the Assets or in order to obtain the full benefits of this Agreement.

Section 4.02. Purchaser as Attorney-in-Fact. Seller hereby makes, constitutes and appoints Purchaser the true and lawful attorney-in-fact of Seller, with full power of substitution, in the name, place and stead of Seller, but on behalf and for the benefit of Purchaser, to demand and receive any and all of the aforesaid properties, assets, rights and interests of Seller, and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute, prosecute, appear in, defend and appeal in the name of Seller, or otherwise, at the expense and for the benefit of Purchaser, any and all actions, suits and proceedings at law, in equity or otherwise, which Purchaser may deem proper in order to collect or reduce to possession any of the aforesaid properties, assets, rights and interests of Seller and/or in order to collect or enforce any claim or right of any kind hereby sold, conveyed, assigned and transferred, or to resist or defend against any claim, debt, obligation, liability or assertion of a liability assumed by Purchaser, or intended so to be, and to do all acts and things in relation to the properties, assets, rights,

interests, liabilities and obligations which Purchaser shall deem desirable, Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by any act of Seller, or by its winding up and dissolution, or in any other manner or for any reason whatsoever.

Section 4.03. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 4.04. Notices. All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by overnight courier service or mailed by certified or registered mail with postage prepaid, return receipt requested, or sent by telex, telegram, cable or facsimile or other electronic transmission confirmed by such mail or courier service, provided that the failure so to confirm shall not affect the validity of such communication), addressed as set forth on the signature pages hereof or at such other address as any party hereto may designate by notice duly given in accordance with this Section 4.04 to the other parties hereto. Notice shall be deemed to have been given when received.

Section 4.05. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same

agreement.

Section 4.06. Amendments and Waivers. No amendment or waiver of any provision hereof shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 4.07. Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be so affected only to the extent of such prohibition or unenforceability without affecting the validity or enforceability of the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Bill of Sale, Assignment and Assumption to be executed by their respective officers thereunto duly authorized as of the date and year first above written.

BILL OF
SALE

BWAC SUB TWO, INC.

By _____

Title:

Address: 1160 Battery Street
San Francisco, California 94111
Attention:

WESTINGHOUSE CREDIT CORPORATION

By _____

Title:

Address: One Oxford Centre
Pittsburgh, Pennsylvania
15219
Attention: Vice President,
Leasing Operations

STATE OF California)
COUNTY OF San Francisco) ss.:

On this _____ day of December, 1988, before me personally came Alex A Najjar to me known, who being by me duly sworn, did depose and say that he resides at 80 Toyon Lane Sausalito California 94965; that he is the President & Treasurer of BWAC SUB TWO, INC., the corporation described in, and which executed, the above instrument; and that he signed the same as the act of said corporation by order of the Board of Directors of said corporation; and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.



Veronica K. Mc Gregor
Notary Public

STATE OF _____)
COUNTY OF _____) ss.:

On this _____ day of December, 1988, before me personally came _____ to me known, who being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of Westinghouse Credit Corporation described in, and which executed the above instrument; and that he signed the same as the act of said corporation pursuant to a general resolution of the Board of Directors of said corporation; and he acknowledges that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

BILL OF
SALE

BWAC SUB TWO, INC.

By _____

Title:

Address: 1160 Battery Street
San Francisco, California 94111
Attention:

WESTINGHOUSE CREDIT CORPORATION

By _____

Title: *John M. ...*

Address: One Oxford Centre
Pittsburgh, Pennsylvania
15219
Attention: Vice President,
Leasing Operations

SCHEDULE A

[6104]

DESCRIPTION OF ASSETS

All right, title and interest of the Company in and to the equipment described below, the Equipment Trust Agreement dated as of October 15, 1973 between Borg-Warner Equities Corporation and Inter National Bank of Miami, as amended and supplemented to date, in and to the estate created for the benefit of the Company under such Equipment Trust Agreement, and in and to the Lease Agreement with Canadian Pacific Limited of even date therewith and the other related transaction documents.

Equipment: 188 bulkhead flatcars manufactured by Maine Industries Limited, with car numbers in the range of CPI 317000 to 317199, both inclusive.