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New No.
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UPPER MERION AND PLYMOUTH RAILROAD COMPANY
P.O. Box 404
Conchohocken, Pennsylvania 19428

RECORDATION NO. 11298 Filed 1425

DEC 28 1979 -3 10 PM

INTERSTATE COMMERCE COMMISSION

December 28, 1979

9-362A094

No.
Date DEC 28 1979
Fee $ 50.00
ICC Washington, D. C.

Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. 11298 Filed 1425

DEC 28 1979 -3 10 PM

INTERSTATE COMMERCE COMMISSION

Attn: Secretary

Dear Sir:

It is hereby respectfully requested that the following documents be recorded pursuant to the provisions of the Interstate Commerce Act (Title 49 U.S.C. §11303):

Conditional Sale Agreement, dated as of December 10, 1979, between

Builder/Vendor - The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Purchaser/Vendee - Upper Merion and Plymouth Railroad Company
P.O. Box 404
Conshohocken, Pa. 19428

Agreement and Assignment, dated as of December 10, 1979, between

Builder/Assignor - The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Investor/Assignee - Lincoln First Bank N.A.
One Lincoln First Square
Rochester, New York 14643

General Description of the Equipment:
22 Open-Top Hopper Cars (100-ton), bearing Upper Merion and Plymouth Railroad Company Road Numbers UMP 7233 to UMP 7254 (both inclusive).

Sincerely yours,

John D. McInerey

Assistant Secretary

Counterpart - C.T. Kappler

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EXHIBIT A
TO
PARTICIPATION AGREEMENT

11298
RECORDATION NO. ..... Filed 1425

DEC 28 1979 -3 10 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of December 10, 1979

between

THE CHESSIE CORPORATION

and

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

CONDITIONAL SALE AGREEMENT dated as of December 10, 1979, between THE CHESSIE CORPORATION (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and UPPER MERION AND PLYMOUTH RAILROAD COMPANY (hereinafter called the Vendee).

WHEREAS, the Builder and Vendee (as assignee of Funding Systems Railcars, Inc.) entered into a certain Purchase Agreement dated as of June 12, 1979 (hereinafter called the Purchase Agreement), and Builder and Vendee desire to amend such Purchase Agreement, as herein provided, but only insofar as such Purchase Agreement relates to that number of units of railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, pursuant hereto, the Builder agrees to assemble and construct, and to sell and deliver to the Vendee, and the Vendee agrees to purchase, that number of units of the Equipment which are accepted hereunder by the Vendee on or prior to December 31, 1979 (and which, if less than the number specified in Annex B, are to be specifically described by supplement hereto subject to the provisions hereof); and

WHEREAS, LINCOLN FIRST BANK N.A. (hereinafter sometimes called the Assignee or the Vendor) is agreeing to finance as Investor 70% of the Purchase Price of the Equipment pursuant to a Participation Agreement (copy of which is annexed hereto as Annex C) dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Vendee, and Funding Systems Railcars, Inc. and FSC Corporation as guarantors (hereinafter separately and collectively called Guarantor) of the payment in full of the indebtedness represented hereby;

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the number of units of the Equipment described in the second WHEREAS clause of this Agreement, it being understood that the Equipment shown on Annex B hereto not accepted pursuant to this Article 2 on or before December 31, 1979, shall be excluded from this Conditional Sale Agreement and not included in the term Equipment, and the Vendor and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore accepted and settled for hereunder. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of assembly and manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, including units intended for interchange, and each such unit will be new railroad equipment. As and when any Equipment shall from time to time be accepted by the Vendee hereunder within the limitations described in the second WHEREAS clause of this Agreement as evidenced by the Vendee's Certificate of Acceptance, the same shall be deemed accepted hereunder and shall ipso facto and without further instrument pass under and become subject to all the terms and provisions hereof.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid (to the extent included in the Purchase Price as herein set forth), in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Assignment have been filed pursuant to 49 U.S.C. §11303 of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder (including payment therefor pursuant to the Assignment) on or prior to December 31, 1979, shall be excluded from this Agreement; provided, however, that neither the Vendee nor the Builder shall thereby be relieved of their respective obligations to purchase or sell such excluded units pursuant to the Purchase Agreement, it being the intent of this provision, and of the similar provisions appearing in the first paragraph of Article 2 and the first paragraph of Article 4 merely to exclude such units from the provisions of this Agreement intended to provide for the financing of the Equipment on an installment purchase basis. The Purchase Agreement shall be superseded by this Agreement only with respect to units of Equipment delivered and settled for hereunder and paid for pursuant to the provisions of the Assignment.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery, each unit of the Equipment shall be

presented to an inspector of the Vendee for inspection at the Builder's plant specified in Annex B hereto, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of inspection (hereinafter called the Certificate of Inspection) stating that such unit or units have been inspected on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof. Vendee shall execute a certificate of acceptance (hereinafter called the Certificate of Acceptance) upon delivery of the Equipment at the place specified for delivery of the Equipment. Such Certificate of Inspection and Certificate of Acceptance shall be in the forms, respectively, of Exhibits 1 and 2 to Annex B hereto.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provisions of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof or the second paragraph of this Article 3 shall be ineffective, ab initio, to impose on the Assignee any liability, obligation or responsibility with respect thereto.

ARTICLE 4. Purchase Price and Payment. The term "Purchase Price" as used herein shall mean the prices set forth in Annex B hereto (which prices are inclusive of freight charges, and applicable sales tax if any), all as further evidenced by the Builder's separate invoice or invoices delivered to the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this

sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date or dates (not later than December 31, 1979, such date being hereinafter called the Cut-Off Date), occurring not more than ten days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Vendor by written notice delivered to the Vendee and the Assignee at least three business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Pennsylvania, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 30% of the aggregate Purchase Price of such Group, plus (ii) the amount, if any, by which (x) 70% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 5 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 60 quarter-annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness) shall be payable on the last day of each March, June, September and December, commencing September 30, 1980, to and including June 30, 1995 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness has occurred at the rate of 13.25% per annum. Such interest shall be payable, to the extent accrued, on March 31 and June 30, 1980 and thereafter on each Payment Date thereafter occurring. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall, in the aggregate, be substantially level and equal (i.e. $22,799.62 per quarter-annual combined installment of principal and interest). The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 16% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and shall be made by wire transfer of Federal or other immediately available funds not later than 11:00 a.m., local time, in the city where payable. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

ARTICLE 5. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will, at Vendee's expense, (a) execute and deliver to the Vendee, at its address referred to in Article 20 hereof, such documents as Vendee may reasonably require to evidence the release of the Vendor's security interest in the Equipment, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the unencumbered title of the Vendee to the Equipment, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such documents or instruments, or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such documents or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income of the Vendor, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (so long as such fines or penalties are not imposed as the result of actions of the Builder or Vendor) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that, so long as the Vendee is not then in default under this Agreement, the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, together with interest thereon at the rate of 13.25% per annum, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee shall maintain and keep each unit of the Equipment in good operating order, repair and condition and in compliance with the standards from time to time in effect under the Interchange Rules of the Association of American Railroads for use in interchange service. In addition, the Vendee agrees that it will be responsible for maintaining all governmental consents, approvals or authorizations required to keep all of the units of Equipment which are subject to this Agreement eligible for interchange service.

In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Vendee for a period of 90 consecutive days, except requisition for use by United States, state or municipal government (such occurrences being hereinafter called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit; provided, however, that the Vendee shall be obligated to make such payment, and thereby be entitled to the benefits of partial prepayment of the Conditional Sale Indebtedness (as hereinafter provided), only if such Casualty Value shall be in an amount not less than $50,000. In the event that any Casualty Value, which would otherwise be payable in accordance with the provisions hereof, shall be less than $50,000, payment shall be deferred until such time as the aggregate Casualty Value of units suffering a Casualty Occurrence shall be not less than such amount as aforesaid. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Assignee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request. In the event of the requisition for use by the United States, state or municipal government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of and property in such unit shall pass to and vest in the Vendee free and clear of the security interest of the Vendor, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, shall execute and deliver to the Vendee, at the expense of the Vendee, an appropraite instrument confirming such release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price applicable to each such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any pre-payment or prepayments theretofore made under this Article 7 with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, after having received payment of the Casualty Value hereunder, pay any remaining insurance proceeds or condemnation payments to the Vendee, provided that no default hereunder shall have occurred and be continuing. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Vendee will, at all times, cause to be carried and maintained all risk, physical loss and damage insurance in respect of the units of Equipment in an amount at least equal to the Casualty Value of such Units at the time subject hereto, and public liability insurance in amounts and against risks customarily insured against by others in the Vendee's

industry in respect of similar equipment. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice (or, if such insurance is available without increased premium expense, without at least 30 days' prior notice) to the Vendor by the insurers or the insurers' authorized representative, as the case may be. The benefits of such insurance shall be payable to the Vendor as its interests may appear, so long as any of the Conditional Sale Indebtedness shall not have been paid in full, and thereafter to the Vendee.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee shall cause each unit of the Equipment to be kept numbered with the road numbers set forth in Annex B hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced

promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation (except the name of a transferee permitted under Article 11 hereof) to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, if no default exists hereunder, the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. The Equipment will be used, on a regular basis, only within the continental United States.

The Vendee/Purchaser shall not transfer, sell, part with the possession of, or otherwise dispose of the Equipment, while any of the Conditional Sale Indebtedness shall be outstanding, except under and pursuant to one or more of the following arrangements:

The Equipment may be sold by the Vendee to one or more purchasers, and resold by said purchasers to others (collectively and individually herein called a Purchaser/Owner) provided that (i) the intended use and operation of the Equipment shall be limited, on a regular basis, to the continental United States, (ii) the initial instrument of transfer shall be executed subsequent to the execution (as identified by the acknowledgments thereto or time stamp thereon) of this Agreement and the Assignment, (iii) the Purchaser/Owner shall explicitly acknowledge that the interests thus acquired by the Purchaser/Owner are secondary and subject to the rights of the Vendor (including its assigns) under Article 16 hereof upon the happening of an event of default hereunder, (iv) possession of the Equipment shall remain with and subject to the control of the Vendee, at least until all Conditional Sale Indebtedness shall have been paid in full, pursuant to a management agreement substantially in the form of Annex D hereto, and (v) the Purchaser/Owner agrees, upon request of the Vendor, to assign to Vendor all of Purchaser/Owner's right, in all sums due and to become due under such management agreement, together with the Purchaser/Owner's right to all claims for damages arising out of the breach thereof, and all rights of the Purchaser/Owner to terminate such agreement and to compel performance of the terms thereof. Upon written instruction from the Vendor to the Vendee, as manager, all sums payable under such management agreement shall thereafter be paid by the manager directly to the Vendor, it being understood and agreed by the parties hereto, however, that until default shall have occurred hereunder, the Vendor shall refrain from issuing any such instruction. In the event of a transfer of the Vendee's rights as aforesaid, any payments thereafter due hereunder and payable to Vendee, shall instead be paid to manager.

In the event of a transfer of the Vendee's rights as aforesaid, there shall be delivered to the Investor an opinion of counsel (who shall be acceptable to the Vendor) of the Purchaser/Owner to the effect that:

(i) the Purchaser/Owner is duly organized, validly existing and in good standing under the laws of its state of formation and is duly qualified to do business and in good standing in such other jurisdictions in which its business, properties or activities require such qualification;

(ii) the management agreement has been duly authorized, executed and delivered by the Purchaser/Owner and Vendee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a legal and valid instrument binding on the Purchaser/Owner and Vendee;

(iii) neither the execution and delivery of the management agreement, nor the consummation of the transactions therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument known to such counsel to which Purchaser/Owner and Vendee is or are now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder or, pursuant to the provisions thereof, result in a lien on the Equipment which would be equal to or superior to the lien of the Vendor hereunder or in any manner affect adversely the security interest of the Vendor therein.

The utilization of units of the Equipment by one or more railroad companies in interchange service within the continental United States (on a regular basis) shall not be deemed a loss of possession or control of the Equipment by the Vendee.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim, so long as no default exists hereunder,

and so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts so paid the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when a security therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, it will transfer to the Vendee good and marketable title to such unit and the Vendee will have good and marketable title thereto, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement.

The Builder further represents and warrants to the Vendee, its successors and assigns, that at the time of delivery of each unit of Equipment to the Vendee, such units will constitute "new Section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended, and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of such Code from commencing with the Vendee.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Item 3 of Annex A hereto.

ARTICLE 14. Assignments. Except as provided in Article 11 hereof, the Vendee will not transfer ownership or the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of its rights under this Agreement. Every such transfer, and every such sale, assignment or other disposition shall be expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, its rights and remedies upon the happening of an event of default hereunder).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever. ~~arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder~~. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder, or under the Participation Agreement or the Assignment, and such default shall continue for five business days after the date such payment is due and payable; or

(b) the Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of the Participation Agreement, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) an event of default (as therein defined) under the form of management agreement set forth as Exhibit D hereto shall have occurred and be continuing and a substitute manager shall not, within a period of 30 days thereafter, have been agreed upon and consented to by the Vendor (which consent will not be unreasonably withheld); or

(d) any proceeding shall be commenced by or against the Vendee or a Guarantor for any relief which includes or might result in, any modification of the obligations of the Vendee or Guarantor hereunder or under the Participation Agreement or Guarantee, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or Guarantor (as the case may be) under this Agreement or under the Participation Agreement or Guarantee, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or Guarantor (as the case may be), or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days or after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) the Vendee shall relinquish or lose title to, or possession or control of, any unit of the Equipment other than pursuant to, and in accordance with, the provisions hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

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

Anything in this Article 15 and Article 16 hereof to the contrary notwithstanding, in the event that the Vendee does not pay, when due, any installment of Conditional Sale Indebtedness or other moneys payable by the Vendee to the Vendor hereunder (herein called a Payment Default), the Vendor nevertheless agrees not to exercise any of its rights or remedies under said Articles, including, without limitation, the acceleration of payments due hereunder, solely by reason of such Payment Default if, within 10 days after the Vendor shall have given written notice of such Payment Default to the Purchaser/Owner, (i) the Purchaser/Owner shall have made all payments required by this Agreement, nonpayment of which shall have occasioned the Payment Default, including interest at the overdue rate set forth herein, and (ii) no event of default under this Agreement other than such Payment Default shall have occurred and be continuing; provided, however, that the Purchaser/Owner shall be entitled to cure not more than four Payment Defaults, no more than two of which may be consecutive. The Vendor agrees to give notice, as aforesaid, upon the occurrence of a Payment Default, but its failure to do so shall not affect its rights to proceed against the Vendee.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of Vendee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of any railroad controlled by the Vendee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided,

however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee or Purchaser/Owner should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or Purchaser/Owner, as the case may be. The proceeds of such sale or other disposition, less attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited first to principal, and other amounts not constituting interest payments, due Vendor hereunder or under the Participation Agreement or the Assignment, and thereafter to interest due the Vendor hereunder or under said other instruments.

Any sale hereunder may be held or conducted at such place or places, and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16),

and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate (applicable in respect of overdue amounts as specified in Article 4 hereof) on the unpaid Conditional Sale Indebtedness with respect to such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments of default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

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

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except as otherwise stated herein, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Purchaser/Owner (if a transfer shall have occurred as permitted by Article 11 hereof).

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by certified mail, postage prepaid (return receipt requested), at the following addresses:

(a) to the Vendee, at P. O. Box 404, Conshohocken, Pennsylvania 19428, Attn: President;

(b) to the Builder, at the address specified in Item 1 of Annex A hereto;

(c) to the Vendor, at One Lincoln First Square, Rochester, N.Y. 14643, Attn: Peter Posson, Vice President;

(d) to the Guarantor, at 1000 RIDC Plaza, Pittsburgh, Pa. 15238, Attn: President;

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Copy of all notices required or permitted to be given to the Vendee shall, concurrently therewith, also be given to:

(f) The Swig Investment Company, c/o Fairmont Hotel, 950 Mason Street, San Francisco, California 94106 , as Purchaser/Owner.

ARTICLE 21. Law Governing. This Agreement having been executed in the Commonwealth of Pennsylvania by one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations hereunder shall be governed by the laws of said Commonwealth; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

THE CHESSIE CORPORATION

(CORPORATE SEAL)
WITNESS:

By _____
Senior Vice President

_____
Assistant Secretary

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

(CORPORATE SEAL)
WITNESS:

By _____
Attorney in Fact

_____

STATE OF Ohio :
SS:
COUNTY OF Cuyahoga :

On this 27th day of December, 1979, before me personally appeared R. W. Donnen, to me personally known, who, being by me duly sworn, says that he is Senior Vice President of The Chessie Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Clara Masuga
Notary Public

My Commission expires: CLARA MASUGA, Notary Public
State of Ohio - Cuyahoga County
My Commission Expires April 21, 1984

STATE OF NEW YORK :

SS:

COUNTY OF NEW YORK :

On this 27th day of December, 1979, before me personally appeared John F. McEnery, to me personally known, who, being by me duly sworn, says that he is Attorney-In-Fact of Upper Merion and Plymouth Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Notarial Seal)

Notary Public

STODDARD D. PLATT
Notary Public, State of New York
No. 31-3113309
Qualified in New York County
Commission Expires March 30, 1981

My Commission expires:

ANNEX A

to

CONDITIONAL SALE AGREEMENT

Item 1: The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Attention: Senior Assistant Treasurer

Item 2: The Equipment shall be settled for in Groups of not less than 22 units of Equipment delivered to and accepted by the Vendee unless another number shall be agreed to by the parties hereto.

Item 3: The Builder warrants to the Vendee that the Equipment will be built in accordance with the specifications, requirements and standards referred to in Article 2 of the Conditional Sale Agreement (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to repairing or replacing any part or parts of any Item of Equipment which shall be returned to the Builder, at a location designated by the Builder which is determined in good faith and which is reasonable under the circumstances, within one year after delivery of such Equipment, with transportation charges prepaid, and which the Builder's examination shall disclose to its satisfaction to have been thus defective; provided, however, this warranty shall be subject to the following exclusions and conditions:

(a) Items or specialities, specified or supplied by the Vendee and not manufactured by the Builder, are excluded from this warranty.

(b) Warranty coverage on Equipment running gear and contact points to Equipment structure is limited to one (1) year or 50,000 miles, whichever first occurs. (Equipment running gear and contact points to Equipment structure utilize components conforming to A.A.R. specifications to provide maximum Equipment service life. The direct relationship between Equipment mileage and service life limits the coverage of these components as specified in this Item 3.)

(c) Normal use and service may require inspection, adjustment, maintenance, and compliance with all regulatory agencies' requirements. This obligation is the Vendee's responsibility and such performance is necessary to preserve stated warranty coverage.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE BUILDER EXCEPT AS SET FORTH HEREIN. THE BUILDER SHALL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

The Builder additionally agrees to indemnify the Vendee against any judgment for damages and costs which may be rendered against the Vendee in any suit brought on account of the alleged infringement of any United States patent by any Equipment supplied by the Builder hereunder, and shall procure for the Vendee the right to continue to use the Equipment or modify the Equipment so it becomes non-infringing. In the event the Equipment is made in accordance with materials, designs or specifications furnished or designated by the Vendee, the Vendee agrees to indemnify the Builder against any judgment for damages and costs which may be rendered against the Builder in any suit brought on account of the alleged infringement of any United States patent by such Equipment or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and that an opportunity be given such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. Neither the Builder nor the Vendee shall in any event be liable to the other for special, direct, indirect, incidental or consequential damages arising out of or resulting from infringement of patents.

Any controversy arising out of or relating to the respective rights and obligations of the Builder and the Vendee, as set forth in this Annex A, or a breach thereof, excluding prices, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitration Panel may be entered in any court having jurisdiction thereof. The Arbitration Panel shall consist of three arbitrators, one to be appointed by each party hereto and the third to be designated by the two arbitrators so appointed.

Item 4: The Maximum Purchase Price referred to in Article 4 of the Agreement is $844,116.24.

Item 5: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is $590,881.37.

ANNEX B

to

CONDITIONAL SALE AGREEMENT

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both (Inclusive)	Unit Purchase Price	Total Purchase Price	Place of Delivery
100-Ton Open-Top Hopper Cars	Chessie System Specification No. H7-8978 dated August 8, 1978 and Supplement No. 1 dated March 13, 1979; General Arrangement Car Drawing No. 139-11-832, Revision C	The shop of The Chessie Corporation in Russell, Kentucky	22	UMP 7233 through UMP 7254	$38,368.92	$844,116.24	At Russell, Kentucky or such other location as may be designated by Vendee.

Exhibit 1
to ANNEX B

CERTIFICATE OF INSPECTION

I, a duly appointed and authorized representative of the Vendee do hereby certify that I have inspected under the Purchase Agreement dated as of June 12, 1979 and under the Conditional Sale Agreement dated as of _____, 19__, both with The Chessie Corporation the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE INSPECTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and conform to the specifications, requirements and standards applicable thereto, that my inspection has disclosed no defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY
AGREEMENT FILED WITH THE INTERSTATE
COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.

_____
Inspector and Authorized
Representative of the Vendee

Dated:

Exhibit 2
to ANNEX B

CERTIFICATE OF ACCEPTANCE

TO:

I, a duly appointed and authorized representative of the Vendee do hereby certify that I have inspected, received, approved and accepted delivery under the Conditional Sale Agreement dated as of _____, 19___, with The Chessie Corporation, of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and that each Item has been labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.

_____
Inspector and Authorized
Representative of the Vendee

Dated:

Annex C
to Conditional
Sale Agreement

PARTICIPATION AGREEMENT

AMONG

UPPER MERION AND PLYMOUTH RAILROAD COPMANY,
("Vendee/Purchaser")

LINCOLN FIRST BANK N.A.
("Investor")

AND

FUNDING SYSTEMS RAILCARS, INC. and

FSC CORPORATION ("Guarantors")

Dated as of December 10, 1979

PARTICIPATION AGREEMENT dated as of December 10, 1979, among UPPER MERION AND PLYMOUTH RAILROAD COMPANY, a Pennsylvania corporation (hereinafter called the Vendee/Purchaser), LINCOLN FIRST BANK N.A., a national banking association (hereinafter called the Investor) and FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation ("FSR"), and FSC CORPORATION, a Delaware corporation ("FSC") (both FSR and FSC being separately and collectively sometimes hereinafter referred to as Guarantor).

WHEREAS, the Vendee/Purchaser, subject to the fulfillment of certain conditions as hereainfter provided, agrees to purchase certain units of railroad equipment (hereinafter called the Equipment) from The Chessie Corporation (hereinafter called the Builder), pursuant to a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) substantially in the form of Exhibit A hereto and the Builder will retain a security interest in such units until the Vendee/Purchaser fulfills its obligations under the Conditional Sale Agreement; and

WHEREAS, the Investor will finance 70% of the cost of the Equipment by investing in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

WHEREAS, the security interest of the Builder in the Equipment will be assigned to the Investor, pursuant to an Agreement and Assignment (hereinafter called the Assignment) in substantially the form of Exhibit B hereto, until the Vendee/Purchaser fulfills all its obligations under the Conditional Sale Agreement;

WHEREAS, as security, in part, for the payment by the Vendee/Purchaser of the Conditional Sale Indebtedness, the Guarantor will issue and deliver to the Investor its separate personal guarantee in substantially the form of Exhibit C hereto (hereinafter called a Guarantee);

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Vendee/Purchaser will enter into the Conditional Sale Agreement and pursuant thereto purchase, as hereinafter provided, the units of Equipment described in Schedule A hereto, delivered and accepted under the Conditional Sale Agreement, and having an aggregate maximum Purchase Price not exceeding the amount set forth in said Schedule A.

The Equipment shall be settled for pursuant to the Conditional Sale Agreement in not more than two groups (each such group hereinafter called a Group) accepted by or on behalf of the Vendee/Purchaser upon issuance of a Certificate of Acceptance.

2. Subject to the terms and conditions hereof, the Investor will pay to the Builder, in Federal funds or funds immediately available at Baltimore, Maryland, not later than 1:00 p.m., local time, on dates and in such amounts determined in the manner described below (each such date being hereinafter called a Payment Date), such amounts, however, not to exceed in the aggregate the investment set forth in Schedule B hereto. The Builder will give to the Investor written notice of the payment to be made by the Investor at least three business days prior to its Payment Date, which dates shall coincide with the Closing Dates (as defined in the Conditional Sale Agreement) to occur under the Conditional Sale Agreement (the first of such dates being hereinafter called the First Delivery Date).

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Richmond, Virginia or Baltimore, Maryland, are authorized or obligated to remain closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-days months.

Pursuant to the Assignment, the Investor will acquire from the Builder all its right, security title and interest under the Conditional Sale Agreement, except as specifically excepted by the Assignment. Simultaneously with the final payment to the Investor of all amounts payable under the Conditional Sale Agreement, all rights of the Investor thereunder, pursuant to the Assignment, shall terminate.

The forms of the Exhibits annexed to this Agreement are hereby approved by the Investor. No modification or supplement to such forms shall occur without the prior written approval of the Investor, which approval will not unreasonably be withheld.

3. The Vendee/Purchaser and the Guarantor each jointly and severally represents and warrants as follows:

(a) It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and is duly qualified to do business, and is in good standing, in such other jurisdictions in which the ownership of its properties or the business and activities conducted by it require such qualification.

(b) It has full power, authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver and to fulfill and comply with the terms, conditions and provisions of this Agreement and of the other agreements and documents referred to herein, or contemplated hereby or thereby; this Agreement and such other agreements and documents to which it is a party, have been duly authorized and have been duly executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute or will then constitute valid, legal and binding agreements, enforceable in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium, debtor relief or other similar laws affecting the enforcement of creditors' rights generally.

(c) No authorization or approval is required from any governmental or public regulatory body or authority of the United States of America, or of any of the States thereof or the District of Columbia, in connection with the execution by the Vendee/Purchaser of this Agreement or the Conditional Sale Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof by the Vendee/Purchaser or arising from the Vendee/Purchaser's possession or use of the Equipment in connection with the terms, conditions and provisions of the Conditional Sale Agreement.

(d) It has filed all foreign, Federal, state and local tax returns which (to the best of its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(e) It is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any rental obligation, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder.

(f) The Vendee/Purchaser is a "railroad" within the meaning of 11 U.S.C. §10133, and it agrees to remain a railroad as therein defined for the term of the Conditional Sale Agreement.

(g) The Vendee/Purchaser has not directly or indirectly offered or sold any of the Conditional Sale Indebtedness or other securities to, solicited offers to buy any of the Conditional Sale Indebtedness or other securities from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any of the Conditional Sale Indebtedness or other securities with, any person so as to require registration of the Conditional Sale Indebtedness under the provisions of Section 5 of the Securities Act of 1933, as amended.

(h) FSC has furnished to the Investor consolidated balance sheets of FSC and its subsidiaries as at December 31, 1977 and December 31, 1978, and related consolidated statements of earnings and retained earnings and of changes in its financial position for the years then ended, in each case accompanied by the report of Arthur Young & Company, certified public accountants, as well as similar statements (unaudited) for the nine months period ended September 30, 1979. Such financial statements are in accordance with the books and records of FSC and its subsidiaries, and have been prepared in accordance with generally accepted accounting principles. The financial statements have been prepared on a consistent basis throughout the periods covered thereby, except as set forth therein. The financial statements present fairly the financial condition of FSC and its subsidiaries at such dates and the results of its operations for such periods. Since September 30, 1979, there has been no change except in the ordinary course of business, and there have been no changes which individually or in the aggregate have been materially adverse to the condition, financial or otherwise, of FSC and its subsidiaries as shown on the balance sheet as of such date.

(i) The Equipment will be used in interstate commerce.

(j) The Specifications (as defined in the Conditional Sale Agreement) have been approved by the Vendee/Purchaser, and in its opinion are sufficient to enable the Equipment to perform the functions for which it will be used.

(k) Neither the execution and delivery of this Agreement or the Conditional Sale Agreement, nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Vendee/Purchaser or Guarantor, will conflict with, or result in a breach of, any of the terms, conditions or provisions of its articles of incorporation (as amended) or by-laws (as amended), or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which it is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder.

(l) Neither the execution and delivery by the Vendee/Purchaser or Guarantor of this Agreement, the Conditional Sale Agreement or the Guarantee (as the case may be), nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality.

(m) No mortgage, deed of trust or other lien of any nature whatsoever (other than liens, if any, for taxes not yet due and payable), which now covers or affects any property or interest therein of the Vendee/Purchaser, now attaches or hereafter will attach to the Equipment (except pursuant to a transaction permitted by Article 11 of the Conditional Sale Agreement), or in any manner affects or will affect adversely the right and security interest of the Investor therein.

(n) There are no actions, suits or proceedings pending or threatened against or affecting the Vendee/Purchaser or the Guarantor, or any property rights of any thereof, at law or in equity, or before any commission or other administrative agency, arbitration board or

tribunal which could materially and adversely affect the condition, financial or otherwise, of the Vendee/Purchaser or Guarantor or the ability of any thereof to perform its obligations under this Agreement or the Conditional Sale Agreement, and none thereof is in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

4. The Vendee/Purchaser and the Guarantor acknowledge and agree that the Investor is acquiring its interest in the Conditional Sale Indebtedness on an interim basis and will transfer its interest therein to ~~the Life Insurance Company of Virginia.~~ a third party.

~~The Investor understands that its interest in the Conditional Sale Indebtedness has not been registered under the Securities Act of 1933 because the transaction is exempt from the registration requirements of such Act, and that the Investor's interest must be held indefinitely unless a subsequent disposition thereof is registered under said Act or is exempt from registration.~~

5. The obligation of the Investor to make any payment required of it under Paragraph 2 hereof, or under the Assignment, on each Payment Date shall be subject to the receipt by the Investor of the following documents dated the First Delivery Date:

(a) An opinion of Messrs. McCann, Garland, Ridall & Burke, counsel for the Vendee/Purchaser and the Guarantor, to the effect that:

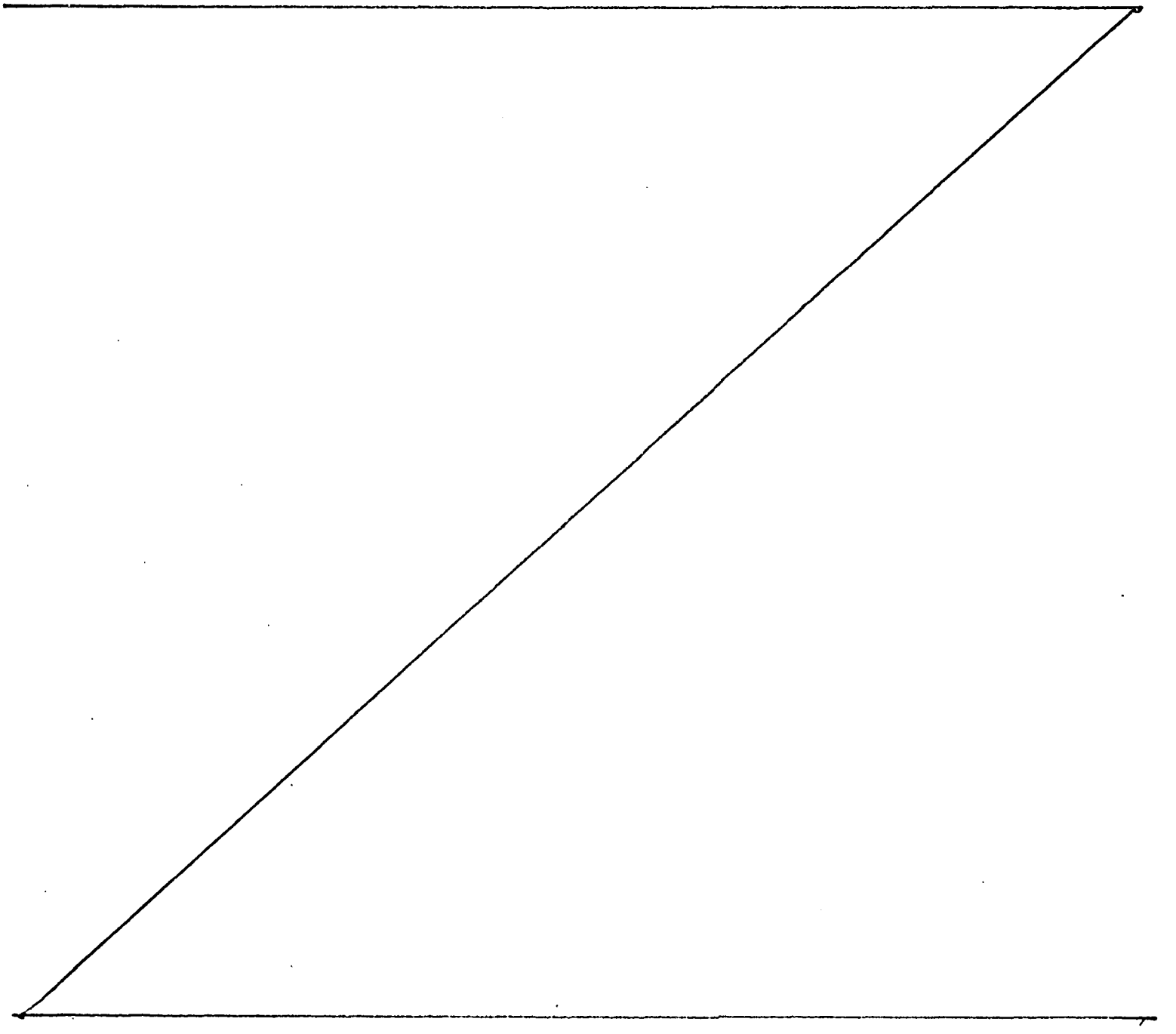
(i) this Agreement, assuming due authorization, execution and delivery by the other parties hereto, has been duly authorized, executed and delivered by the Vendee/Purchaser and the Guarantor and constitutes a legal, valid and binding instrument enforceable in accordance with its terms;

(ii) assuming the due authorization, execution and delivery by the other parties thereto, the Conditional Sale Agreement and Guarantee have been duly authorized, executed and delivered by the Vendee/Purchaser and the Guarantor and each is a legal, valid and binding instrument enforceable in accordance with its terms;

(iii) the Conditional Sale Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303, and no other filing or recordation (including any requirement for the filing of continuation statements) is necessary for the protection of the rights of the Investor therein or in the Equipment in any State of the United States of America or the District of Columbia;

(iv) no authorization or approval from any governmental or public body or authority of the United States of America, or of any of the States thereof or the District of Columbia is necessary for the execution, delivery and performance of this Agreement, the Conditional Sale Agreement or the Guarantee, by the Vendee/Purchaser or the Guarantor, as the case may be;

(v) each of the Vendee/Purchaser and Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and is duly qualified to do business



and in good standing in such other jurisdictions in which its business, properties or activities require such qualification;

(vi) neither the execution and delivery of this Agreement, the Conditional Sale Agreement or the Guarantee, nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation or the by-laws of the Vendee/Purchaser or Guarantor, or of any bond, debenture, note, mortgage indenture, deed of trust, lien, agreement or other instrument, known to such counsel after diligent inquiry, to which any thereof is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder;

(vii) neither the execution and delivery by the Vendee/Purchaser or Guarantor of any of this Agreement, the Conditional Sale Agreement or the Guarantee, nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality or arbitrator;

(viii) no mortgage, deed of trust or other lien of any nature whatsoever which now covers or affects any property or interest therein of the Vendee/ Purchaser or Guarantor, now attaches or hereafter (pursuant to the terms of the relevant instrument or instruments) will attach to the Equipment (other than the lien of the Conditional Sale Agreement and liens which are subordinate to the lien of the Conditional Sale Agreement) or in any manner affects or will affect adversely the first and prior security interest of the Investor therein;

(ix) each of the Vendee/Purchaser and Guarantor has the full corporate power, authority and legal right to enter into and perform its obligations under this Agreement, the Conditional Sale Agreement and

Guarantee, and the execution, delivery and performance hereof and thereof have been duly authorized by all necessary corporate action on its part, do not require any stockholder approval, or approval or consent of any trustee or holders of any of its indebtedness or other obligations; and

(x) under the circumstances contemplated by this Agreement, neither the execution and delivery by the Vendee/Purchaser or Guarantor of any of this Agreement, the Conditional Sale Agreement or Guarantee, nor the consummation of any of the transactions contemplated hereby or thereby, requires the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other Federal, state, foreign or other governmental authority or agency, except the filing and recording of the Conditional Sale Agreement and Assignment with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

(b) An opinion of counsel for the Builder to the effect that the Conditional Sale Agreement and Assignment have each been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other parties thereto, are each a legal and valid instrument binding on the Builder and enforceable against it in accordance with its terms.

(c) A certificate of an officer of the Vendee/Purchaser to the effect (i) that the Vendee/Purchaser is not in default under, and to the knowledge of the Vendee/Purchaser, there is no event which with the passage of time or giving of notice, or both, would place the Vendee/Purchaser in default under, this Agreement or the Conditional Sale Agreement, (ii) that the representations and warranties of the Vendee/Purchaser contained in Paragraph 3 hereof are true and correct as of the date of such certificate with the same effect as if made on such date; and (iii) that no Federal tax liens (including tax liens filed pursuant to section 6323 of the United States Internal Revenue Code of 1954, as amended), or, to the best of the knowledge and belief of the Vendee/Purchaser, other tax liens, have been filed and are currently in effect against the Vendee/Purchaser which could adversely affect the first and prior security interest of the Investor in the Equipment.

In giving the opinions specified in subparagraphs (a) and (b) of this Paragraph 5, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

The obligation of the Investor to make any payment required of it hereunder or pursuant to the Assignment for units of Equipment, on any Closing Date, including the First Delivery Date, shall be subject to the receipt by the Investor of the opinion, certificates and other documents specified by the Assignment (to the extent not also required by the foregoing provisions of this Paragraph 5). The Vendee/Purchaser shall furnish to the Investor six days' prior written notice of each Closing Date.

6. The Vendee/Purchaser's obligation to purchase and pay for units of Equipment on any Closing Date under the Conditional Sale Agreement shall be subject to the receipt, on the First Delivery Date, of an opinion of counsel of the Builder, dated the First Delivery Date, to the same effect as the opinion set forth in subparagraph (b) of Paragraph 5 hereof (unless waived by the Vendee/Purchaser by written notice to the Builder and the Investor on or prior to the First Delivery Date), and to the receipt, on each Closing Date, including the First Delivery Date, of the Invoices and Bills of Sale specified by the Conditional Sale Agreement.

7. Subject to the terms and conditions hereof, upon each delivery to and acceptance by the Vendee/Purchaser under the Conditional Sale Agreement of a Group (as therein defined) of the Equipment and the receipt by the Investor of the delivery papers with respect thereto to be delivered by the Builder in accordance with the Assignment, on each Closing Date the Investor will pay to the Builder in accordance with the Assignment (and subject to the conditions specified in the Conditional Sale Agreement and/or Assignment) an amount equal to the Conditional Sale Indebtedness with respect to such Group.

If, on the earlier of (1) December 31, 1979, (2) the last Closing Date under the Conditional Sale Agreement, and (3) the date of any default under the Conditional Sale Agreement (the earlier of said dates being hereinafter called the Cut-Off Date), the aggregate Conditional Sale Indebtedness will be less than the amount which the Investor has agreed to invest pursuant to Paragraph 2 hereof (less any amounts prepaid pursuant to Paragraph 8 hereof), the Investor's remaining obligations, if any, to make investments and payments pursuant to Paragraph 2 and this Paragraph 7 shall forthwith terminate.

8. The Investor will accept payments made to it pursuant to the Conditional Sale Agreement and the Assignment on account of the principal of and interest on the Conditional Sale Indebtedness and will apply such payments promptly first, to the payment of interest then due and payable to the Investor on its interest in the Conditional Sale Indebtedness, and second, to the payment of its interest in the installments of Conditional Sale Indebtedness then due and payable in the order of maturity thereof until the same shall have been paid in full.

The Investor will accept all sums paid to it pursuant to Article 7 of the Conditional Sale Agreement with respect to Casualty Occurrences (as therein defined) and will apply such sums to the pro rata prepayment of each of the installments of the aggregate Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of aggregate Conditional Sale Indebtedness represented by each such installment), without premium, together with interest thereon. The Vendee/Purchaser will furnish to the Investor a revised schedule or schedules of payments showing the reduction of the Investor's interest in the installments of the aggregate Conditional Sale Indebtedness remaining unpaid and the interest payable thereon.

The Investor's interest in the Conditional Sale Indebtedness shall be evidenced by a Certificate of Interest substantially in the form of Exhibit D hereto.

All payments to be made by the Vendee/Purchaser hereunder shall be made by check mailed to the Investor on the date such payment is due or, upon written request of the Investor, by bank wire, on the date such payment is due, of immediately available funds to it at such address as it may specify.

9. The Guarantor will deliver to the Investor (i) as soon as available and in any event within 120 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of

the Guarantor stating that a review of the activities of the Vendee/Purchaser and Guarantor during such year has been made under his supervision with a view to determining whether the Vendee/Purchaser and the Guarantor have kept, observed, performed and fulfilled all of its obligations under this Agreement and the Conditional Sale Agreement and that to the best of his knowledge the Vendee/Purchaser and the Guarantor during such year have kept, observed, performed, and fulfilled each and every covenant, obligation and condition contained herein and in the Conditional Sale Agreement, or if an Event of Default (as defined in the Conditional Sale Agreement) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof, (ii) as soon as available and to the extent available, and in any event within 60 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Vendee/Purchaser and Guarantor copies of the balance sheet of the Vendee/Purchaser and Guarantor as of the end of such accounting period and copies of the related statements of earnings and retained earnings of the Vendee/Purchaser and Guarantor for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, satisfactory to the Investor, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, and (iii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the balance sheet of the Vendee/Purchaser and Guarantor as at the end of such fiscal year, and of the statements of earnings and retained earnings of the Vendee/Purchaser and Guarantor for such fiscal year, all in reasonable detail, satisfactory to the Investor, and stating in comparative form the figures as of the end of and for the previous fiscal year, and, as to FSC only, certified by the independent public accountants regularly auditing the consolidated financial statements of FSC; and (iv) a copy of the Annual Report to the Interstate Commerce Commission which is required to be filed by the Vendee/Purchaser.

10. The Vendee/Purchaser agrees to pay the reasonable fees and disbursements of the Investor (including the reasonable fees, and disbursements if any, of its counsel), whether or not the transactions contemplated hereby actually occur.

11. All documents, notices and funds deliverable hereunder to the Vendee/Purchaser, Guarantor or the Investor shall be delivered or mailed to them at their respective addresses set forth in Schedule A or B hereto, or as any of them may otherwise specify.

12. In the event that the Vendee/Purchaser or Guarantor shall have knowledge of an event of default under the Conditional Sale Agreement, it shall give prompt telephonic notice (confirmed in writing) thereof to the Investor.

13. This Agreement having been executed in the Commonwealth of Pennsylvania by at least one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations of the parties hereto hereunder shall be governed by the laws of said Commonwealth. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

14. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

(CORPORATE SEAL)

WITNESS:

By _____
Attorney in Fact

_____

LINCOLN FIRST BANK N.A.

WITNESS:

By _____

_____

FUNDING SYSTEMS RAILCARS, INC.

(CORPORATE SEAL)

WITNESS:

By _____
Attorney in Fact

_____

FSC CORPORATION

(CORPORATE SEAL)

WITNESS:

By _____
Attorney in Fact

_____

SCHEDULE A

Equipment

Type: 100-ton open top hopper cars

Identifying Numbers: UMP 7233 through
UMP 7254

Vendee/Purchaser	Maximum Purchase Price (including freight)
Upper Merion and Plymouth Railroad Company 22 cars	$ 844,116.24

Address for delivery of documents:

P. O. Box 404
Conshohocken, Pa. 19428

Attention: J. Noel Ball,
President

Guarantor

Funding Systems Railcars, Inc.

Address for delivery of documents:

Suite 404
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238

Attention: James B. Shein,
President

Guarantor

FSC Corporation

Address for delivery of documents:

Suite 404
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238

Attention: H. L. Lehman,
Vice President-Treasurer

SCHEDULE B

INVESTOR:

Lincoln First Bank, N.A.

Maximum Investment: $590,881.37 (including freight)

Mailing Address:

One Lincoln First Square
Rochester, NY 14643
Attn: Peter G. Posson
Vice President

Address for manual delivery of documents:

Same as above

Address for delivery of funds:

Wire transfer in immediately available funds (with sufficient information to identify source and application of funds) to: