



**Western Pacific
Railroad Company**
"THE FEATHER RIVER ROUTE"

Law Department
526 Mission Street
San Francisco, CA 94105
Telephone 415 982-2100

RECORDATION NO. **12926** 425

FEB 13 1981 - 11 10 AM

INTERSTATE COMMERCE COMMISSION

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February 12, 1981

File: 6116-79

The Honorable Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, D. C. 20423

No. **1-044A-140**
Date **FEB 13 1981**
Fee **50.00**
ICC Washington, D. C.

Re: Conditional Sale Agreement dated as of February 1, 1981, between The Western Pacific Railroad Company, Seller, and American Railcar Exchange, Buyer

Dear Secretary Mergenovich:

PACIFIC

Enclosed for filing with and recording by the Interstate Commerce Commission are five (5) original counterparts of a Conditional Sale Agreement dated as of February 1, 1981, between The Western Railroad Company, 526 Mission Street, San Francisco, California 94105, Seller, and American Railcar Exchange, Continental Plaza, 1006 West Ninth Avenue, King of Prussia, Pennsylvania 19406, Buyer, covering the following railroad equipment:

- 45 100-ton aluminum covered hopper cars, manufactured by Magor Car Company; AAR Mechanical Designation LO; Identifying marks: "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act"; Road numbers:

<u>Old Numbers</u>	<u>New Numbers</u>
WP 11851-11859, inclusive	RSVX 301-345
WP 11861-11870, inclusive	
WP 11872-11877, inclusive	
WP 11879-11891, inclusive	
WP 11893-11898, inclusive	
WP 11900	

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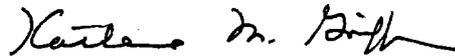
Open Report - C. H. Kimmel

The Honorable Agatha L. Mergenovich
Page Two

Also enclosed is this Company's voucher in the sum of \$50.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return three (3) of the enclosed counterparts with recordation data stamped thereon to the messenger who will be delivering this letter on our behalf.

Yours very truly,



Katherine M. Griffin

Enc.

KMG:dla

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Katherine M. Griffin
Western Pacific RR Co.
526 Mission Street
San Francisco, CA. 94105

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 2/13/81 at 11:10AM, and assigned re-
recording number(s). 12926

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

FEB 13 1981 - 11 10 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of
February 1, 1981

Between

THE WESTERN PACIFIC RAILROAD COMPANY, Seller

And

AMERICAN RAILCAR EXCHANGE, Buyer

For the Purchase of
Up to 45 Aluminum Covered Hopper Cars

CONDITIONAL SALE AGREEMENT dated as of February 1, 1981, between THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called the Seller) and AMERICAN RAILCAR EXCHANGE, a Pennsylvania corporation (hereinafter called the Buyer).

WHEREAS, the Seller has agreed to sell and deliver to the Buyer, and the Buyer has agreed to purchase for use in interstate commerce the equipment described in Schedule A hereto (such equipment or such lesser number as shall have been delivered and accepted hereunder being called the Equipment).

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

ARTICLE 1. Sale. Pursuant to this Agreement, the Seller will sell and deliver to the Buyer, and the Buyer will purchase from the Seller and accept delivery of and pay for (as hereinafter provided), all of the Equipment. Each unit of the Equipment shall as of the date of delivery be empty and shall be in suitable condition to move through interchange to a contract shop for running repairs in order to fully qualify for unrestricted use in interchange service. All equipment to be equipped with 100 ton roller bearing trucks.

ARTICLE 2. Delivery. So long as no event of default or any event, which with lapse of time and/or notice would constitute an event of default exists, the Seller will deliver the units of Equipment to the Buyer, with freight charges prepaid, in such numbers as Buyer may specify to Benecia, California, and Alliance, Nebraska.

Upon delivery of each unit or of a number of units of the

Equipment, if each such unit conforms to the standards set forth in Article 1 hereof, an authorized representative of Buyer shall execute and deliver to the Seller a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Buyer.

On delivery of each such unit hereunder at the place specified for delivery, the Buyer will assume the responsibility 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 such unit. In the event that any unit shall be damaged or destroyed prior to acceptance hereunder, Seller shall be excused from delivering the same and the parties shall execute a supplement excluding such unit from this agreement.

ARTICLE 3. Financing: Purchase Price and Payment.

This Agreement contemplates that Buyer is to have certain repairs effected on the cars by Berwind at Benecia, California, and by PLM at Alliance, Nebraska. Buyer represents and warrants to Seller that it has obtained take-out financing from Beneficial Leasing Group, Inc., and/or one of its subsidiaries (hereinafter called Beneficial) sufficient to pay such car repairers for their charges and to pay Seller the balance of the purchase price hereunder, and that all terms and conditions required by Beneficial to complete the transactions contemplated by this agreement have been fulfilled.

The base price or prices per unit of the Equipment are set forth in Schedule A hereto.

For the purpose of settlement therefor, the Equipment shall be divided into 8 groups of at least five units and two groups of the remaining units (each such group being hereinafter called a Group). Buyer agrees to obtain from the respective car repairers a certificate of completion and to present the same with buyers certificate of acceptance to Seller at San Francisco, California, no later than 5 days following completion of five cars. The term "Closing Date" with respect to any Group shall mean such date not later than two business days following such presentation to the Seller; provided that Seller agrees to present its documentary sight draft drawn on Beneficial Leasing Group, Inc. (and/or a subsidiary or affiliate thereof as buyer by notice may instruct), together with an assignment without recourse to such payor, of seller's security title in the units then being settled for (except any rights it may have under Article 4 hereof and except its rights hereunder with respect to the remaining units of the equipment, it being the intent that this Agreement shall be fully enforceable at any time by Seller with respect to any remaining units as to which no assignment has been made). The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, Pennsylvania or California, are authorized or obligated to remain closed.

The Buyer hereby acknowledges itself to be indebted to the Seller in the amount of, and hereby promises to pay in cash to the Seller in immediately available funds at such place as the Seller may designate, the Purchase Price of the Equipment as follows: the sum of \$72,000 upon the signing of this Agreement and the balance of the Purchase Price per unit for each unit in a Group on each Closing Date.

The Buyer will pay to the extent legally enforceable interest at a rate per annum equal to the Discount Rate, hereinafter defined, plus 5% (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding. The

Discount Rate shall mean the rate per annum charged by the Federal Reserve Bank in San Francisco, California, for advances to its member banks as of January 26, 1981.

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.

ARTICLE 4. Taxes. All payments to be made by the Buyer hereunder will be free of expense to the Seller for collection or other charges and will be free of expense to the Seller with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Buyer assumes and agrees to pay on demand. The Buyer will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Seller solely by reason of its interest herein (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Seller or result in a lien upon any part of the Equipment; provided, however, that the Buyer shall

be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the interest or rights of the Seller in or to the Equipment or otherwise. If any such impositions shall have been charged or levied against the Seller directly and paid by the Seller, the Buyer shall reimburse the Seller upon presentation of an invoice therefor. The obligations contained herein shall survive delivery of the bill or bills of sale hereunder and any assignments of sellers rights or interests hereunder.

ARTICLE 5. Title to the Equipment. The Seller shall and hereby does retain the full legal title to and property in the Equipment until the Buyer shall have made all the payments and shall have kept and performed all their agreements and obligations under this Agreement, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer as provided in this Agreement. Any and all additions to the Equipment (except additions that are readily removable without causing material damage to the unit) and any and all replacements of the Equipment and of parts thereof and additions thereto (except as provided above) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Buyer's obligations herein contained shall have been performed by the Buyer, respectively, absolute right to the possession of, title to and property

in the Equipment shall pass to and vest in the Buyer without further transfer or action on the part of the Seller. However, the Seller, if so requested by the Buyer at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Buyer, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Buyer at its address referred to in Article 15 hereof, and (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 in order then to make clear upon the public records the release of the security interest of the Seller in the Equipment. The Buyer hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Buyer.

ARTICLE 6. Marking of the Equipment. The Buyer will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act," or other appropriate markings approved by the Seller with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect

the Seller's interest in the Equipment and its rights under this Agreement. The Buyer will not place any such unit in operation or exercise any control or dominion over the same until such markings have been placed thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Buyer will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Seller by the Buyer and filed, recorded and deposited by the Buyer in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Buyer will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Buyer may cause the Equipment to be lettered with the names or initials or other insignia of the Buyer or its affiliates.

ARTICLE 7. Prohibition Against Liens. The Buyer will pay or discharge any and all sums claimed by any party from, through or under the Buyer or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Seller's title thereto or property therein, provided, however, that the Buyer shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Seller, adversely affect the property or rights of the Seller in or to the Equipment or otherwise under this Agreement.

Any amounts paid by the Seller in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

ARTICLE 8. Buyer's Indemnities. The Buyer agrees to indemnify, protect and hold harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Seller of title to the Equipment, the use and operation thereof by the Buyer during the period when title thereto remains in the Seller or the transfer of said security interest in the Equipment by the Seller pursuant to any of the provisions of this Agreement. This covenant 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.

ARTICLE 9. Disclaimer of Warranties. Buyer acknowledges that the Equipment is used and that Seller is not a manufacturer or supplier of the Equipment. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT OR ANY PART THEREOF, AND BUYER UNDERSTANDS AND AGREES THAT THE EQUIPMENT IS SOLD "AS IS".

ARTICLE 10. Assignments. The Buyer will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, transfer the right to possession of any unit of the Equipment with-

out first obtaining the written consent of the Seller.

All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Buyer, may be assigned by the Seller and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Seller from, any of the obligations of the Seller to sell and deliver the Equipment in accordance with this Agreement or to respond to its obligations and warranties hereunder, or relieve the Buyer of any of its obligations to the Seller which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Buyer, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Buyer of the notification of any such assignment, all payments thereafter to be made by the Buyer under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 11. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to-wit:

(a) the Buyer shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Buyer as provided in this Agreement when payment thereof shall be due hereunder and such failure shall continue for more than five business days after payment thereof shall be due hereunder; or

(b) the Buyer shall, for more than thirty days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, on its part to be kept or performed or to make provision satisfactory to the Seller for such compliance; or

(c) any indebtedness or obligation of the Buyer, including, without limitation, indebtedness in connection with leases of equipment, conditional sales agreements or the like, becomes due prior to its expressed maturity by reason of any default by the Buyer in the performances or observance of any obligation or condition or is otherwise not paid when due; or

(d) any proceedings shall be commenced by or against the Buyer for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall

continue in force or such ineffectiveness shall continue), all the obligations of the Buyer under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Buyer or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within thirty days after such appointment, if any, or sixty days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Buyer shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such unit (or make provision satisfactory to the Seller for such compliance) within fifteen days after written notice from the Seller demanding such cancellation and recovery of possession; then at any time after the occurrence of such an event of default the Seller may, upon written notice to the Buyer and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Seller, declare (hereinafter called a Declara-

tion of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Buyer wherever situated. The Buyer shall promptly notify the Seller of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Seller may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Buyer that time is of the essence of this Agreement and that no such waiver, recession or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 12. Remedies. At any time during the continuance of a Declaration of Default, the Seller may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Buyer any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 12 expressly provided, and may remove the same from possession and use of the Buyer or any other person and for such purpose may enter upon the Buyer's premises or any 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 and other facilities or means of the Buyer.

In case the Seller shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Seller for the delivery of the Equipment to the Seller, the Buyer shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Seller and shall there deliver the Equipment or cause it to be delivered to the Seller and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Seller upon any sale, lease or other disposal of all or any part of the Equipment by the

Seller. At the option of the Seller, the Seller may keep the Equipment on any of the lines or premises of the Seller until the Seller shall have leased, sold or otherwise disposed of the same, and for such purpose the Buyer agrees to pay a reasonable rental for storage at any point or points selected by the Seller and, at the Buyer's risk, to permit inspection of the Equipment by the Seller, the Seller's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Buyer requiring specific performance hereof. The Buyer hereby expressly waives any and all claims against the Seller and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Seller (after retaking possession of the Equipment as hereinbefore in this Article 12 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Seller shall deem fit. Written notice of the Seller's election to retain the Equipment shall be given to the Buyer by telegram or registered mail, addressed as provided in Article 15 hereof, and to any other persons to whom the law may require notice,

within thirty days after such Declaration of Default. In the event that the Seller should elect to retain the Equipment and no objection is made thereto within the thirty-day period described in the second proviso below, all the Buyer's rights in the Equipment shall thereupon terminate and all payments made by the Buyer may be retained by the Seller as compensation for the use of the Equipment by the Buyer; provided, however, that if the Buyer, before the expiration of the thirty-day period described in the proviso below, should pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing and storing the Equipment and the Seller's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Buyer; provided, further, that if the Buyer or any other persons notified under the terms of this paragraph object in writing to the Seller within thirty days from the receipt of notice of the Seller's election to retain the Equipment, then the Seller may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Seller shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 12.

At any time during the continuance of a Declaration of Default, the Seller, with or without retaking possession thereof, at its election and upon reasonable notice to the Buyer and to any other persons to whom the law may require notice of the time and place may sell the Equipment, or any unit thereof, free from any and all claims of the Buyer or any other party claiming from, through or under the Buyer, at law or in equity, at public or private sale and with or without advertisement as the Seller may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Buyer should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Seller in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Seller's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Buyer. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Seller in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Seller under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in separate lots and without the

necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine. The Seller or the Buyer may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Seller shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Buyer as provided in Article 15 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than forty offerees have been solicited in writing to submit bids), it shall be subject to the right of the Buyer to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Seller shall be the purchaser of the Equipment, it shall not be accountable to the Buyer (except to the extent of surplus money received as hereinafter provided in this Article 12), and in payment of the purchase price therefor the Seller shall be entitled to have credited on account thereof all or any part of the sums due to the Seller from the Buyer hereunder. From and after the date of any such sale, the Buyer shall pay to the Seller the per diem interchange applicable (if any) for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby 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 the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Buyer shall not otherwise alter or affect the Seller's rights or the Buyer's obligations hereunder. The Seller's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Buyer's obligations or the Seller's rights hereunder with respect to any subsequent payments or default therein. The Seller and the Buyer agree that the Seller shall be entitled to all rights provided for in the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Seller shall have the right to take possession of the Equipment upon an event of default under this Agreement.

If, after applying all sums of money realized by the Seller under the remedies herein provided, there shall remain any amount

due to it under the provisions of this Agreement, the Buyer shall pay the amount of such deficiency to the Seller upon demand, together with interest from the date of such demand to the date of payment by the Buyer at the rate per annum set forth in Article 3 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Buyer shall fail to pay such deficiency, the Seller may bring suit therefor and shall be entitled to recover a judgment therefor against the Buyer. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Buyer.

The Buyer will pay all reasonable expenses, including attorneys' fees, incurred by the Seller in enforcing its remedies under the terms of this Agreement. In the event that the Seller shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Seller may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

ARTICLE 13. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Buyer to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Buyer, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Seller's rights under this Agreement and any and all rights of redemption.

ARTICLE 14. Recording. To the extent applicable, the Buyer will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303, Title 49, of the Interstate Commerce Act; and the Buyer will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement including, without limitation, the filing of financing statements pursuant to the Uniform Commercial Code; and the Buyer will promptly furnish to the Seller certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Seller.

ARTICLE 15. 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 Seller, at Western Pacific Building,
526 Mission Street, San Francisco, California 94105,
attention Senior Vice President-Finance;

(b) to the Buyer, at Continental Plaza, 1006 West
Ninth Avenue, King of Prussia, Pennsylvania 19406,
attention President;

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

ARTICLE 16. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Seller and the Buyer with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Buyer.

ARTICLE 17. Law Governing. The terms of this Agreement 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 rights conferred by the Interstate Commerce Act and such additional rights arising out of the filing, recording

or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 18. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, 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, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

AMERICAN RAILCAR EXCHANGE

ATTEST:



SECRETARY

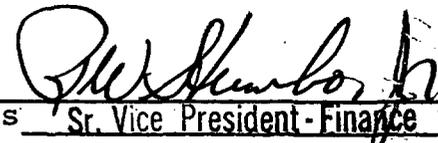
By 
Its PRESIDENT

THE WESTERN PACIFIC RAILROAD COMPANY

ATTEST:



SECRETARY

By 
Its Sr. Vice President - Finance

STATE OF Penna)
COUNTY OF Chester : ss.

On this 6 day of Feb, 1981, before me personally appeared NORMAN R COGLIATI to me personally known, who, being by me duly sworn, says that he is the PRES of AMERICAN RAILCAR EXCHANGE, 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.

Nancy H. Murdock
Notary Public

[Notarial Seal]

My Commission expires: _____ Nancy H. Murdock, Notary Public,
Exton, Chester County, Pa. My
Commission Expires July 21, 1983.

STATE OF CALIFORNIA)
CITY AND COUNTY OF SAN FRANCISCO) : ss.

On this 12th day of February, 1981, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is the Senior Vice President of THE WESTERN PACIFIC RAILROAD COMPANY, 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.

Diane Lorette Fafoutis
Notary Public

[Notarial Seal]

My Commission expires: Dec. 14, 1983.

OFFICIAL SEAL
DIANE LORETTE FAFOUTIS
NOTARY PUBLIC - CALIFORNIA
San Francisco County
My Commission Expires Dec 14, 1983



SCHEDULE A

CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1981

Between

THE WESTERN PACIFIC RAILROAD COMPANY

and

AMERICAN RAILCAR EXCHANGE

45 100-ton aluminum covered hopper cars manufactured by Magor Car Company, Road numbers WP 11851-11859, inclusive; 11861-11870, inclusive; 11872-11877, inclusive; 11879-11891, inclusive; 11893-11898, inclusive; and 11900 to be renumbered RSVX 301-345

Purchase Price: \$16,000 per unit, plus prepaid freight or delivery charges from WP points to Benecia, California, or Alliance, Nebraska