

LAW OFFICES
ALVORD AND ALVORD

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD
ALBERT H. GREENE
CARL C. DAVIS*
CHARLES T. KAPPLER
ROBERT S. HOPE
JOHN H. DOYLE
MILTON C. GRACE*
GEORGE JOHN KETO**
RICHARD N. BAGENSTOS

* NOT A MEMBER OF D. C. BAR
** ALSO A MEMBER OF OHIO BAR

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N.W.
WASHINGTON, D.C.

20006

JUL 19 1979 - 2 30 PM

July 19, 1979

INTERSTATE COMMERCE COMMISSION

OF COUNSEL
JESS LARSON
URBAN A. LESTER

CABLE ADDRESS
"ALVORD"

TELEPHONE
AREA CODE 202
393-2266

TELEX
440348 CDAA UI

10646

RECORDATION NO. 10646
Filed 1425

JUL 19 1979 - 2 30 PM
INTERSTATE COMMERCE COMMISSION

3-2004151

JUL 19 1979

Date
Fee \$ 100.00

CC Washington, D. C.

Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

Enclosed herewith for recordation pursuant to the provisions of 49 U.S.C. §11303(a) are original and two counterparts each of a Purchase Agreement dated July 18, 1979 and a Bill of Sale dated July 18, 1979. *and Assignment*

A general description of the railroad equipment covered by the enclosed documents is as follows:

One hundred ten (110) 100-ton, 4000 cubic feet, triple pocket open top hopper cars manufactured by Bethlehem Steel Corporation and bearing identifying marks and numbers UMP 8000-8109, inclusive.

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

SELLER: Funding Systems Railcars, Inc.
1000 RIDC Plaza
Pittsburgh, PA 15238

BUYER: Hayward Manufacturing Co., Inc.
900 Fairmount Avenue
Elizabeth, New Jersey 07201

The undersigned is Agent of the Seller mentioned in the enclosed documents for the purposes of recordation.

Please return the original and one counterpart of the enclosed Purchase Agreement and Bill of Sale to Charles T. Kappler, Esq.,

Charles T. Kappler

FEE OVERPAID
JUL 19 1979
U.S. DEPT. OF COMMERCE

Secretary
Interstate Commerce Commission
July 19, 1979
Page Two

Alvord and Alvord, 200 World Center Building, 918 Sixteenth Street,
N.W., Washington, D.C. 20006, or to the bearer hereof.

Also enclosed is a remittance in the amount of \$100 in pay-
ment of the required recording fee.

Very truly yours,

FUNDING SYSTEMS RAILCARS, INC.
BY ALVORD AND ALVORD

By Charles T. Kappler
Charles T. Kappler

10646

RECORDATION NO. Filed 1425

JUL 19 1979 -2 30 PM UMP - Hayward

INTERSTATE COMMERCE COMMISSION

PURCHASE AGREEMENT

AGREEMENT dated July 18, 1979, by and between FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation, having its principal office and place of business at 1000 RIDC Plaza, Pittsburgh, Pennsylvania 15238 ("Seller"), and HAYWARD MANUFACTURING CO., INC., a New Jersey corporation, having its principal office and place of business at 900 Fairmount Avenue, Elizabeth, New Jersey 07201 ("Buyer").

BACKGROUND

Simultaneously with the execution and delivery hereof, Seller is acquiring 110 open top hopper railroad cars manufactured by Bethlehem Steel Corporation (the "Equipment") more particularly described in the schedule attached hereto (the "Schedule"). The Equipment is subject to the lien described in the Schedule (the "Lien") securing the indebtedness of Seller to the holder of the lien as more particularly described in the Schedule. Seller, as lessor, is a party to a lease agreement ("Lease"), more particularly described in the Schedule, with the Upper Merion and Plymouth Railroad Company ("UMP") pursuant to which, effective on the date hereof, Seller agreed to lease to UMP, and UMP agreed to lease from Seller, the Equipment, upon the terms and conditions provided for in the Lease. Funding Systems Corporation ("Guarantor") has guaranteed the obligations of UMP under the Lease pursuant to a guarantee dated the date hereof (the "First Guarantee") and has guaranteed the obligation of Seller hereunder pursuant to another guarantee dated the date hereof (the "Second Guarantee"). The First Guarantee and the Second Guarantee are sometimes hereinafter referred to collectively as the "Guarantees".

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Equipment and the Lease.

NOW, THEREFORE, in consideration of the premises, the parties hereto, desiring legally to be bound, hereby agree as follows:

071779/1818/A1

1. Purchase of Equipment.

1.1 Conveyance of Equipment. Subject to the terms and conditions of this Agreement, Seller hereby sells, transfers, conveys, assigns, sets over, bargains, sells and delivers unto Buyer, and Buyer hereby purchases from Seller, the Equipment and all of the rights of lessor under the Lease and the First Guarantee, subject and subordinate, however, to the Lien, and as to the Equipment, the rights of UMP under the Lease. Seller hereby delivers to Buyer, and Buyer hereby acknowledges receipt of, a bill of sale and assignment for the Equipment and the Lease.

1.2 Purchase Price. The full purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Equipment shall be \$4,386,250 in the aggregate, payable \$1,282,187.52 in cash simultaneously herewith and the balance by Buyer taking the Equipment subject to the Lien.

1.3 Assumption and Subordination. Buyer and Seller acknowledge and agree that although Buyer's interest in the Equipment and the Lease is subject and subordinate, in all respects, to the Lien and, as to the Equipment, the rights of UMP under the Lease, Buyer is not assuming any of Seller's obligations under the Lien, or in respect of the indebtedness secured thereby (except to the extent any such obligations are specifically assumed by Buyer in a separate writing), or under the Lease (other than the obligation to lease the Equipment to UMP pursuant to the Lease). All obligations in respect of the Lien or in respect of the indebtedness secured thereby (other than the obligations specifically assumed by Buyer in a separate writing as aforesaid) and all obligations of lessor under the Lease (other than the obligation to lease the Equipment to UMP thereunder) shall be performed by Seller.

2. Representations and Warranties.

2.1 Representations and Warranties of the Seller. Seller represents and warrants to, and covenants and agrees with, Buyer as follows:

(a) On the date hereof (i) the Equipment has been properly maintained and is in good working order and repair, (ii) to the best of Seller's knowledge, neither the sale nor

use of the Equipment violates or infringes the patent, trademark, trade name or other rights of any person, (iii) the Lease has been duly executed and delivered, is in full force and effect, constitutes the valid and binding obligations of the Seller, as lessor, and the UMP as lessee, thereunder, is enforceable against Seller and the UMP in accordance with its terms (subject to laws of general application affecting creditor's rights) and no material defaults, or conditions which with the passage of time, the giving of notice, or both, could constitute material defaults, exist thereunder by UMP or by Seller, (iv) the Lease is a true lease and not conditional sale or similar agreement, (v) the Equipment is located at the place designated in the Schedule and (vi) no material defaults, or conditions which, with or without the passage of time, the giving of notice or both, could constitute material defaults, exist by Seller under any agreement, instrument or document relating to the Lien or the indebtedness secured thereby.

(b) On the date hereof Seller owns, and by this Agreement conveys to Buyer, good and marketable title to the Equipment, Lease and First Guarantee, free and clear of any and all leases, liens, claims and encumbrances other than the Lien and, as to the Equipment, the rights of UMP under the Lease. There are no agreements, leases, liens, claims, or encumbrances affecting the Equipment or the Lease which are not disclosed in the Schedule.

(c) Upon the purchase of the Equipment by Buyer pursuant to this Agreement, the Equipment, in the hands of Buyer (assuming Buyer is qualified purchaser), will be "new Section 38 property" eligible for the full investment tax credit allowed under Section 38 (and related sections) of the Internal Revenue Code of 1954 as amended.

(d) Seller has the power and authority to enter into this Agreement and all other instruments and documents executed, delivered and/or received, to be executed, delivered and/or received, in connection with the transactions herein referred to and to carry out the sale and transfer of the Equipment and the Lease and First Guarantee (both of which are assignable to Buyer) to Buyer and the transactions contemplated hereunder and thereunder. (This Agreement and all such other instruments and documents are hereinafter referred to collectively as the "Documents.") There is no action, suit or proceeding pending against Seller 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, delivery or performance by Seller of any Document. The sale of the Equipment by Seller to Buyer hereunder does not constitute a bulk sale under the Bulk Sales law of any pertinent jurisdiction.

(e) The execution and delivery of the Documents by Seller and the performance by it of its obligations thereunder, including, without, limitation, the conveyance of the Equipment, Lease and First Guarantee and the acceptance of the Purchase Price for the Equipment, have been duly authorized by all necessary action of Seller and do not violate or conflict with (i) any provision of Seller's Certificate of Incorporation or By-Laws (ii) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority or (iii) any agreement to which Seller is a party or by which Seller is, or may be, bound.

(f) The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Seller enforceable against it in accordance with their respective terms, subject, however, to laws of general application affecting creditors' rights.

(g) Seller is not subject to any restriction or agreement (including, without limitation, the Lease or any agreements creating or relating to the Lien) which, with or without the passage of time, the giving of notice, or both, prohibits, or would be violated by, the execution, delivery and consummation of the Documents and transactions therein referred to. No consents are necessary for such execution, delivery or consummation by Seller.

(h) Each of Seller and Guarantor is a corporation validly organized and existing in good standing under the laws of the state of its incorporation, is qualified where required for the conduct of its business and 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.

(i) Guarantor has the power and authority to enter into the Guarantees and to perform its obligations thereunder. The execution and delivery of each of the Guarantees and the performance by Guarantor of its obligations thereunder, have been duly authorized by all necessary action of Guarantor and do

not violate or conflict with (i) any provision of Guarantor's Certificate of Incorporation or By-Laws, (ii) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority or (iii) any agreement to which Guarantor is a party or by which Guarantor is, or may be, bound. The Guarantees constitute the valid and binding obligations of Guarantor enforceable against it in accordance with their respective terms (subject, however, to laws of general application affecting creditors' rights). Guarantor is not subject to any restriction or agreement which, with or without the passage of time, the giving of notice or both, prohibits, or would be violated by, the execution, delivery or performance of the Guarantees. No consents are necessary for such execution, delivery or performance by Guarantor.

(j) All sales, use, property or other taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates which were or may be required to be paid or obtained in connection with the original acquisition of the Equipment by Seller or upon the leasing thereof to UMP pursuant to the Lease has been, or when due will be promptly be, paid in full (or adequate provision for such payment has or shall have been made) or obtained.

(k) Seller has furnished or made available to Buyer a true, correct and complete copy of each and every document delivered to or by Seller in connection with the purchase of the Equipment by Seller and the leasing of the Equipment to UMP under the Lease and all documents creating or relating to the Lien, including, without limitation, notes, loan agreements, security agreements, note purchase agreements and financing statements, and Seller shall furnish to Buyer true, correct and complete copies of all such documents delivered after the date hereof.

(l) The sale by Seller to the holder of the Lien of the instruments evidencing the indebtedness secured by the Lien, did not, does not, and, after giving effect to the transactions contemplated herein, will not require registration under the Securities Act of 1933, as amended.

(m) Per Diem Rate. The current per diem rate is \$.73 per hour and the current mileage charge is \$0.0553 per mile. Accordingly, each item of Equipment at 95% utilization and 60 miles per day average use would yield gross revenues of \$7,225.58 per year at current rates.

(n) EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 2.1, OR IN THE BILL OF SALE HEREINBEFORE REFERRED TO, THERE ARE NO WARRANTIES OR REPRESENTATIONS OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, CONCERNING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, THE LEASE OR THE EQUIPMENT, ITS CONDITION, ITS FITNESS FOR A PARTICULAR PURPOSE, ITS MERCHANTABILITY OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE.

2.2 Representations and Warranties of the Buyer.
Buyer represents and warrants to, and agrees with, Seller as follows:

(a) Buyer is a corporation duly and validly organized and existing in good standing under the laws of the State of its incorporation and has all power and authority to own its properties and carry on its business where such properties are located and such business is conducted.

(b) Buyer has the power and authority to enter into the Documents and to carry out the transactions contemplated thereunder.

(c) The execution and delivery of the Documents by Buyer, and the performance of its obligations thereunder have been duly authorized by all necessary action of Buyer.

(d) The Documents constitute, or when executed and delivered will constitute, the valid and binding obligations of Buyer enforceable against it in accordance with their respective terms, subject, however, to laws of general application affecting creditors' rights.

(d) Buyer is not subject to any restriction or agreement which, with or without the giving of notice, the passage of time or both, prohibits or would be violated by, the execution, delivery and consummation of the Documents or the transactions therein referred to. No consents are necessary for such execution, delivery and consummation by Buyer.

3. Covenants.

3.1 Taxes, etc. Seller shall pay or obtain, as the case may be, when due, all sales, use, property or other taxes (other than taxes based on the net income of Buyer), licenses, tolls, inspection or other fees, bonds, permits or certificates now or hereafter imposed by or required to be paid or obtained to or from any jurisdiction in connection with the sale of the Equipment, Lease and First Guarantee by Seller to Buyer;

provided, however, that Seller may in good faith (at its expense) contest in any reasonable manner the imposition of any such taxes, licenses, tolls, inspection or other fees, bonds, permits or certificates, but only to the extent that such contest does not adversely affect, or threaten to affect, the title of Buyer to the Equipment and does not expose Buyer to any criminal or civil liability.

3.2 Reporting. For income tax purposes Seller will account for the transactions herein referred to as a true sale and will take no position on its tax return, or any other document relating thereto, inconsistent therewith.

4. Benefits of Representations, Warranties, Etc.

Seller hereby assigns to Buyer the benefits of all warranties, representations, covenants, guaranties and indemnities made to Seller by, or which Seller is entitled to enforce against, any predecessor in title to the Equipment or the manufacturer of the Equipment or any other party relating to the Equipment or the transactions contemplated hereby.

5. Indemnification.

Seller will indemnify Buyer and protect, defend and hold it harmless from and against any and all loss, cost, damage, injury or expense, including, without limitation, reasonable attorney's fees, wheresoever and howsoever arising which Buyer or its subsidiaries or stockholders, or any of its, or their, directors, officers, agents, employees, stockholders or partners, may incur by reason of any material breach by Seller of any of the representations by, or obligations of, Seller set forth in the Documents or by reason of the Bulk Sales Laws of any jurisdiction. In the event any claim for indemnification hereunder arises on account of a claim or action made or instituted by a third person against Buyer, Buyer shall notify Seller promptly after the receipt of notice by Buyer that such claim was made or that such action was commenced. Seller shall be entitled to participate in the defense of any such claim or action by counsel of its own choosing. If Seller shall participate in the defense of such claim or action, the same shall not be settled without its prior written consent (which consent shall not be unreasonably withheld) unless Seller shall deny Buyer's right to indemnification.

6. Miscellaneous.

6.1 Survival. The representations and warranties made herein shall survive the execution and delivery of this Agreement and the consummation of the transactions described herein.

6.2 Successors and Assigns. The rights and obligations of the parties hereunder shall inure to the benefit of, and be binding and enforceable upon, the respective successors, assigns and transferees of either party.

6.3 Notices. Any notice, request or other communication to either party by the other 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 mail, return receipt requested, postage prepaid and addressed to the party for which it is intended at the address set forth at the head of the Lease together with a copy to one addressee as may be designated by a party by notice hereunder. The place to which notices or copies of notices are to be given to either party may be changed from time to time by such party by written notice to the other party.

6.4 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of Pennsylvania applicable to contracts made and to be performed therein without giving effect to the principles of conflict of laws thereof.

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

6.6 Counterparts. This Agreement 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 agreement.

6.7 Amendments. This Agreement may be amended or varied only by a document, in writing, of even or subsequent date hereof, executed by Buyer and Seller.

6.8 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 the Documents and the transactions referred to therein, including,

without limitation any instruments or documents required by the holder of any Lien.

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement as of the day and year first above written.

BUYER: HAYWARD MANUFACTURING CO., INC.

By: *William Garbee Sr. V.P.*

SELLER: FUNDING SYSTEMS RAILCARS, INC.

By: *Stanley G. Williams*

SCHEDULE

Equipment:

110 100-ton, 4000 cubic feet, triple pocket open top hopper cars, manufactured by Bethlehem Steel Corporation and bearing identifying marks and numbers as follows:

UMP 8000 through UMP 8109, inclusive

Lease:

Lease covering the Equipment between Funding Systems Railcars, Inc., as lessor and Upper Merion and Plymouth Railroad, as lessee, dated July 18, 1979. The Lease is for a term of 15 years and 6 months and calls for fixed rentals of \$104,762.11 for each of the first two three-month periods, and \$121,319.83 for each of the next sixty three-month periods thereafter as well as certain contingent rentals.

Lien:

First lien security interest of Marmon Retirement Trust in the Equipment and Lease, pursuant to a security agreement between Marmon Retirement Trust, as secured party and Funding Systems Railcars, Inc., as debtor, dated July 18, 1979. Lien secures indebtedness of \$3,104,062.50, together with interest at the annual rate of 13.5% and calls for debt service equal to the payments of fixed rent required to be made under the Lease. Such debt service will fully liquidate the indebtedness.

Location:

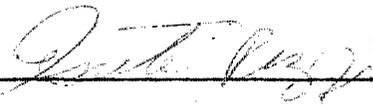
Equipment to be delivered at Somerset, Pennsylvania.

STATE OF NEW YORK

County of New York, ss:

On this 18th day of July, 1979, before me personally appeared Richard E. Parker, to me personally known, who being by me duly sworn, says that he is the Secretary of Hayward that the seal 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.

[Seal]


ANITA RIZZO
NOTARY PUBLIC, State of New York
No. 03-4625488
Qualified in Bronx County
Commission Expires March 30, 1980

My comission expires 1980

STATE OF NEW YORK

County of New York, ss:

On this 18th day of July, 1979, before me personally appeared Barry B. Schanor, to me personally known, who being by me duly sworn, says that he is the President of Fordley Systems that the seal 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.

[Seal]


ANITA RIZZO
NOTARY PUBLIC, State of New York
No. 03-4625488
Qualified in Bronx County
Commission Expires March 30, 1980

My comission expires 1980

Interstate Commerce Commission
Washington, D.C. 20423

7/19/79

OFFICE OF THE SECRETARY

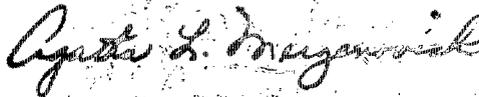
Charles T. Kappler, Atty.
Alvord & Alvord
200 World Center Building
918 16th Street, N.W.
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on 7/19/79 at 2:30pm, and assigned recordation number(s). 10646 & 10646-A

Sincerely yours,



Secretary

Enclosure(s)

SE-30
(3/79)