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RECORDATION NO. 10261 Filed 1425

April 6, 1979

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APR 6 1979

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D. C.

X Washington

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303(a) of Title 49 of the United States Code and the rules and regulations thereunder is one counterpart of an Agreement of Lease dated March 29, 1979.

A general description of the railroad equipment covered by the enclosed document is contained in the attached Schedule.

The names and addresses of the parties to the enclosed document are:

LESSOR: DSN Enterprises, Inc.
10 South LaSalle Street
Chicago, Illinois 60603

LESSEE: F S Railcars, Inc.
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238

The undersigned is agent for the Lessee mentioned in the enclosed document for the purpose of submitting the enclosed document for recordation and has knowledge of the matters set forth therein.

Also enclosed is a remittance in the amount of \$50 in payment of recordation fees.

Very truly yours,

ALVORD AND ALVORD
as Agent for F S Railcars, Inc.

By Charles T. Kappler
Charles T. Kappler

Charles T. Kappler

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COMMERCIAL

SCHEDULE

<u>Description</u>	<u># of Units</u>	<u>Identification Numbers</u>
Half Dome Coach	7	904, 905, 907, 911-913, 909
Half Dome Diners	3	801, 802, 805
Kitchen Dormitory	1	593
Sleeper	2	AM2241, AM2803
Sleeper	2	250, 252
Caboose	1	93
Single Level Auto Carrier	1	194
Low Level Coach	1	582
Locomotive "B" Units	2	1139, 1140
Half Dome Diner	1	800
Crew Sleepers	2	630, 631
Caboose	2	91, 92
Yard Locomotives	4	622-625
Single Level Carrier*	6	190-193, 195-196
Auto Carrier/Caboose*	3	3, 6, 12
Full Dome Coaches*	13	510-515, 520-521, 523- 524, 522, 540, 541
Half Dome Coaches*	2	460, 470
Half Dome Coaches*	10	700-709
Half Dome Coach*	1	902
Half Dome Diners*	5	804, 806, 807, 803, 808
Diner*	4	590, 592, 594, 598
Diner*	1	570
Diner*	1	580
Kitchen Dormitories*	4	591, 595, 597, 599
Sleepers*	6	201-206
Sleepers*	2	304, 305
Steam Generators*	6	1130, 1132, 1134, 1136- 1138
Bi-Levels*	7	4, 17, 21, 22, 23, 25, 26
Tri-Levels*	20	101-120
Tri-Level Prototype*	1	100

* Subject to a first Lien of Commercial Credit Industrial Corp. and a second Lien of Riggs National Bank.

The rights of the parties hereto are subject to the conditions referred to in letters of consent issued by Commercial Credit Industrial Corp., 300 St. Paul Place, Baltimore, Maryland 21202, and Riggs National Bank of Washington, D.C. dated March 29, 1979 and to the Liens.

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AGREEMENT OF LEASE

RECORDATION NO. 10261 Filed 1425

APR 6 1979-10 25 AM

INTERSTATE COMMERCE COMMISSION

29. AGREEMENT OF LEASE, dated March 29, 1979, by and between DSN ENTERPRISES, INC., a Delaware corporation having an office and place of business at 10 South La Salle Street, Chicago, Illinois 60603 ("Lessor"), and FS RAILCARS, INC., a Delaware corporation having its principal office and place of business at 1000 RIDC Plaza, Pittsburgh, Pennsylvania 15238 ("Lessee").

IN CONSIDERATION of the mutual agreements hereinafter set forth and the payment of rent as herein provided for, the parties hereto, desiring legally to be bound, hereby agree as follows:

1. Definitions.

1.1 "Equipment" means the railroad rolling stock described in the Schedule annexed hereto.

1.2 "Fixed Rent" means the Rent payable by Lessee to Lessor pursuant to Section 5.1 hereof.

1.3 "Additional Rent" means the Rent payable by Lessee to Lessor pursuant to Section 5.2 hereof.

1.4 "Rent" means and includes Fixed Rent and Additional Rent.

1.5 "Lease Term" means the term of this Lease as provided for in Section 3 hereof.

1.6 "Lien" means collectively (i) the interest of the Existing Underlying Lessee (as defined in a Purchase

Agreement [the "Purchase Agreement"] of even date herewith between Lessor as buyer and Comet Leasing Corp., a Delaware corporation ("Seller"), as seller) pursuant to the Existing Underlying Lease (as defined in the Purchase Agreement); (ii) the liens of lending institutions, covering the Equipment as described in subdivision (a) of the Schedule to the Purchase Agreement and as refinanced pursuant to Section 28 hereof (the "Bank Lien"); (iii) the lien covering the equipment now held by the Existing Underlying Lessee ("Lessee's lien") and (iv) the lien covering the Equipment now held by Seller (the "Seller's Lien"). Lessee has been furnished with copies and is fully acquainted with all of the provisions of the documents evidencing and securing each of the Bank Lien, Lessee's Lien and the Seller's Lien. Each term defined in the Purchase Agreement shall have the same meaning herein.

2. Property Leased. Lessor, in consideration of the Rent to be paid by Lessee and the covenants and agreements of Lessee hereinafter set forth, hereby demises and lets to Lessee all of the Equipment. Each item of Equipment is leased hereunder, in "AS IS" condition, "WHERE IS" and subject to the leases, liens, security interests and encumbrances that exist at the time of the execution and delivery hereof, and all that may hereafter be placed or are permitted to be placed on the Equipment by Lessee.

3. Term. The term of lease for the Equipment shall be a fixed term commencing on the date hereof and extending through and including March 31, 1994; provided, however, that such term may be shortened pursuant to termination provisions contained elsewhere in this Lease.

4. Delivery and Redelivery. Except with respect to those items of Equipment for which an Underlying Lease entered into in accordance with the provisions of this Agreement is then in effect, and in such case upon termination of such Underlying Lease, promptly upon expiration or termination of the Lease Term for any reason, Lessee, at its expense, shall deliver or cause the delivery of each item of Equipment to Lessor in the same operating order, repair and condition as on the date hereof (reasonable wear and tear excepted) at such places in the Continental United States and at such times as Lessor shall designate in writing.

5. Rent.

5.1 Fixed Rent. Lessee shall pay to Lessor as Fixed Rent for the Equipment during the Lease Term the amounts referred to in Schedule A attached hereto at the times provided therein.

5.2 Additional Rent. If there shall occur an Event of Default (as hereinafter defined) (whether by reason of any failure by Lessee to perform any obligation (i) under an Underlying Lease, (ii) directly to Lessor under this Lease [as for example, the failure to pay taxes] or (iii) otherwise [as for example a failure to pay an insurance premium]) and Lessee fails to cure such default within any applicable grace period (whether herein or otherwise) after notice as provided for herein or otherwise, Lessor shall have the right, upon notice to Lessee, to cure such default or breach, and the amount of all reasonable expenses incurred by Lessor in connection therewith, after written notice to Lessee, shall be added to and be paid with the installment of Fixed Rent next payable under this Lease following the giving of such notice or at Lessor's option by written notice to Lessee, such amount shall be immediately due and payable. Interest on any amounts of Additional Rent due to be paid hereunder, but unpaid, shall accrue at the rate of 2% per month (or if that rate exceeds the maximum rate allowed by law, then such maximum rate) and shall be payable on demand.

5.3 Taxes and Fees. In addition to the Rent, Lessee shall pay or cause to be paid to the appropriate governmental authorities all franchise taxes that may be imposed upon Lessor in any state where the Equipment is located and all sales, use, property, ad valorem or other taxes, imposts, levies, duties, assessments, licenses, tolls, inspection or other fees, however designated, paid, payable or required to be collected by Lessor, Lessee, any end user of the Equipment or any other person, which are levied or based upon the rental provided for in this Lease or derived from any Underlying Lease, upon this Lease or any Underlying Lease, upon the Equipment or the use, delivery, return, lease, operation, control or value thereof or upon or with respect to any substitution as hereinafter provided for, including without limitation, state and local privilege and excise taxes based on gross revenues, any penalties or interest in connection therewith (other than penalties or interest arising out of acts or failures to act of Lessor) or amounts in lieu thereof, paid or payable by Lessor, Lessee, any Underlying Lessee or any

other person, with respect to the foregoing, but excluding taxes (including gross receipts taxes in the nature of an income tax) based on or measured by Lessor's net income; provided, however, that Lessee may in good faith (at its expense) contest in any reasonable manner the imposition of any such taxes, licenses, tolls, inspection or other fees, but only to the extent that such contest does not adversely affect, or threaten to affect, the title of Lessor in the Equipment or impose any criminal or civil liability on Lessor. Lessee agrees timely to file or cause to be timely filed, on behalf of Lessor, or otherwise, all such required tax and other returns and reports concerning the Equipment, any Underlying Leases and the taxes required to be paid by Lessee hereunder with all appropriate governmental agencies and to send Lessor copies of the same upon request. If the timely filing of any such return or report is dependent upon the action of Lessor, Lessee shall only be obligated under the immediately preceding sentence if Lessor shall timely provide Lessee with the information necessary for such filing.

5.4 Manner of Payment. All Fixed Rent, Additional Rent and other sums payable hereunder are expressed and shall be payable to Lessor in lawful money of the United States at its address set forth at the head of this Lease, or at such other place as Lessor shall designate in writing.

5.5 Net Lease. This lease is a net lease and it is specifically agreed that, as between Lessor and Lessee, Lessee shall be responsible for all costs and expenses of any nature whatsoever arising out of or related to or in connection with this Lease or the Equipment.

6. Maintenance and Risk of Loss.

6.1 Maintenance. During the Lease Term, Lessee, at its sole cost and expense, shall keep or cause to be kept each item of Equipment in such working order, repair and condition as a reasonably prudent company would keep similar equipment it owned and operated for similar purposes, make all necessary adjustments, repairs and replacements thereto and pay all costs, expenses, fees and charges incurred in connection therewith and with the use, possession and operation thereof, including, without limitation, repairs, maintenance, storage and servicing.

6.2 Risk of Loss. Until the Equipment is redelivered to Lessor, as provided for in this Lease, Lessee relieves Lessor of responsibility for (and Lessee shall be solely responsible for) all risk of physical damage to, or loss or destruction of, the Equipment, howsoever caused unless caused by any wilful or negligent act of Lessor. During the Lease Term, Lessee shall, at its own cost and expense, keep each item of Equipment insured at not less than full replacement cost, less a deductible amount which, commencing no later than April 15, 1979, shall not exceed \$500,000 in the aggregate per occurrence, against loss by fire, windstorm, collision and explosion and with extended "all risk" coverage against such other risks as are customarily insured against by reasonably prudent companies owning and operating property of a character similar to the Equipment for similar purposes. Upon the request of the Lessor, all insurance shall name Lessor as a loss payee (as its interest may appear) and shall provide that copies of all notices to Lessee shall be sent to Lessor and that such insurance shall not be cancelled without giving ten (10) days prior written notice to Lessor. Upon the request of the Lessor, Lessee shall furnish current certificates of such insurance to Lessor throughout the term. If any item of Equipment is rendered unusable as a result of any physical damage to, or destruction of, the Equipment, Lessee shall give to Lessor immediate notice thereof, but this Lease shall continue in full force and effect without any abatement of rental. Lessee shall determine, within forty-five (45) days after the date of occurrence of such damage or destruction, whether such item of Equipment can be repaired. In the event Lessee determines that the item of Equipment cannot be repaired on an economically feasible basis, Lessee at its expense shall promptly replace such items of Equipment in a manner that meets the requirements of Section 13 hereof (and convey title to such replacement equipment to Lessor free and clear of all liens and encumbrances other than the Lien), and this Lease shall continue in full force and effect as though such damage or destruction had not occurred. In the event Lessee determines that such item of Equipment can be repaired, Lessee shall cause such item of Equipment to be repaired at such times and in such manner as would reasonably prudent companies owning and operating similar equipment for similar purposes. (The foregoing shall not be deemed to impair or diminish Lessee's obligations under Section 4 hereof.) Provided Lessee

complies with its obligations under this Section, all proceeds of insurance received by Lessor or Lessee under the policies referred to above shall be paid to or retained by Lessee; provided, however, that in the event that insurance proceeds retained by Lessee exceed the cost of replacement equipment such difference shall promptly be paid to Lessor. Lessor hereby agrees to execute and deliver any instruments or documents requested in order to accomplish the foregoing.

7. Lessee to Hold Harmless. Lessee shall indemnify Lessor from and protect, defend and hold it harmless against any loss, cost, damage or expense (including, without limitation, reasonable attorneys' fees) by reason of any claim which is in any manner connected with the delivery, warehousing, transportation, use, condition, operation, possession, control or removal of Equipment during the Lease Term, howsoever arising and whether or not alleged to be attributed to any default or defect in the Equipment; provided, however, that Lessee shall be subrogated to all of Lessor's rights against third parties, including, but not limited to, the vendors, manufacturers or transporters of the Equipment with respect to any such claims. Lessor shall give Lessee notice of any claim or liability in respect of which indemnification is provided for hereunder promptly after Lessor learns thereof, and Lessee shall be entitled to control the defense or settlement thereof. Notwithstanding the foregoing, Lessee shall not be required to indemnify Lessor for any loss, cost, damage or expense (including reasonable attorneys' fees) arising out of or as a result of Lessor's fault or negligence.

8. Protection of Title. Lessee agrees that title to all Equipment shall remain in Lessor and that Lessee will at all times (except as otherwise specifically permitted hereunder or in connection with the Lien) (a) protect and defend, at its own cost, the title and interest of Lessor in and to the Equipment from and against any and all claims, liens, charges, encumbrances and legal processes of Lessee's creditors or other persons having claims against

Lessee or the Equipment (except claims, liens, charges, encumbrances and legal processes of Lessor's creditors or other persons having claims against Lessor and not also against the Lessee), including, without limitation, persons to whom Lessee may sublease the Equipment and their creditors, (b) keep each item of Equipment free and clear of any such claims, liens, charges, encumbrances and processes (except as permitted under the Documents) and (c) confirm and warrant the title of Lessor to the Equipment and the interest of Lessor by such instruments of further assurance as it shall reasonably be requested to execute. Lessee further agrees that by the execution of this Lease it does not have or obtain, and by payment and performance hereunder it does not and will not have or obtain, any title to the Equipment, nor any property right or interest, legal or equitable, therein, except as expressly set forth in this Lease.

9. Use of the Equipment. Lessee shall use its best efforts to cause each item of the Equipment at all times during the Lease Term to be used and operated under and in compliance with all applicable laws, orders, ordinances and regulations of the jurisdictions in which such item may be operated, including the Interchange Rules of the Association of American Railroads and the rules and regulations of the Interstate Commerce Commission; provided, however, that Lessee may in good faith contest (at its expense) in any reasonable manner the application of any such rule, regulation or order, but only to the extent that such contest or non-compliance during the pendency thereof does not adversely affect or threaten to affect the title of Lessor to any item of Equipment or impose any civil or criminal liability upon Lessor.

10. Right of Examination; Reports. Lessee agrees that it will at all times during the Lease Term, upon receipt of reasonable notice from Lessor, permit Lessor or its agents and representatives to make such examination during normal business hours of the Equipment and Lessee's books relating thereto as Lessor may reasonably request; provided, however, that any such right of examination shall be made in conformity with the provisions of any sublease permitted hereunder. Lessee shall at all times keep Lessor advised of any default by an Underlying Lessee, any loss or damage to the Equipment or any other material matters concerning the Equipment of which Lessee, from time to time, shall have knowledge. Lessee shall furnish Lessor with such

information (and copies of relevant documents) concerning the Equipment, Underlying Leases, the Lien, Fixed Rent and Additional Rent, as Lessor may, from time to time, reasonably request.

11. Sublease of Equipment. In addition to the Existing Underlying Lease, Lessee shall have the right during the Lease Term to sublease the Equipment to, or otherwise permit the control and use of the Equipment by, any party; provided, however, that in each such case Lessee shall obtain the prior written consent of Lessor which consent shall not be unreasonably withheld.

Except as provided below, Lessee shall fully and timely perform and discharge its obligations under all Underlying Leases, and Lessor shall not (i) have any obligations or liabilities under any Underlying Lease or (ii) be required or obligated in any manner to pay, perform or fulfill any obligations of Lessee under any Underlying Lease.

Lessee shall forward to Lessor full, complete and correct copies of all documents received by it relating to or creating subleases or other agreements or arrangements relating to the use and/or control of the Equipment, within 15 days after the making thereof.

If, upon the expiration or termination of this Lease (including termination pursuant to Section 16.2 hereof), any Underlying Lease is then in effect, the same shall not be cancelled or terminated and all of the rights of Lessee under such Underlying Lease, including, without limitation, the right to all payments due or to become due to Lessee under such Underlying Lease (except for rights, duties and obligations accrued or incurred prior to the date of the expiration or termination of this Lease, including, without limitation, the right to receive sums or the obligation to pay sums accrued prior thereto, and the duty to pay or defend any claim arising from such Underlying Lease prior thereto), and all guarantees of the obligations of the pertinent Underlying Lessees shall be, ipso facto, automatically assigned to Lessor; provided, however, that (a) Lessor shall not bear or assume any obligations other than the obligation to lease the Equipment to the Underlying Lessees and (b) such assignment shall be subject and subordinate to the interest of the holder of the Lien. In addition, Lessee shall pay to Lessor, at the time of the expiration or termination of this Lease, an amount equal to all advance rent, if any, paid by Underlying Lessees on account of all periods after the expiration or termination

of this Lease, and, in the event Lessee thereafter receives any rent or other sums on account of Underlying Leases for periods subsequent to the expiration or termination of this Lease, Lessee shall promptly pay such sums to Lessor. Promptly upon the request of Lessee, Lessor shall execute any and all documents requested by Lessee to perfect the interest of the holders of the Lien in such Underlying Leases and subordinate its interests therein. Lessee shall fully and timely perform and discharge its obligations under any Underlying Leases after the Lease Term (i) to the extent such obligations are not then assumed by Lessor hereunder and (ii) so long as Lessor performs its obligations hereunder.

12. Location of Equipment. Except as otherwise permitted under any Underlying Lease, the Equipment shall be operated and/or stored at all times during the term hereof within the United States.

13. Replacement of Equipment. In the event Lessee is required to replace any item of Equipment pursuant to Section 6.2 of this Lease (as in the case of destruction of the Equipment), Lessee shall replace such item with any item or items of tangible personal property ("Replacement Equipment") (a) which are substantially identical to the item or items which are being replaced or are otherwise reasonably satisfactory to Lessor, (b) having a fair market value at the time of such replacement and a residual fair market value equal to the fair market value and residual fair market value of the Equipment or item or items thereof ("Replaced Equipment") for which replacement is made immediately prior to the event giving rise to Lessor's obligation to replace such item or items, (c) being sufficiently similar to such Replaced Equipment or item or items thereof so as to be of "like kind" within the meaning of Section 1031 (or "similar or related" within the meaning of Section 1033, whichever is applicable) of the Internal Revenue Code of 1954, as amended and (d) having an "Asset Guideline Period" (as defined in Treasury Regulations Section 1.167(a)-(11)) equal to the Asset Guideline Period of such Replaced Equipment or item or items thereof. Without limiting the generality of the foregoing, any item or items of Replacement Equipment may be subject (to the extent that the Replaced Equipment is subject to the Lien) to the Lien including any refinancing thereof permitted under Section 28 hereof; provided, that in all events, such replacement (a) shall not impose upon Lessor any obligation greater than is imposed upon Lessor (as

owner of the Equipment) under this Lease, (b) shall not be in respect of equipment subject to a sublease (including all renewals or extensions thereof) which extends beyond the expiration date of the Lease Term, (c) shall provide for sublease rents to be paid directly to the lender under any financing thereof in amounts and at times as are equal to scheduled payments provided for under the terms of such financing, (d) shall be in compliance with, as to any sublease, the requirements of Section 11 hereof as to permitted subleases and (e) shall not result in any material increase in Lessor's tax burden over that which would have prevailed absent the loss, damage or destruction followed by the replacement provided for herein.

Lessee shall give Lessor at least (10) days prior notice of the replacement of Equipment hereunder, which notice shall include (x) a description and an appraisal of the fair market and residual values of the item or items of Replaced Equipment and the proposed Replacement Equipment, (y) copies of any and all leases, security agreements and other documents relating to security interests, liens, leases or encumbrances imposed or to be imposed, as permitted hereunder, on the item or items of proposed Replacement Equipment and (z) a statement of the amounts secured by security interests, liens and encumbrances on the item or items to be replaced and on the proposed Replacement Equipment.

Effective upon such replacement, all incidents of Lessee's interest as Lessee hereunder in the Replaced Equipment ipso facto shall cease and terminate automatically and the Replacement Equipment shall become Equipment leased hereunder instead of the Replaced Equipment. In addition, effective upon such replacement, all of Lessor's right, title and interest in and to the Replaced Equipment shall be automatically assigned and shall pass to Lessee and Lessor shall have no further interest therein.

14. Lessee's Covenants Satisfied by Compliance. Lessee's obligations under this Lease (other than for payment of Rent) shall be deemed satisfied by compliance with the requirements hereof by any Underlying Lessee under an Underlying Lease presently or hereafter in force as permitted hereby.

15. Additions and Alterations. During the term of this Lease, Lessee may make alterations or add attachments to the Equipment provided none thereof decrease the value of the Equipment, in any way damage or injure the Equipment, interfere with the normal or satisfactory operation or maintenance of the Equipment or create a safety hazard. At or following the expiration of the term hereof, Lessee shall, at its expense, remove such additions or alterations promptly on demand of Lessor, and, forthwith upon such removal, restore the Equipment to its original condition, less ordinary wear and tear.

16. Events of Default.

16.1 "Event of Default" means any of the following events:

(a) If Lessee shall default in the payment of any installment of Rent or other sums payable by Lessee to Lessor or its assigns hereunder as and when such Rent, or other sums become due and payable, and such default shall continue for a period of ten (10) days after notice or if Funding Systems Leasing Corporation, a Delaware corporation ("Guarantor"), shall default in the payment or performance of its obligations under that certain guaranty letter of even date herewith pursuant to which Guarantor has guaranteed the payment and performance by Lessee of its obligations hereunder and such default shall continue for a period of ten (10) days after notice; or

(b) If Lessee shall (i) default in the payment, or, in a material way, in the performance or observance, when due, of its obligations under the Liens or of any other covenant, agreement or obligation of Lessee to Lessor hereunder or otherwise relating in any manner to the purchase or leasing of the Equipment including, without limitation, obligations of Lessee (as Seller) under the Purchase Agreement, or (ii) have made any material misrepresentation or materially breached any warranty, covenant or agreement material to Lessor hereunder or under the Purchase Agreement and such default, misrepresentation or breach of warranty shall continue for a period of thirty (30) days after notice; or

(c) If Lessee or Guarantor shall:

(i) admit in writing its inability to pay its debts generally as they become due;

(ii) file a petition in bankruptcy or a petition to take advantage of any insolvency act;

(iii) make an assignment for the benefit of its creditors;

(iv) consent to the appointment of a receiver for itself or for the whole or any substantial part of its property;

(v) on a petition in bankruptcy filed against it, be adjudicated a bankrupt; or

(vi) file a petition or answer seeking reorganization, arrangement or other aid or relief under the bankruptcy laws or any other state or federal law for the relief of debtors; or

(d) If a court of competent jurisdiction shall enter an order, judgment or decree appointing, with or without the consent of Lessee or Guarantor, a receiver for Lessee or Guarantor or the whole or any substantial part of either of their property, or approving a petition filed against either of them seeking reorganization or arrangement of either of them under any bankruptcy or insolvency laws or any other state or federal law for the relief of debtors, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof; or

(e) If, under the provisions of any other law for the relief of debtors, any court of competent jurisdiction shall assume custody or control of Lessee or Guarantor or the whole or any substantial part of either of their property, with or without the consent of Lessee or Guarantor, and such custody or control shall not be terminated or stayed within sixty (60) days from the date of assumption of such custody or control.

16.2 Remedies. If an Event of Default occurs and is continuing, Lessor, at its option, may terminate this Lease and the term hereof by giving Lessee notice of its election and intention to do so. Upon Lessor's election to terminate this Lease as set forth above, then upon the expiration of the time fixed in such notice (i) this Lease and the term hereof shall wholly cease and expire in the same manner and with the same force and effect as if the date fixed by such notice were the expiration of the entire Lease Term herein granted, (ii) subject to the Lien and any Underlying Leases, Lessor may take possession of any or all of the Equipment wherever situated, and, for such purposes, enter upon any premises without any liability for so doing and (iii) subject to the Underlying Leases and the Lien, Lessor may sell, dispose of, hold, use or lease any or all of the Equipment as Lessor in its sole discretion shall determine, without any duty to account to Lessee, except as expressly provided herein. Lessee shall in all events, whether or not this Lease is terminated as foresaid, be and remain liable (a) for damages as provided by law, (b) for Lessee's obligations which extend beyond the Lease Term or such termination and (c) for costs and expenses incurred by Lessor arising from such Event of Default or termination.

17. Indemnification.

17.1 Lessee will indemnify Lessor and protect, defend and hold it harmless from and against any and all loss, cost, damage, injury or expense, including, without limitation, reasonable attorneys' fees, wheresoever and howsoever arising which Lessor or its subsidiaries or shareholders, or any of its or their directors, officers, agents, employees, stockholders or partners, may incur by reason of any breach by Lessee of any of the representations by, or obligations of, Lessee contained in this Lease or in any way relating to or arising out of this Lease, the Equipment, claims of holders of the Lien, Underlying Lessees; provided, however, that if Lessor shall fail to notify Lessee as aforesaid within a reasonable time after Lessor shall have actual notice of any such claim or liability with the result that Lessee is denied all reasonable judicial process to defend against the same, then Lessee shall be relieved of any liability to

indemnify Lessor under this Section 17.1. Notwithstanding the foregoing, Lessee shall not be required to indemnify Lessor for any loss, cost, damage or expense (including reasonable attorneys' fees) arising out of or as a result of Lessor's fault or negligence.

17.2 In the event any claim for indemnification hereunder arises on account of a claim or action made or instituted by a third person against Lessor, Lessor shall notify Lessee promptly after the receipt of notice by Lessor that such claim was made or that such action was commenced. Lessee shall be entitled to participate in or, at its option assume the defense of any such claim or action by counsel of its own choosing, and if it assumes such defense, to control and settle the same. If Lessee shall only participate in the defense of any such claim or action, the same shall not be settled without its prior written consent (which consent shall not be unreasonably withheld) unless Lessee shall deny Lessor's right to indemnification.

18. No Transfer. Lessee shall not, without first obtaining the written consent of Lessor, which consent shall not be unreasonably withheld or delayed, sell, assign or transfer any or all of its rights or interests in, to or under this Lease or the Equipment, except under a sublease permitted by the provisions of Section 11 hereof or in accordance with a refinancing permitted under Section 28 hereof, but in any event Lessee named herein shall remain liable for the full performance of all of the obligations of Lessee under this Lease. Lessor acknowledges and agrees that any transfer by it of the Equipment or any rights therein shall require the prior consent of the holders of the Bank Lien subject, however, with regard to the giving or withholding of such consent to any reasonableness or other standards placed on any such holder of the Bank Lien by the documents evidencing same.

19. Disclaimer of Warranties. THE EQUIPMENT IS BEING LEASED HEREUNDER "AS IS." ACCORDINGLY, EXCEPT AS MAY BE SPECIFICALLY SET FORTH HEREIN, LESSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE. LESSOR SHALL IN NO EVENT, BE LIABLE TO LESSEE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CAUSED, DIRECTLY OR INDIRECTLY, BY

THE EQUIPMENT OR ANY INADEQUACY THEREOF FOR ANY PURPOSE, OR ANY DEFICIENCY OR DEFECT THEREIN, OR THE USE OR MAINTENANCE THEREOF, OR ANY REPAIRS, SERVICING OR ADJUSTMENTS THERETO.

20. Remedies. No course of dealing between Lessee and Lessor nor any delay or omission of Lessor or Lessee to exercise any right or remedy granted under this Lease shall operate as a waiver of any rights of such party, and every right and remedy of such party provided for herein shall be cumulative and concurrent, unless otherwise expressly provided herein, and shall be in addition to every other right or remedy provided for herein or now or hereafter existing in law or in equity or by statute or otherwise. The exercise or attempted exercise by such party of any such rights or remedies shall not preclude the simultaneous or later exercise by such party of any or all other such rights or remedies. Such rights or remedies may be exercised from time to time and as often as shall be deemed expedient.

21. Successors and Assigns. Subject to the provisions of Section 18, all covenants and agreements contained in this Lease shall bind the successors, assigns and transferees of Lessee and Lessor and shall inure to the benefit of the successors, assigns, and transferees of Lessee, to the extent assignment is permitted hereunder, and Lessor, in the same manner and to the same extent and with like effect as if such successors and assigns were named in such covenants and agreements and were made parties to this Lease. Except as provided for in this Section 21, nothing contained in this Lease is intended to create any rights in any third persons, including, without limitation, any Underlying Lessees or any persons claiming through or under any Underlying Lessees.

22. Notices. Any notice, request or other communication to either party hereunder shall be given in writing and shall be deemed given on the earlier of the date the same is (i) personally delivered with receipt acknowledged or (ii) mailed by certified or registered mail, return receipt requested, postage prepaid, and addressed to the party for which intended at its address set forth at the head of this Lease together with a copy thereof to such

single additional addressee as a party may request by notice to the other. The person and the place to which notices or copies of notices are to be given to either party may be changed from time to time by written notice to the other party.

23. Quiet Enjoyment. Except as to acts or things which Lessor is permitted to do pursuant to the other provisions of this Lease, Lessor agrees not to do any act or thing which would cause a breach or default by Lessee under the Lien or any Underlying Lease entered into in accordance with the terms of this Lease. So long as this Lease shall not have expired or been terminated, Lessee shall have the right of quiet enjoyment, use and possession of the Equipment in accordance with the terms hereof (subject to the Lien and any Existing Underlying Lease); provided, however, that nothing herein shall be deemed to diminish or modify Lessor's rights upon the occurrence of an Event of Default. Lessor agrees that so long as any Underlying Lease or other sublease permitted hereunder is not in default, Lessor shall not disturb the right of any lessee under any such Underlying Lease or other sublease of the quiet enjoyment, use and possession of the Equipment in accordance with the terms of any such Underlying Lease or other sublease.

24. Reporting. For income tax purposes Lessee agrees to account for the transactions hereunder as a true lease and will take no position on its tax returns or any other document relating thereto inconsistent therewith.

25. Governing Law. This Agreement shall be governed by and interpreted under the laws of the Commonwealth of Pennsylvania applicable to contracts made and to be performed therein without giving effect to the principles of conflict of laws thereof; provided, however, that the parties shall be entitled to all rights conferred by Section 11303 of Title 49 of the U.S. Code (formerly Section 20c of the Interstate Commerce Act) and such additional rights arising out of the filing, recording or deposit hereof or of any financing statement or other document relating hereto, if any, as shall be conferred by the laws of the jurisdictions in which this Agreement or such financing statement or other document shall be filed, recorded or deposited.

26. Covenants of Lessor. Lessor represents, warrants and covenants to the Lessee, that:

(a) Lessor is a corporation duly organized and existing in good standing under the laws of the state of its incorporation;

(b) Lessor has all power and authority to own its properties and carry on its business in the places where such properties are located and such business is conducted;

(c) Lessor has the power and authority to enter into this Lease and to carry out the transactions contemplated thereunder;

(d) the execution and delivery of this Lease and the performance of Lessor's obligations hereunder have been duly authorized by all necessary corporate action of Lessor and do not violate or conflict with any provision of such Lessor's Certificate of Incorporation, or By-Laws, any law, or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority, or any agreement to which such Lessor is a party or by which Lessor is bound;

(e) Lessor is not subject to any restriction or agreement which (with or without the giving of notice or passage of time or both) prohibits or would be violated by, and Lessor has obtained all of the consents of third persons necessary for, the consummation of the transactions contemplated hereby and thereby, and this Lease constitutes the valid and binding obligation of such Lessor enforceable in accordance with its terms;

(f) there is no action, suit or proceeding pending against Lessor before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution and delivery by Lessor of this Lease and the performance by Lessor of its obligations hereunder and thereunder;

(g) Lessor will keep each item of the Equipment free and clear of all claims, liens, security interests or other encumbrances senior to the Lien which are not created by or arising from acts or omissions of Lessee, any Underlying Lessee, or any holder of the Lien.

27. Covenants of Lessee. Lessee represents, warrants and covenants to the Lessor, that:

(a) Lessee is a corporation duly organized and existing in good standing under the laws of the state of its incorporation;

(b) Lessee has all corporate power and authority to own its properties and carry on its business in the places where such properties are located and such business is conducted;

(c) Lessee has the power and authority to enter into this Lease and to carry out the transactions contemplated hereunder;

(d) the execution and delivery of this Lease and the performance of Lessee's obligations hereunder have been duly authorized by all necessary corporate action of Lessee and do not violate or conflict with any provision of Lessee's Certificate of Incorporation or By-Laws, any law, or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority, or any agreement to which such Lessee is a party or by which Lessee is bound;

(e) Lessee is not subject to any restriction or agreement which (with or without the giving of notice or passage of time or both) prohibits or would be violated by, and has obtained all of the consents of third persons necessary for, the consummation of the transactions contemplated hereby and thereby, and this Lease constitutes the valid and binding obligation of such Lessee enforceable in accordance with its terms;

(f) Lessee is not a party to any indenture, mortgage, deed of trust or other written agreement (to which Lessor is not also a party) of any nature whatsoever, which by its terms causes any security interest to attach or hereafter to attach to the Equipment (other than the Lien), or in any manner affects or will affect adversely the Lien; there is no action, suit or proceeding pending against Lessee before or by any court, administrative agency or other governmental authority which bring into question the validity of, or might in any way impair, the execution and delivery by Lessee of this Lease and the performance by Lessee of its obligations hereunder;

28. Refinancing.

28.1 Refinancing. Lessor and Lessee hereby acknowledge and agree that Lessee shall not permit, without the prior written consent of Lessor, any extension, modification, replacement, exchange or increase of the Bank Lien or the Lessee's Lien from time to time outstanding; provided, however, that such consent shall not be required for a refinancing or other increase by the Existing Underlying Lessee of the Bank Lien so long as such refinancing or other increase meets the requirements contained in Section 3.1 of that certain Purchase Agreement of even date between Lessee, as Buyer, and the Existing Underlying Lessee, as Seller.

28.2 Obligations of Lessor. In connection with any extension, modification, replacement, exchange or increase of the Bank Lien or the Lessee's Lien permitted in accordance with the provisions hereof, Lessor agrees that its interest in the pertinent Equipment and Underlying Leases shall be subordinate to that of the lender. At Lessee's or such lender's request, Buyer shall grant to such lender a security interest in such Equipment and shall execute and deliver any and all documents requested by Lessee or such lender in order to perfect such lender's security interest in and to such Equipment and to reflect Lessor's subordination of its interest thereto.

29. Further Assurances. Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party in order to fully carry out the intent and accomplish the purposes of this Lease and the transactions referred to herein.

30. Captions. Captions used herein are inserted for reference purposes only and shall not affect the interpretation or construction of this Lease.

31. Execution. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

32. Severability. The invalidity or unenforceability of any provision of this Lease shall not affect the validity or enforceability of any other provision.

33. Amendments. This Lease may be amended or varied only by a document, in writing, of even or subsequent date hereto, executed by Lessor and Lessee.

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the day and year first above written.

LESSOR: DSN ENTERPRISES, INC.

By: *Jerry H. Sedimo*
Asst. Vice President

LESSEE: FS RAILCARS, INC.

By: *Harley P. Schuman*
Pres

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

On this *29th* day of *March*, 1979, before me personally appeared *Stanley B. Scheinman* to me personally known, who being by me duly sworn, did depose and say that he is the *President* of FS RAILCARS, INC., 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.



Notary Public

DIANE H. McCLAIN

Notary Public, State of New York
No. 52-4807792-Qual. in Suffolk County
Certified in New York County
Commission Expires March 30, 1979

(SEAL)



SCHEDULE A

Fixed Rent shall be monthly installments in the amount of:

- (a) \$136,031.96 for each of the first ten (10) full months (April, 1979 through January, 1980) of the term hereof;
- (b) \$92,365.00 for each of the next twelve (12) months (February, 1980 through January, 1981) during the term hereof;
- (c) \$96,531.67 for each of the next twelve (12) months (February, 1981 through January, 1982) during the term hereof; and
- (d) \$117,365.00 for each of the next twelve (12) months (February, 1982 through January, 1983) during the term hereof; and
- (e) \$192,405.00 for each of the next remaining 134 months (February, 1983 through March, 1994) during the term hereof.

Each such installment shall be due and payable on the last day of each month. Rent in the amount of \$11,970.38 shall be due and payable on March 31, 1979 for the month of March, 1979.

SCHEDULE

<u>Description</u>	<u># of Units</u>	<u>Identification Numbers</u>
Half Dome Coach	7	904, 905, 907, 911-913, 909
Half Dome Diners	3	801, 802, 805
Kitchen Dormitory	1	593
Sleeper	2	AM2241, AM2803
Sleeper	2	250, 252
Caboose	1	93
Single Level Auto Carrier	1	194
Low Level Coach	1	582
Locomotive "B" Units	2	1139, 1140
Half Dome Diner	1	800
Crew Sleepers	2	630, 631
Cabooes	2	91, 92
Yard Locomotives	4	622-625
Single Level Carrier*	6	190-193, 195-196
Auto Carrier/Cabooes*	3	3, 6, 12
Full Dome Coaches*	13	510-515, 520-521, 523- 524, 522, 540, 541
Half Dome Coaches*	2	460, 470
Half Dome Coaches*	10	700-709
Half Dome Coach*	1	902
Half Dome Diners*	5	804, 806, 807, 803, 808
Diner*	4	590, 592, 594, 598
Diner*	1	570
Diner*	1	580
Kitchen Dormitories*	4	591, 595, 597, 599
Sleepers*	6	201-206
Sleepers*	2	304, 305
Steam Generators*	6	1130, 1132, 1134, 1136- 1138
Bi-Levels*	7	4, 17, 21, 22, 23, 25, 26
Tri-Levels*	20	101-120
Tri-Level Prototype*	1	100

* Subject to a first Lien of Commercial Credit Industrial Corp. and a second Lien of Riggs National Bank.