

**HOPKINS & SUTTER**

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEENTH STREET, N.W., WASHINGTON, D.C. 20006 (202) 835-8000  
FACSIMILE (202) 835-8136

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602  
DALLAS OFFICE 3700 BANK ONE CENTER 1717 MAIN STREET 75201

RECORDATION NO. 20524-A FILED 1425  
JAN 29 1997 - 4:23 PM

CHARLES A. SPITULNIK  
(202) 835-8196

January 29, 1997

**BY HAND DELIVERY**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Room 1324  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Agreement Between Philip Morris, Inc. and Rader Railcar, Inc.

Dear Mr. Williams:

Enclosed please find two copies of the documents described below, to be recorded pursuant to Section 11301 of Title 49 of the U.S. Code. I am providing under separate cover an affidavit certifying their authenticity.

The following document creates a bailment relationship between Philip Morris, Inc. ("PM") as bailor and Rader Railcar, Inc. ("Rader") as bailee and a security interest for the benefit of PM in all of Rader's rights to any property, including railcars, and requires recordation:

Amendment No. 5, dated June 13, 1996, to the Agreement between PM and Rader dated October 1, 1964. This is a secondary document.

The names and addresses of the parties to the document are as follows:

Bailor: Philip Morris, Inc.  
120 Park Avenue  
New York, N.Y. 10017

Bailee: Rader Railcar, Inc.  
10700 E. 40th Avenue  
Denver, CO 80239

*Counter Parts - Attorney's Office*

A description of the 18 rail cars covered by the document follows:

Seven (7) Sleeper Cars (Code Numbers THSC 1-3, 5-8): Three (3) bi-level rail cars with 13 Standard State rooms, one (1) Deluxe Cabin and one (1) Superior Cabin; all cabins having independent bathroom with showers, vanity sink and toilets and double sleeping accommodations. Communications to all other cabins and public phones. Audio visual entertainment center and individual climate and lighting controls. Security safes and luggage storage. Upper level cabins have overhead dome windows.

One (1) Sleeper Car (Code Number THSC4): Bi-level rail car with 13 Standard State rooms, one (1) Deluxe Cabin and one (1) Superior Cabin; all cabins having independent bathroom with showers, vanity sink and toilets and double sleeping accommodations. Communications to all other cabins and public phones. Audio visual entertainment center and individual climate and lighting controls. Security safes and luggage storage. Upper level cabins have overhead dome windows. This car also has one cabin that can accommodate a disabled person and one cabin that will serve as an infirmary.

One (1) Spa Car (Code Number THSPA): Single level domed glass rail car with panoramic view and open-end platform equipped with five (5) spa hot tubs each accommodating up to seven (7) people, two (2) massage rooms and shower and changing facilities.

One (1) Diner with Galley (Code Number THDWG): Bi-level rail dining car with full service galley on lower level. Upper level dining area capable of seating approximately 60 guests. Upper level also includes two (2) hydraulic dumb waiters from the lower level main galley, and a small food service area for final meal preparation.

One (1) Diner no Galley (Code Number THDNG): Bi-level rail car with upper level dining area able to accommodate approximately 52 guests with access to upper level of adjoining public cars, one of which is DWG to accommodate meal service. Lower level entertainment area and cinema able to seat 10 as well as a reading room and open sitting area. This car also has an ADA accessible toilet.

One (1) Lounge Car (Code Number THLC1): Bi-level rail car with office facilities on lower level, including full time security. This car has an open platform at the end of the car. Upper level lounge seating with small bar.

Mr. Vernon A. Williams  
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Page 3

This car will eventually have an ADA lift for disabled passenger access from station platforms. This car has a unisex public toilet on lower level. Upper level has lounge seating and a small bar.

One (1) Lounge Car (Code Number THLC2): Bi-level rail car with lower level arrangement for lounging. This car has a public unisex toilet as well as a separate ADA accessible toilet on one end of car. Upper level has two lounging areas plus a small bar and an open floor area to view the lounge area below.

One (1) Lounge Car (Code Number THLC3): Bi-level rail car where the lower level arrangement has a bar and dance floor with adjoining lounge area immediately below an opening to the upper level. This car also has a public unisex toilet as well as a separate ADA accessible toilet on one of the cars. The upper level has a bar and lounging area on either side of opening to the lower level.

One (1) Staff Sleeping Car (Code Number THST1): Single level rail car with sleeping accommodations for 33 people.

One (1) Staff Car (Code Number ST2): Single level rail car with dining area, full galley and lavatory facilities.

One (1) Staff Car (Code Number THST3): Single level rail car with sleeping accommodations for 28; also houses all hardware for IS communications.

One (1) Power Car (Code Number PWR): Single level rail car equipped with three (3) diesel caterpillar units each capable of producing 725 kilowatts and 950 horsepower.

A short summary of the document to appear in the index follows:

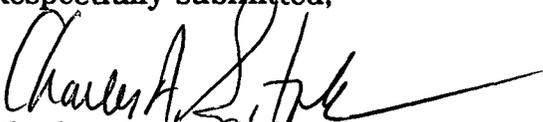
Amendment No. 5 dated June 13, 1996, to the Agreement between Philip Morris Inc. ("PM") and Rader Railcar, Inc. ("Rader") dated October 1, 1994 creates a bailment relationship between PM as bailor and Rader as bailee. Pursuant to this document, Rader was entrusted with possession of the equipment owned by PM, consisting of 18 railcars, solely to provide the service of outfitting such railcars to conform to specifications set forth in the agreement. Once the service was complete, Rader would return the cars to PM's possession and terminate the bailment. In addition, as part of Amendment No. 5, Rader granted to PM a security interest in all of

Mr. Vernon A. Williams  
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Rader's rights to any property, which included the railcars, which had been or was to be acquired by Rader pursuant to the Agreement or with funds provided by PM.

A fee of \$22.00 is enclosed. I have enclosed three (3) additional copies to be stamped and returned to me via our messenger. Thank you for your attention to this matter.

Respectfully submitted,



Charles. A. Spitznik

Enclosures

# HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

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INTERNET <http://www.hopsut.com>

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DETROIT OFFICE 1333 BREWERY PARK BOULEVARD SUITE 101 48207

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CHARLES A. SPITULNIK  
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January 29, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Room 1324  
12th Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Agreement Between Philip Morris, Inc. and Rader Railcar, Inc.

Dear Mr. Williams:

I am enclosing an Acknowledgement and Certification of Dennis Floam, Assistant Secretary of Philip Morris, Inc. certifying that the following documents, filed today with the Surface Transportation Board, are complete and identical copies of the originals of each of those agreements, respectively:

1. An agreement between Philip Morris and Rader Railcar, Inc. dated October 1, 1994. This is the primary document.
2. Amendment No. 5, dated June 13, 1996, to the Agreement between Philip Morris, Inc. and Rader Railcar, Inc. dated October 1, 1994. This is a secondary document; and
3. Amendment No. 9, dated July 26, 1996, to the Agreement between Philip Morris, Inc. and Rader Railcar, Inc. dated October 1, 1994.

Mr. Vernon A. Williams  
January 29, 1996  
Page 2

I am also enclosing an additional copy of this Certification, along with three additional copies that I would appreciate your date-stamping and returning to me via our messenger. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Spitulnik". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

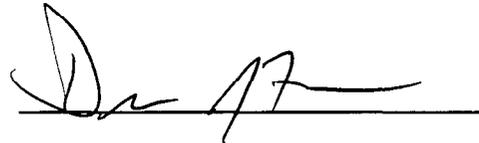
Charles A. Spitulnik

Enclosures

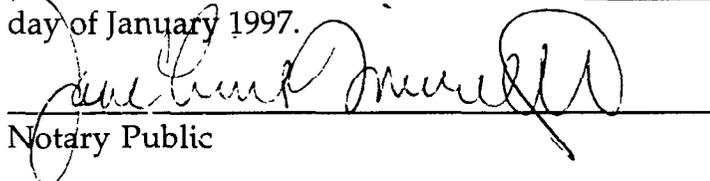
ACKNOWLEDGEMENT AND CERTIFICATION

State of New York )  
 ) SS:  
County of New York )

I, Dennis Floam, certify on this 27th day of January, 1997, that I am Assistant Secretary of Philip Morris Incorporated (the "Corporation"), that the copies filed herewith have been compared with the original agreement and amendments thereto and are, in all respects, complete and identical copies thereof, that the agreement and amendments thereto were signed on behalf of the Corporation by authority of its Board of Directors, and that I acknowledge that the execution of the foregoing agreement and amendments thereto was the free act and deed of the Corporation. I further declare under penalty of perjury that the foregoing is true and correct.



Subscribed and sworn to before me this 27<sup>th</sup>  
day of January 1997.

  
Notary Public

My Commission Expires: \_\_\_\_\_

JOSE LUIS MURILLO  
Notary Public, State of New York  
No. 025876  
5/9/97  
New York County



PHILIP MORRIS

INCORPORATED

120 PARK AVENUE, NEW YORK, N Y 10017-5592 · TELEPHONE (212) 880-5000

RECORDATION NO. 20524-A  
FILED 1/25  
JAN 25 1997 -4 20 PM

June 13, 1996

Mr. Thomas Rader  
Rader Railcar, Inc.  
10700 E. 40th Avenue  
Denver, Colorado 80239

**Amendment #5: Agreement Effective October 1, 1994**

Dear Mr. Rader:

In confirmation of the discussions between senior executives of Philip Morris Incorporated, doing business as Philip Morris U.S.A., a Virginia corporation with offices at 120 Park Avenue, New York, New York 10017 ("Philip Morris"), and Rader Railcar, Inc., a Colorado corporation with offices at 10700 East 40th Avenue, Denver, Colorado 80239 ("Contractor"), which began May 31, 1996, and in accordance with Section 41.6 of the agreement, effective October 1, 1994, between Philip Morris and Contractor, as previously amended by the letter agreements, dated as of July 5, 1995, August 21, 1995, January 31, 1996, and April 29, 1996, respectively, between Philip Morris and Contractor (such agreement, as amended, the "Agreement"), Philip Morris and Contractor agree to further amend the Agreement.

Because Contractor (i) has not completed the Work in the time provided in the Agreement, (ii) needs financial support in order to pay its debts as they become due and (iii) is, therefore, in default under the Agreement, and because Philip Morris is unwilling to pay Contractor additional amounts to cover certain labor and miscellaneous expenses, absent the assurances and protections for Philip Morris provided for herein, Philip Morris and Contractor agree as follows:

1. Because (i) Contractor has not completed the Work in the time provided in the Agreement and (ii) Contractor's expenses have exceeded the amount allocated in the Agreement, the following shall be added as a new second sentence in Section 11 of the Agreement.

Notwithstanding the foregoing, (i) Philip Morris shall pay Contractor \$1,426,016.55 based on an invoice dated June 10, 1996, for labor and miscellaneous expenses previously incurred by Contractor; (ii) Philip Morris acknowledges receipt of a second

Mr. Thomas Rader  
June 13, 1996  
Page 2

invoice dated June 10, 1996, for \$244,265.54 in miscellaneous out-of-pocket expenses incurred by Contractor in the fourth quarter 1995 through April 1996 (the "Second Invoice"); and (iii) Philip Morris agrees to review and reconcile the contents of the Second Invoice and, promptly upon reconciliation of the contents to Philip Morris' satisfaction, to pay Contractor all reconciled amounts.

2. Philip Morris and Contractor agree that:

- (i) to their knowledge, the exhibits attached to this Amendment contains a complete description of all materials, components and equipment in Contractor's possession that have been or are to be incorporated into the Trainset or used in the performance of the Work (certain materials, components and equipment not yet staged for or incorporated into the Trainset are situated, as of the date of this Amendment, in locations described by Contractor as: Warehouse 7801; Warehouse 8000; the Truck Bins; the Electrical Foreman's Office; the Plumbing Trailer; the Electrical Trailer; the Tool Shop; and the Yard) (the "Inventory");
- (ii) all of these materials, components and equipment have been identified to the Agreement in accordance with Section 8 of the Agreement;
- (iii) pursuant to Section 8 of the Agreement, title to all of these materials, components and equipment has passed to Philip Morris; and
- (iv) to the extent title to these materials, components and equipment has not yet passed to Philip Morris, title hereby passes pursuant to this Amendment.

Notwithstanding the foregoing, Contractor may request removal of one or more items from the Inventory for good cause stated no later than the close of business on June 18, 1996.

3. By this Amendment, to secure all of Contractor's obligations to Philip Morris under the Agreement, Contractor hereby grants to Philip Morris, and agrees to cooperate with Philip Morris in perfecting, a security interest in all of Contractor's existing and future right, title and interest in, to and under all personal property, to the extent such property is acquired or to be acquired pursuant to the Agreement or acquired or to be acquired with funds provided by Philip Morris, including, but not limited to:

- (i) goods;
- (ii) equipment;

- (iii) inventory;
- (iv) accounts;
- (v) accounts receivable;
- (vi) contract rights;
- (vii) general intangibles;
- (viii) documents;
- (ix) fixtures;
- (x) materials, components and equipment; and
- (xi) all proceeds and products of any or all of the foregoing, including, but not limited to, the railcars that shall constitute the Trainset.

4. Nothing in this Amendment, any prior amendment to the Agreement or any conduct by Philip Morris before the date of this Amendment shall be deemed a waiver of any of Philip Morris' rights and remedies under the Agreement. Contractor hereby agrees to execute all Uniform Commercial Code financing statements and Surface Transportation Board or other forms reasonably requested by Philip Morris (the "Security Documents") in connection with (i) perfecting the security interest granted in this paragraph 4 and (ii) providing public notice of Philip Morris' ownership rights granted in Section 8 of the Agreement, including, without limitation, one or more UCC-1's in the form attached to this Amendment as Exhibit 1. Contractor hereby constitutes and appoints Philip Morris as attorney-in-fact for the purpose of executing the Security Documents. This appointment shall be irrevocable and coupled with an interest. Nothing in this Amendment or the filing of the Security Documents shall be deemed acknowledgment that Philip Morris does not have title to any item listed therein.

5. David Merrill has been designated Philip Morris' Point of Contact within the meaning of Section 4 of the Agreement.

Mr. Thomas Rader  
June 13, 1996  
Page 4

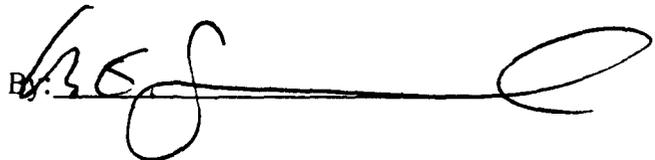
6. The terms and conditions of the Agreement will remain in full force and effect, except as expressly set forth in this Amendment.

If Contractor agrees with and consents to the foregoing, please sign and return one copy of this letter.

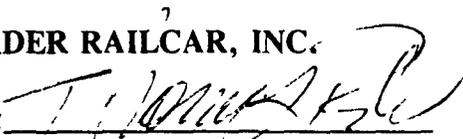
Sincerely,

*PMI*

**PHILIP MORRIS INCORPORATED**

By: 

ACCEPTED AND AGREED:

**RADER RAILCAR, INC.**  
By:   
Title: Chairman

REVISED INSTRUCTIONS ON BACK

UCC-1

UNIFORM COMMERCIAL CODE  
FINANCING STATEMENT

1ST DEBTOR

SSN/FED Tax ID

Check One:  Business  
 Personal

CHECK IF APPLICABLE

- This statement is to be recorded in the real estate records ONLY.
- This statement is to be filed in real estate AND UCC records.
- The debtor is a transmitting utility.

Name (Last, 1st)

Street

City, State, Zip

For Office Use Only

COLORADO SECRETARY OF STATE - UCC1  
1560 BROADWAY STE 200  
DENVER CO 80202-5169

Fold Here

2ND DEBTOR

Additional debtor(s) on attachment

SSN/FED Tax ID

Check One:  Business  
 Personal

PLEASE CHECK APPROPRIATE BOX.  
THIS STATEMENT IS SIGNED BY THE  
SECURED PARTY INSTEAD OF THE  
DEBTOR TO PERFECT A SECURITY  
INTEREST IN COLLATERAL

Name (Last, 1st)

Street

City, State, Zip

- Already subject to a security interest in another jurisdiction when it was brought into this state, or when the debtor's location was changed to this state;

1ST SECURED PARTY

Additional secured party on attachment

Name (Last, 1st)

Street

City, State, Zip

- Which is proceeds of the original collateral described below in which a security interest was perfected
- As to which the filing has lapsed; or
- Acquired after a change of name, identity or corporate structure of the debtor.

Fold Here

ASSIGNED PARTY

Additional assigned party on attachment

Name (Last, 1st)

Street

City, State, Zip

(Collateral Description)

COLLATERAL CLASSIFICATION:

(Supply full description)

- Accounts, Accounts Receivable
- Fixtures
- Proceeds
- Equipment, Machinery
- Livestock, Farm Animals, Etc.
- Contract Rights
- Inventory
- Products
- Truck, Car, Vehicle
- Other

Debtor Signature(s)

Printed Name(s)

Title

Secured Party Signature(s)

Printed Name(s)

Title

June 18, 1996

Mr. Michael E. Szmanczyk  
Philip Morris USA  
120 Park Avenue  
New York, NY 10017-5592

Dear Mike.

We have made a good faith effort to review all of the items listed in your attachments to Amendment #5 dated June 13, 1996 and we signed on Friday. However, two days is not sufficient to review each and every item on the lists. Additionally, we have found a considerable difference (approximately \$100,000) between the listing presented to us for fixed assets and the amounts we have billed you for the assets listed.

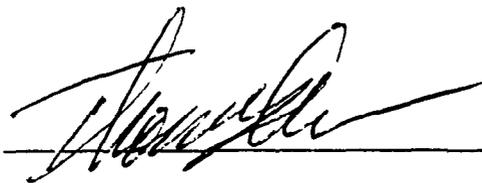
Attached, please find our exception list (Appendix A) to the attachments to Amendment #5 dated June 13, 1996

Due to the pending auditor reconciliation of our billings to the fixed asset listing, we must take exception to the entire fixed asset listing as presented.

Finally, we would propose the following language be included as an attachment to Amendment #5

Should PM have inadvertently included an item on the attachments that should not have been included, PM will consent to releasing such item(s) from its security interest.

If the above language is acceptable to you, please sign and return a copy of this letter for our files.



Thomas G Rader, Chairman

Rader Railcar Inc.

Michael E Szymanczyk, Executive VP  
Marketing and Sales  
Philip Morris USA

# Amendment #5

## Appendix A

June 18, 1996

Rader Railcar Inc takes exception to the following items being included in the attachments and related security filing of PM

Yard Inventory (6/6/96)

Location Y010 - 29 sets of misc used unassembled wheels

These sets were the property of Rader before the project began

Location Y008 - 8' bucket for a loader truck

This item is currently being leased and is not owned by Rader

8000 Warehouse Inventory Report (6/1/96)

“Return Materials Inventory”

28 items listed as “FFT”, “GCRC” and “Prin.”

These items are specifically identified to other projects of Rader

Philip Morris Project Thunder Fixed Assets Listing As of May 22, 1996

Rader takes exception to the entire listing pending auditor reconciliation to Rader billings to PM

## RETURN MATERIALS INVENTORY

PJ	P.O. #	MATERIAL DESCRIPTION	MANUFACTURE	PART #	QTY.	REMARK
FFT		COMPRESSOR	MANEUROP	MT80	1ea	WAS REPLACED WITH IN STOCK
GCRC		COMPRESSOR	MANEUROP	MT100HS4D	1ea	BAD DISCHARGE VALVE
GCRC		COMPRESSOR	MANEUROP	MT100HS4D	1ea	WRONG VOLTAGE (230V)
GCRC		CONTROL PANEL			1	
GCRC		DIALECT UNION 1 1/2" SWEAT				
GCRC		FAN & LIMIT CONTROL			1	
GCRC		FAN MOTOR	EBM INDUSTRIES	RH50M	4ea	MOTOR BAD
GCRC		H E TANK DRAIN PARTS			1	
GCRC		HUMIDITY CONTROL MODULE			4	
GCRC		NORM CLOSED COIL ASBY.110-120V			1	
GCRC		NORM CLOSED SOLEN'D VALVE-5/8"			4	
GCRC		PERMAGUM CORDS (NOT USED IN BOX)			3	
GCRC		SLOT'D PAN HEAD MACH SCREW BOX			6	
GCRC		SOLENOID VALVE (E10S250)			7	
GCRC		SOLENOID VALVE (ME10S250)			1	
GCRC		STD U SPEED NUT BOX			21	
GCRC		TEMP CONTROL (COOPER HEAT)		W351AB-2C	1	
GCRC		TEMP DISPLAY MODULE		A350AA-1C	5	
GCRC		THERMO EXP VALVE (LOW TEMP R-22)	SPORLAN	R-22	1	
GCRC		THERMO EXP VALVE (R-12)	SPORLAN	R-12	4	
GCRC		VIBRATION ABSORBER-5/8"			7	
PRIN	6014	COMPRESSOR	MANEUROP	MT100HS4D	2ea	OVERLOAD BAD
PRIN.	8097	FOIL BACK INSULATION 1"		475-BE	5040sq ft	LEFT OVER FROM PRINCESS
PRIN.	8201	HOOD FASTENER			48ea	LEFT OVER FROM PRINCESS
PRIN	8205	FORMICA (BLUE)			8pcs	LEFT OVER FROM PRINCESS
PRIN	8306	VALVES			14ea	SYSTEM DESIGNED CHANGED (NOT USED)
PRIN	10053	WIRE CLOTH			60yrd	LEFT OVER FROM PRINCESS
PRIN		HINDGES		05-0480	16ea	
THUN	5786	DUAL PRESS CRTL KP-15W	DANFOSS	060-2008	36	REPLACED WITH FIXED PRESS SWITCH
THUN	5786	HIGH PRESS CTRL. KP-7W	DANFOSS	060-2003	72	REPLACED WITH FIXED PRESS SWITCH
THUN	5786	MOTORIZED DAMPNER		X89-503	0	REPLACED WITH DIFFERET DAMPNER
THUN	5786	TXV 5-5 TON	DANFOSS	TKEX 3-5	0	NOT USED WITH SYSTEM DESIGN
THUN	5787	ER-12 NOZZLE	SPOIRLAN VLV CO	ASC-H-7	0	SYSTEM DESIGN N/A FOR VALVE
THUN	6197	FLOW SWITCH	ADVANCE CTRL TECH	3409	1	NOT USED
THUN	7127	PUMP	ARMSTRONG	4270	0	3 WITH BAD SEALS(UNSUITABLE FOR SYS LEAKY)
THUN		BALL VALVE 1"	WATTS REG	600 WOG	27	ENGINEERING DESIGN CHANGE (NOT USED)

YARD INVENTORY

	LOCATION	DESCRIPTION	QUANTITY
	Y005	C frame brake bars	2
	Y005	Equalizer Beams	10
	Y006	Palette 2" x 4" 's	1
	Y006	C frame brake bars	2
	Y006	Wood box of buffers	1
	Y006	Yoke Pins	16
	Y006	Unassembled Wheels - 36" 6x11	2
	Y006	Bolster	1
	Y006	Coupler Pins	5
	Y006	Faller Blocks	2
	Y006	Sets of draft gear	5
	Y006	Brake thread bearings	14
	Y006	Draft gears <i>returnable?</i>	2
	Y007	Broken window carner	1
	Y007	8 ft. x 4 ft. sheet metal	17 pallets
	Y007	30' x 10" metal sheet	12
	Y007	300 CMS Welder	1
	Y007	Angle iron & channel iron & tubing 6'x4'	7 pallets
	Y007	8' x 2' metal tanks	3
	Y007	Couper-knuckles	4
	Y007	Completed truck frames	2
	Y007	truck frames	5
	Y007	Equalize beams	2
	Y007	Bolster	2
	Y008	Pallets of 6' x 4' sheet metal	47
	Y008	Partially completed truck frames	3
EXCEPTION →	Y008	8' bucket for a loader truck	1
	Y008	Misc. Springs approx. 16 per palette	28 pallets
	Y010	Unassembled Wheels - 36" 6 1/2x12	4
	Y010	Unassembled Wheels - 33" 6 1/2x12	4
	Y010	Unassembled Wheels - 36" 6x11	2
EXCEPTION →	Y010	Misc. used unassembled wheels	101
	Y010	Truck Frame	1
	Y010	Black Pipe 20 ft. sch 80-1/2"	140 ft.
	Y010	Black Pipe 20 ft. sch 80-3/8"	440 ft.
	Y010	Black Pipe 20 ft. sch-3/4"	140 ft.
	Y010	Black Pipe 20 ft. sch 1 1/4"	120 ft.
	Y010	Black Pipe 8 ft. sch 1"	8 ft.
	Y010	Copper pipe Type K 20 ft.-3/4"	420 ft.
	Y011	Flood Light	1
	Y012	Old End Doors	40
	Y012	Old Side Doors	25