

# Southern Railway System

Law Department  
P.O. Box 1808  
Washington, D.C. 20013  
(202) 383-4000

No. 3-249A076  
Date SEP 6 1983  
Fee \$ 50.00

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I.C.C.  
FEE OPERATION DR.

September 6, 1983  
58305

ICC Washington, D. C.  
My Direct Line Is: (202)383-4417

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

14140/A  
RECORDATION NO. Filed 1983

14140  
RECORDATION NO. Filed 1983

SEP 6 1983 - 1 00 PM

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Dear Mrs. Mergenovich:

INTERSTATE COMMERCE COMMISSION INTERSTATE COMMERCE COMMISSION

I enclose nine original counterparts of the documents described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49 of the U.S. Code and return, together with an original counterpart thereof for retention by the Commission.

In accordance with 49 CFR Part 1177, covering the recordation of documents, I advise you as follows:

- (1) The enclosed documents are a Lease of Railroad Equipment (the "Lease") dated as of May 1, 1983 between United States Trust Company of New York, as trustee, 45 Wall Street, New York, New York 10005, Lessor, and Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013, Lessee, together with an Assignment of Lease and Agreement (the "Assignment"), dated as of May 1, 1983 between United States Trust Company of New York, as trustee, Assignor, and Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza, Baltimore, Maryland 21201, Assignee, included in which is a related Lessee's Consent executed by Southern Railway Company, Lessee.
- (2) The enclosed Lease is a "primary document" and the enclosed Assignment is a "secondary document" within 49 CFR §1177.1. The Assignment is being filed concurrently with the Lease, the primary document to which it is connected and for which a recordation number has not yet been assigned.
- (3) We request that the enclosed documents be cross-indexed. Documents to which the enclosed Lease and Assignment are connected and to which they should be cross-indexed include:

- (a) a Lease of Railroad Equipment dated as of December 1, 1974 between American Rail Box Car Company (now known as Railbox Company, Lessee, and United States Trust Company of New York, as trustee, Lessor, which was filed and recorded in your office on January 10, 1975, at 1:25 P.M. and assigned recordation No. 7768;

*Quintana*  
*Mary K. McEown*

(b) a Conditional Sale Agreement dated as of December 1, 1974 among Pullman Incorporated (Pullman-Standard division), United States Trust Company of New York, as trustee, and Southern Railway Company, filed and recorded in your office on January 10, 1975 at 1:25 P.M. and assigned recordation No. 7767;

(c) an Assignment of Lease and Agreement among United States Trust Company of New York, as trustee, and Mercantile-Safe Deposit and Trust Company, as agent, filed and recorded in your office on March 6, 1975 at 10:55 A.M. and assigned recordation No. 7768-B;

(d) an Agreement and Assignment among Pullman Incorporated (Pullman-Standard division) and Mercantile-Safe Deposit and Trust Company, as agent, filed and recorded in your office on March 6, 1975 at 10:55 A.M. and assigned recordation No. 7767-B; and

(e) an Assignment of Lease and Statement of New Numbers, dated as of May 1, 1983 between Railbox Company, 101 North Wacker Drive, Chicago, Illinois 60606, Assignor, and Southern Railway Company, Assignee, filed and recorded in your office on May 3, 1983 at 1:30 P.M. and assigned recordation No. 7767-D.

- (4) The enclosed documents were executed for the purpose of leasing, and assigning Lessor's rights under the Lease in, certain Railroad Equipment, being:

985 50'6" 70'ton capacity General Service Box Cars, AAR designation XM, bearing Lessee's road numbers as shown below;

Lessee's Road Numbers  
(all sets inclusive)

SOU	14000-14048	14477-14585
	14050-14127	14587-14639
	14129-14180	14641-14803
	14182-14232	14805-14814
	14234-14330	14816-14820
	14332-14363	14822-14945
	14365-14454	14947-14994
	14456-14475	14996-14999

Each unit of Equipment will be marked in letters not less than one inch in height with the words:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c

or other appropriate words of similar import.

- (5) The names and addresses of the parties to the enclosed documents are shown in paragraph (1) hereof.
- (6) After recordation, the nine original counterparts of the enclosed documents not required by the Commission for retention should be returned to David R. Willson, Esq., General Attorney, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013.
- (7) The recordation fee of \$50 is enclosed.
- (8) A short summary of the enclosed documents for index use follows:

The Lease:

This is a Lease dated as of May 1, 1983 between United States Trust Company of New York, as trustee, 45 Wall Street, New York, New York 10005, Lessor, and Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013, Lessee, relating to 985 50'6" 70-ton capacity General Service Box Cars bearing Lessee's road numbers SOU 14000 through 14999, inclusive, excepting ## 14049, 14128, 14181, 14233, 14331, 14364, 14455, 14476, 14586, 14640, 14804, 14815, 14821, 14946, and 14995.

The Assignment:

This is an Assignment of Lease and Agreement dated as of May 1, 1983 between United States Trust Company of New York, as trustee, 45 Wall Street, New York, New York 10005, Assignor, and Mercantile-Safe Deposit and Trust Company, Two Hopkins Plaza, Baltimore, Maryland 21201, Assignee, relating to a Lease of Railroad Equipment also dated May 1, 1983 filed contemporaneously with this document.

Please acknowledge receipt on the enclosed copy of this letter.

Very truly yours,



David R. Willson  
General Attorney

Encl.

SEP 6 1983 -1 00 PM

ASSIGNMENT OF LEASE AND AGREEMENT dated as of May 1, 1983 (hereinafter called this Assignment), by and between United States Trust Company of New York, a New York corporation, as Trustee under a Trust Agreement dated as of December 1, 1974, with General Electric Credit Corporation (such Trustee, together with its successors and assigns, being hereinafter called the Owner-Trustee) and Mercantile-Safe Deposit and Trust Company, as agent (hereinafter called the Vendor) acting as Agent under a Finance Agreement dated as of December 1, 1974 (hereinafter called the Finance Agreement).

WHEREAS, the Owner-Trustee and Southern Railway Company, as Guarantor (hereinafter called the Lessee), entered into a Conditional Sale Agreement dated as of December 1, 1974 (such Conditional Sale Agreement hereinafter, together with amendments and supplements thereto, being called the Security Document), with Pullman Incorporated (Pullman-Standard division) (hereinafter called the Builder), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annex thereto as were delivered to and accepted and settled for by the Owner-Trustee thereunder; and

WHEREAS, the Owner-Trustee and American Rail Box Car Company, now known as Railbox Company (hereinafter called Railbox), entered into a Lease of Railroad Equipment dated as of December 1, 1974 (hereinafter, together with any amendments and supplements thereto, being called the Original Lease), providing for the leasing by the Owner-Trustee to Railbox of the Units; and

WHEREAS, Railbox has notified the Owner-Trustee that it cannot meet its rental payment due May 2, 1983, under the Original Lease and Lessee will make such payment and Railbox, effective the date hereof, has transferred and assigned to Lessee all of Railbox's right, title and interest in and to the Original Lease and the Units; and

WHEREAS, the Lessee and the Owner-Trustee have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter, together with any amendments and supplements thereto, being called the Lease), providing for the leasing by the Owner-Trustee to Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Document and in acknowledgement that the investors for which the Vendor is acting as agent (hereinafter called the Investors) have invested in the Conditional Sale Indebtedness (as that term is

defined in the Security Document), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 10 hereof, the Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Owner-Trustee's obligations under the Security Document and the Finance Agreement, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Document then due and payable, subject to the limitations contained in the last paragraph of Article 4 of the Security Document, and any balance shall be paid immediately to and retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under the first paragraph of §3 of the Lease when due, the Vendor shall immediately notify the Owner-Trustee by telegraphic communication at the address set forth in the Lease.

2. This Assignment is executed only as security for the obligations of the Owner-Trustee under the Security Document and, therefore, the execution and delivery of this Assignment

shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against the Owner-Trustee or persons other than the Vendor.

3. To protect the security afforded by this Assignment, the Owner-Trustee agrees as follows:

(a) The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee which are intended to satisfy the obligations of the Owner-Trustee under the Security Document, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement so amending, modifying or terminating the Lease and the Owner-Trustee agrees that any such amendment, modification or termination thereof without such consent shall be void.

(b) At the Owner-Trustee's sole cost and expense, the Owner-Trustee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Owner-Trustee under the Lease.

(c) Should the Owner-Trustee fail to make any payment or to do any act which this Assignment requires the Owner-Trustee to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Owner-Trustee and affording the Owner-Trustee a reasonable period of time within which to make such payment or do such act, but without releasing the Owner-Trustee from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security provided hereby, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security

hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Owner-Trustee contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Owner-Trustee will reimburse the Vendor for such costs, expenses and fees.

4. Subject to the provisions of Paragraph 10 hereof, the Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Owner-Trustee's obligations under the Security Document, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee.

6. The Owner-Trustee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interests of the Vendor hereunder.

7. Pursuant to the provisions of the Finance Agreement relating to assignment to a successor agent thereunder or if a Declaration of Default under the Security Document has been made and is in effect, the Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder. The Vendor will give written notice to the Owner-Trustee and the Lessee of any such assignment.

8. This Assignment shall be governed by the laws of the State of New York, but the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 21 of the Security Document, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Owner-Trustee that, so long as no Declaration of Default under the Security Document has been made and is then effect, the Vendor will not exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Owner-Trustee to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof, and that, subject to the terms of the Lease and the Security Document, the Owner-Trustee may, so long as no Declaration of Default under the Security Document has been made and is then in effect, exercise or enforce, or seek to exercise or enforce, such rights, powers, privileges, authorizations or benefits.

11. The rights acquired by the Vendor pursuant to this Assignment shall be and are acquired for the benefit of the Investors, provided, however, that the rights and remedies provided herein shall be exercised only by the Vendor, as agent for the Investors, and the duties and obligations of the Vendor shall be performed only the Vendor and not the Investors. Any provision of this Agreement requiring notice to or communication with the Vendor shall be deemed satisfied by notice to or communication with the Vendor without additional notice to or communication with any Investor.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names, by officers thereunto duly authorized, and their respective

corporate seals to be affixed and duly attested, all as of the date first above written.

UNITED STATES TRUST COMPANY  
OF NEW YORK, as Trustee,

[CORPORATE SEAL]

Attest:

By *Thomas B. Reynolds*  
Assistant Vice President

*Louis P. Young*  
Asst. Secretary

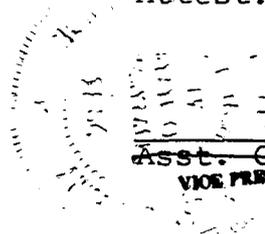
MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent,

[CORPORATE SEAL]

Attest:

BY *[Signature]*  
Assistant Vice President

*[Signature]*  
~~Asst. Corporate Trust Officer~~  
VICE PRESIDENT



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

On this 20th day of July, 1983, before me personally appeared Thomas B. Zakrzewski to me personally known, who, being by me duly sworn, says that he is Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

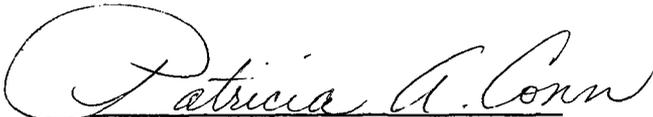
  
Notary Public

[Notarial Seal]  
My Commission expires:

CHRISTINE C. COLLINS  
Notary Public, State of New York  
No. 41-4624735  
Qualified in Queens County  
Commission Expires March 30, 1984

STATE OF MARYLAND )  
 )  
 ) SS.:  
COUNTY OF BALTIMORE )

On this 29th day of August, 1983, before me personally appeared T. A. SUMMERLIN, to me personally known, who, being by me duly sworn, says that he is ~~Assistant~~ Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company 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 trust company.

  
Notary Public

[Notarial Seal]  
My Commission expires: 7-1-86

LESSEE'S CONSENT AND AGREEMENT

The undersigned, a corporation duly incorporated under the laws of the State of Virginia, the Lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment and (b) consents to all the terms and conditions of the Assignment.

As further inducement to the investors (hereinafter called the Investors) in the Conditional Sale Indebtedness, as that term is defined in the Security Document referred to and defined in the Assignment (a copy of which Security Document has been delivered to the undersigned) pursuant to which the United States Trust Company of New York, as trustee (hereinafter called the Owner-Trustee) has partially financed the purchase of the units of railroad equipment (hereinafter called the Units) being leased by the Owner-Trustee to the undersigned pursuant to the Lease, and in consideration of other good and valuable consideration, the undersigned:

(1) represents and warrants to Mercantile-Safe Deposit and Trust Company (hereinafter called the Vendor), acting as agent for the Investors pursuant to the Finance Agreement dated as of December 1, 1974 (hereinafter called the Finance Agreement), that the rentals and other obligations under the Lease have been calculated so as to provide for the due and punctual payment of the principal of, and interest on, the Conditional Sale Indebtedness and the due and punctual performance of all other obligations of the Owner-Trustee under the Security Document (except the obligations of the Owner-Trustee under subparagraph (a) of the third paragraph of Article 4 thereof) without reference to any limitation of liability contained in the last paragraph of Article 4 or Article 22 thereof;

(2) agrees, subject to the terms and conditions of the Assignment, to pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease in respect of the Units leased thereunder, directly to the Vendor to be applied as provided in the Security Document and the Finance Agreement, at P. O. Box 2258, Two Hopkins Plaza, Baltimore, Maryland 21203, attention of Corporate Trust Department (or to such other address as may be furnished in writing to the undersigned by the Vendor); and, if the undersigned fails for any reason whatsoever to pay to the Vendor any Payments, on the respective dates and times set

forth in the Lease on which the Payments are specified to be due thereunder, it will pay to the Vendor or to the Investors, as their interests may appear, sums equivalent to the Payments which the undersigned shall not theretofore have paid to the Vendor; it being hereby agreed that the undersigned's obligation to pay all the aforesaid Payments is absolute and unconditional;

(3) agrees, subject to the terms and conditions of the Assignment, that the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Lease as though the Vendor were named therein as Owner-Trustee;

(4) agrees that the Payments or sums equivalent to the payments shall not be subject to any right of setoff or counterclaim or other defense which the undersigned might have against the Owner-Trustee or otherwise, and the payment thereof to the Vendor shall be final and shall not be subject to, and the undersigned hereby agrees to indemnify the Vendor against, any liens, charges or claims of any nature whatsoever (other than liens, charges or claims created or incurred by the Vendor not arising out of the transactions contemplated by the Security Document, the Lease or the Assignment) resulting from a breach by the undersigned of its obligations under the Lease prior to or pari passu with the right of the Vendor to apply such Payments or sums equivalent thereto, as provided in the Assignment;

(5) agrees that any rights acquired by the undersigned, by subrogation or otherwise, against the Owner-Trustee under the Security Document or with respect to any of the Units by reason of any payments made by the undersigned pursuant hereto may not be exercised until the Vendor has been paid all sums payable to it under the Security Document;

(6) agrees that the Vendor shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise;

(7) agrees that the Lease shall not, without the prior written consent of the Vendor, be amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in any alteration or impairment of the obligations of the Lessee under the Lease which are intended to satisfy the obligations of the Owner-Trustee under the Security Document, the obligations of the Owner-Trustee under the Assignment or the obligations of the Lessee under this Consent and Agreement or of any of the rights created by any thereof; and

(8) will (i) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Security Document and (ii) do all such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions of any thereof.

(9) agrees that rights acquired by the Vendor hereunder shall be and are acquired for the benefit of the Investors; provided, however, that the rights and remedies provided herein shall be exercised only by the Vendor, as agent for the Investors, and the duties and obligations of the Vendor shall be performed only by the Vendor and not the Investors; and provided, further, that any provision hereof requiring notice to or communication with the Vendor shall be deemed satisfied by notice to or communication with the Vendor without additional notice to or communication with any Investor.

This Agreement may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

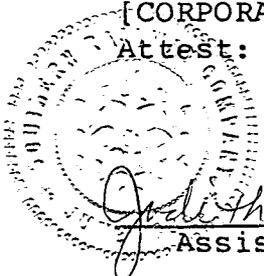
This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of New York and, for all purposes, shall be construed in accordance with the laws of said State.

Dated as of May 1, 1983

SOUTHERN RAILWAY COMPANY

[CORPORATE SEAL]

Attest:



Judith T. Flarowicz  
Assistant Secretary

By F. B. Brunwell  
President

Accepted:

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Agent

[CORPORATE SEAL]

By

  
Assistant Vice President

Attest:-

  
\_\_\_\_\_  
VICE PRESIDENT

DISTRICT OF COLUMBIA:

On this *15<sup>th</sup>* day of *July*, 1983, before me personally appeared E. B. Burwell, to me personally known, who, being by me duly sworn, says that he is President of SOUTHERN RAILWAY 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.

[Notarial Seal]

My Commission expires:

  
\_\_\_\_\_  
Notary Public  
C. O. WAGNER  
Notary Public  
In and For the District of Columbia  
My Commission Expires *July*, 1987