(2) NEW NUMBERS 100 22

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LEON C. BAKER
C. LEONARD GORDON
COUNSEL

11300
RECORDATION NO. ..... Filed 1425
DEC 28 1979 - 8 30 PM
INTERSTATE COMMERCE COMMISSION

No. 9-[illegible]
Date DEC 28 1979
Fee $ 100.00
ICC Washington, D. C.

December 28, 1979

11300-A
RECORDATION NO. ..... Filed 1425
DEC 28 1979
INTERSTATE COMMERCE COMMISSION

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

Upper Merion and Plymouth Railroad Company
Funding Systems Railcars, Inc.
Management and Maintenance Contract dated as of December 28, 1979 and Non-Negotiable Installment Promissory Note-Security Agreement Dated as of December 28, 1979

Dear Sirs:

Pursuant to 49 U.S.C. §11303(a), I enclose herewith on behalf of Funding Systems Railcars, Inc. and Upper Merion and Plymouth Railroad Company, for filing and recordation, counterparts of the following:

2. Management and Maintenance Contract dated as of December 28, 1979 between The Swig Investment Company and Upper Merion and Plymouth Railroad Company; and

1. Non-Negotiable Installment Promissory Note-Security Agreement, dated as of December 28, 1979, between The Swig Investment Company and Funding Systems Railcars, Inc.

The addresses of the parties to the aforementioned agreements are:

Secured Party:

Funding Systems Railcars, Inc.
1000 RIDC Plaza (Suite 404)
Pittsburgh, Pennsylvania 15238

Manager:

Upper Merion and Plymouth Railroad Company
c/o FSC Corporation
1000 RIDC Plaza (Suite 404)
Pittsburgh, Pennsylvania 15238

Owner-Debtor:

The Swig Investment Company
950 Mason Street
San Francisco, California 94106

The equipment covered by each of the aforementioned agreements consists of 22 100-ton open top hopper cars bearing the road numbers UMP 7233-7254, inclusive. All of such equipment bears the legend "Leased from a Corporation and Subject to a Security Interest recorded with the Interstate Commerce Commission."

Enclosed is our check for $100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

C. Martin Goldenberg
As Agent for Funding Systems Railcars, Inc. and Upper Merion and Plymouth Railroad Company

CMG:lr

Copy 3

11300
RECORDATION NO. ..... Filed 1425

9-020-1-20

DEC 28 1979 - 3 30 PM

22

INTERSTATE COMMERCE COMMISSION

NON-NEGOTIABLE INSTALLMENT PROMISSORY NOTE - SECURITY AGREEMENT

$617,010.00 Date: December 28, 1979

FOR VALUE RECEIVED the undersigned, THE SWIG INVESTMENT COMPANY, a California partnership having its principal office and place of business at 950 Mason Street, San Francisco, California 94106 ("Payor" or "Debtor"), promises to pay to FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation having its principal office and place of business at 1000 RIDC Plaza, Pittsburgh, Pennsylvania 15238 ("Payee" or "Secured Party"), the principal sum of $617,010, together with interest thereon at the rate of 14.7807% per annum from the date hereof through and including December 31, 1983, and at the rate of 12.8172% per annum thereafter. Subject to the provisions with respect to acceleration contained in Section 6 below and the provisions with respect to prepayment and deferral set forth in Section 5 below, Payor shall pay to Payee (a) concurrently herewith the sum of $1,013 representing the interest on the principal sum hereof which shall accrue from the date hereof through December 31, 1979, (b) during the period commencing January 1, 1980, 16 consecutive combined quarterly installments of principal and interest payable on March 31, 1980 and on the last day of each calendar quarter thereafter through and including December 31, 1983, each of which installments shall be in the amount of $22,799.62, and (c) thereafter, during the period commencing January 1, 1984, 64 consecutive combined quarterly installments of principal and interest, payable on March 31, 1984 and on the last day of each calendar quarter thereafter through and including December 31, 1999, each of which installments shall be in the amount of $22,799.62. Each payment under this Note shall first be applied to interest which shall have accrued, but not have been paid, hereunder at the time of the making of such payment, and the balance, if any, of each such payment shall be applied to reduce the then outstanding principal balance hereof. This note is not negotiable.

1. Background.

Payor and Payee are parties to an agreement of even date (the "Purchase Agreement"), pursuant to which Payee has

Copy 3

sold and assigned to Payor the equipment (the "Equipment") listed and described in the schedule attached hereto (the "Schedule"). In order to induce Payee to accept this Note, Payor is granting to Payee hereunder a lien with respect to the Equipment, pursuant to which payment of this Note is secured on the terms and conditions hereinafter provided.

2. Definitions.

Unless the context of this Note indicates otherwise, all terms defined in the Purchase Agreement shall have the same meaning as are ascribed to such terms therein.

3. Security Interest.

To secure the payment when due of principal and interest under this Note and the payment and performance by Payor, when due, of all obligations and liabilities of Payor to Payee under this Note, the Purchase Agreement and, until the Letters of Credit called for under the Purchase Agreement are delivered to Payee, the Recourse Notes (such payment under this Note, and such payment and performance of such obligations and liabilities are hereinafter referred to collectively as the "Obligations"), Payor shall and hereby does grant, convey, assign and transfer to Payee, subject and subordinate, however to (i) the rights of the holders of the Lien as described on the Schedule (collectively, the "Senior Lienholder"), a purchase money security interest in and to the Equipment, and all additions, replacements and attachments thereto, all other contracts calling for the disposition of the Equipment or its use, and all proceeds ("Proceeds") therefrom (collectively, the "Collateral"); provided, however, that to the extent the amount by which (a) any Proceeds received by Payor (as Owner) from the use of the Equipment after deducting therefrom all concurrent expenses to third parties (including all management fees) in connection therewith ("Net Proceeds") is in excess of (b) the amounts then due and payable under this Note, such excess shall not be deemed part of Collateral. The foregoing security interest is granted subject to the consent and approval of the Senior Lienholder to the extent required under the Lien and the Payor hereby agrees to take such steps and execute such documents as may be necessary to obtain such consent and approval and, upon

the obtaining thereof, to take such steps and execute such documents as may be necessary to perfect and continue the perfection of such security interest.

Except in connection with a transfer under Section 8 hereof, Payor shall not cause or permit any claim, lien, security interest or other encumbrance to be imposed upon the Equipment except (i) the security interest created hereby and (ii) any claim, lien, security interest or other encumbrance arising from liabilities of or claims against Payee and (iii) agreements for the use of the Equipment.

4. Prepayment

4.1 Voluntary Prepayment. This Note may not be prepaid in whole, or in part, at any time prior to December 31, 1984. Payor may prepay all or any portion of the principal sum of this Note from and after January 1, 1985 upon payment of all accrued but unpaid interest on the amount of principal so prepaid. In the event of partial prepayment, subsequent monthly payments shall be appropriately reduced.

4.2 Casualty. If any Item of Equipment is rendered unusable as a result of any physical damage to or destruction of the Equipment which damage or destruction cannot be repaired (the "Damaged Equipment") an amount (the "Prepayment Amount") which equals the product of (x) the then outstanding principal sum hereunder plus accrued interest thereon multiplied by (y) a fraction, the numerator of which shall be the original purchase price for the Damaged Equipment and the denominator of which shall be the original purchase price of all Items of Equipment then subject to the lien hereof shall become due, but not payable hereunder until the date specified in Section 5.2 hereof; provided, however, that the Prepayment Amount shall become payable immediately to the extent of the receipt by Payor of insurance or salvage proceeds relating to the Damaged Equipment. Upon the payment of the Prepayment Amount, or any portion thereof, each of the then remaining installments of interest or interest and principal shall be proportionately reduced.

5. Deferral, etc.

5.1 Payment of Lien. This Note is a wrap-around note. Payee agrees fully and timely to to pay all amounts

as and when they become due under the Lien, by acceleration or otherwise, required to be paid thereunder, and duly and timely to perform all other obligations required to be performed under the Lien as and when required thereunder. In the event Debtor pays or causes to be paid (including payments by reason of application of condemnation, sale or insurance proceeds) any obligation of Payee under the Lien or incurs any other expense to cure any default of Payee thereunder, or pays any expense in curing a breach of Payee's representations contained in Section 2.1(b) or (i) of the Purchase Agreement, (which Debtor shall have the right, but not the obligation, to do, in addition to all other rights and remedies of Debtor), and is not reimbursed therefore by Payee or any guarantor or endorser hereof within five (5) days after notice thereof, all amounts so paid [and, in the case of all amounts other than insurance and condemnation (but not sale) proceeds an additional amount equal to 15% of such amount to reimburse Debtor for its expense in making such unanticipated payments which expenses will be difficult to ascertain] shall be deemed to be payments of amounts then due under this Note, and in excess thereof, prepayments under this Note, but in no event in reduction of the amounts evidenced by the Recourse Notes.

5.2 Deferral. Notwithstanding anything to the contrary in this Note, payment of principal and interest, as the same shall become due hereunder, shall be deferred if and to the extent that Net Proceeds are insufficient to make such payments when due. Net Proceeds thereafter received by Payor shall be applied in payment and reduction of the amount so deferred, which, to the extent of such Net Proceeds, shall then become immediately due and payable; provided, however, that the amount of interest and principal so deferred shall become due and payable on December 31, 1999, whether or not Payor shall have received Net Proceeds sufficient to make such payments on or before such date. All amounts so deferred shall not bear interest.

6. Default.

6.1 Event of Default. The term "Event of Default" as used herein shall mean the occurrence and continuation of any one or more of the following events:

(a) The failure of Debtor to promptly pay when due any payment due and payable under any of the Notes which failure continues for 20 days after notice, subject however to the provisions of Section 5 hereof;

(b) The failure of Debtor to deliver the Letters of Credit on or before the date hereof;

(c) If Debtor shall commit any affirmative act, or breach any covenant of Debtor to the Senior Lienholder, which shall cause or result in the occurence of an event of default under the terms of the documents creating the Lien, and such commission shall continue for, or such breach shall remain uncured for, a period of 10 days after notice;

(d) The failure of Debtor to promptly and faithfully pay, observe and perform when due any of the Obligations other than those referred to in subsection (a) above or the material breach by Debtor of any material representations, warranties or covenants of Debtor herein or in any of the other Documents, which failure or material breach continues for 35 days after notice;

(e) If Debtor shall:

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

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

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

(iv) consent to the appointment of a receiver for the whole or substantially all of its property;

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

(vi) file a petition or answer seeking any other aid or relief under any bankruptcy or insolvency laws or any other law for the relief of debtors;

(f) If a court of competent jurisdiction shall enter an order, judgment or decree appointing, without the consent of Debtor, a receiver for the whole or substantially all of its property, or approving a petition filed against it seeking any other relief under any bankruptcy or insolvency laws or any other law for the relief of debtors, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of entry thereof;

(g) If, under the provisions of any law for the relief of debtors, any court of competent jurisdiction shall assume custody or control of Debtor or of the whole or any substantial part of its property without the consent of Debtor, and such custody or control shall not be terminated or stayed within sixty (60) days from the date of assumption of such custody or control; or

(h) If Debtor shall sell, transfer or otherwise dispose of Collateral in violation of Section 8 below.

6.2 Acceleration. Upon the occurrence of an Event of Default, the entire unpaid balance and all accrued but unpaid interest under this Note and, until the delivery of the Letters of Credit, the Recourse Notes, and all other amounts payable to Secured Party pursuant to the Obligations shall, at Payee's option, be accelerated and become and be immediately due and payable and Secured Party shall have all the rights and remedies with respect to the Collateral of a secured party holding a purchase money security interest under the Uniform Commercial Code; provided, however, that such rights and remedies shall be subject and subordinate to the security and other interests and the rights and remedies of the Senior Lienholder. The Secured Party shall give Debtor reasonable notice of the time and place of any public or private sale or other intended disposition of all or any portion of the Collateral. Debtor agrees that the requirements of reasonable notice shall be met if notice is mailed to Debtor at his address first above written not less than five (5) business days prior to the sale or other disposition. Expenses of retaking, holding, preparing for sale, selling or the like, shall include, without limitation, Secured Party's reasonable attorneys' fees and other legal expenses. Subject to the provisions of Sections 6.3 and 6.4 hereof, Secured Party's rights and remedies, whether pursuant hereto or pursuant to the Uniform Commercial Code or any other statute or rule of law conferring rights similar

to those conferred by the Uniform Commercial Code, shall be cumulative and not alternative. Until the Letters of Credit are delivered (See Section 6.1(b)) the proceeds from the sale or other disposition of the Collateral resulting from the foreclosure by Secured Party on the Collateral shall be applied first, against the Obligations specified in Section 6.4 hereof and any balance against all other Obligations.

6.3 Limitation of Recourse. Anything in this Note, the Purchase Agreement or any other Document to the contrary notwithstanding, Payor hereunder shall be personally liable only for the lesser of (a) $500,000, or (b) the then outstanding principal balance hereunder. In the event of any acceleration under Section 6.2 hereof and without limiting Payee's rights to foreclose on the Collateral and recover all proceeds constituting Collateral, Payee shall have no right to seek or enforce a deficiency or other money judgment against Payor until December 31, 1999.

6.4 Non-Recourse Obligations. With respect to any sums due hereunder other than or in excess of the amounts provided in Section 6.3, Payor's obligations shall be non-recourse ("Non-Recourse Obligations") and Payee shall look solely and only to the Collateral for the payment and performance of all of such Non-Recourse Obligations of Payor, and, with respect to such Non-Recourse Obligations, Payee, for itself and its successors and assigns, hereby expressly waives any right to enforce payment and performance by Payor in respect thereof other than to proceed against the Collateral as provided herein.

7. Notices.

Any notice, request or other communication required or permitted to be given under any of the provisions of this Agreement, shall be in writing and shall be deemed given on the date the same is sent by certified or registered mail, return receipt requested, postage prepaid and addressed to the party for which intended at its or his address set forth at the head of this Agreement together with a copy to one additional addressee as may be requested by notice hereunder or at such other address as such party may hereafter designate to the other in a like notice.

8. Restrictions on Transfer.

Debtor shall not sell, transfer or otherwise

convey, or pledge, hypothecate or otherwise encumber, all or any portion of the Collateral unless it (i) first delivers to Secured Party an acknowledgment executed by the transferee to the effect that the transferee's interest in the Collateral transferred is subject and subordinate to the rights and interests of Secured Party and the Senior Lienholder, (ii) delivers to Secured Party such documents and instruments of the transferee as Secured Party may reasonably request to effectuate the provisions of (i) above (provided that the transferee shall not be obligated to assume any personal liability), and (iii) delivers such additional documents and acknowledgments as the Senior Lienholder shall reasonably require. In addition, Secured Party must be reasonably satisfied that no lien by or against such transferee will attach to the Equipment which is superior to those of the Senior Lienholder and Secured Party. Further, Debtor shall not sell, transfer or otherwise convey any portion of the Collateral if the documents creating the Lien prohibit such transfer, unless it first obtains the written consent of the Senior Lienholder, as provided for in such documents.

9. Miscellaneous.

9.1 Financing Statements. Debtor hereby agrees from time to time to execute any financing or other statements in such form as may be necessary to evidence, perfect and continue the perfection of, a security interest in the Collateral in favor of a Secured Party in any and all jurisdictions.

9.2 Course of Dealing. No course of dealing between Payor and Payee, or any delay in executing any rights or remedies hereunder or under any communication, report, notice or other document or instrument referred to herein, shall operate as a waiver of any of the rights and remedies of Payor or Payee.

9.3 Amendments. This Note may be amended or varied only by a document, in writing, of even or subsequent date hereto executed by Payor and Payee.

9.4 Governing Law. This Note shall be governed by and interpreted under the laws of the State of New York applicable to contracts made and to be performed therein without giving effect to the principles of conflict of laws thereof; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 (formerly Section

20c of the Interstate Commerce Act) and such additional rights arising out of the filing, recording or deposit thereof of any financing statement or other document relating hereto, if any, as shall be conferred by the laws of the jurisdictions in which this Agreement or such financing statement or other document shall be filed, recorded or deposited. Payor and Payee (i) agree that any legal suit, action or proceeding arising out of or relating to this Note may be instituted in Federal Court for the Southern District of New York; (ii) waive any objection which they may have now or hereafter to the laying of the venue of any such suit, action or proceeding; and (iii) irrevocably submit to the jurisdiction of any such Court in any such suit, action or proceeding.

9.5 Successors and Assigns. This Note shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and transferees.

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

9.7 Headings. The descriptive headings in this Note are for convenience of reference only, and shall not be deemed to affect the meanings of construction of any of the provisions hereof.

9.8 Counterparts. This note shall be executed in three counterparts to be labeled Copy 1, 2 and 3, respectively. Copy 1 shall be deemed an original for all purposes and shall be Payee's copy. Copy 2 shall be deemed an original only for recording purposes under 49 U.S.C. §11303 (formerly Section 20c of the Interstate Commerce Act). Copy 3 shall be deemed an original for the purpose of indicating Payee's acceptance of the terms of this Note and shall be Payor's copy.

9.9 Termination. At such time as all of the Obligations have been discharged, the security interest created hereunder shall terminate and Secured Party shall execute and deliver to Debtor all instruments and documents necessary to give effect to and confirm such termination.

IN WITNESS WHEREOF, the Payor has executed this instrument as of the date and year first above written.

PAYOR: THE SWIG INVESTMENT COMPANY

WITNESS:

_____ By: Melvin M. Swig

AGREED TO:

FUNDING SYSTEMS RAILCARS, INC.

By: John D. McInerney [SEAL]
A-1-F

WITNESS:

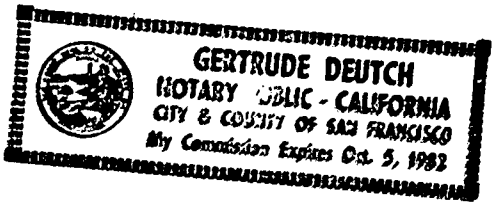
Donald J. Doughkey

COPY 3

STATE OF California)
: ss.:

COUNTY OF San Francisco)

On this 26th day of December, 1979, before me personally appeared Melvin M Swig, to me personally known, who being by me duly sworn, did depose and say that he is the Asst General Manager of The Swig Investment Company, a general partnership organized under the laws of the State of California, the partnership described in and which executed the foregoing Agreement and he acknowledged the foregoing Agreement as his free act and deed.



Gertrude Deutch
Notary Public

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On this 27th day of December, 1979, before me personally appeared John F. McEnroy, to me personally known, who, being by me duly sworn, did depose and say that he is an Atty in Fact of Upper Merion and Plymouth Railroad Company, the corporation which executed the foregoing Agreement and that the seal affixed to the foregoing Agreement is the corporate seal of said corporation, that said Agreement 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 Agreement was the free act and deed of said corporation.

Stoddard D. Platt
Notary Public

STODDARD D. PLATT
Notary Public, State of New York
No. 31-3110309
Qualified in New York County
Commission Expires March 30, 1981

SCHEDULE

The Equipment consists of twenty-two (22) 100 ton Chessie System Design, open top hopper cars bearing idenifying numbers UMP 7233 through UMP 7254, inclusive, manufactured by The Chessie Corporation ("Chessie") under Conditional Sales Agreement made with Upper Merion and Plymouth Railroad Company dated as of December 10, 1979 (the "Chessie Agreement").

The Equipment is subject and subordinate to the lien (the "Lien") originally held by Chessie (which has been assigned by Chessie to Lincoln First Bank, N.A.) pursuant to the Chessie Agreement.

#11300

Funding Systems Railcars, Inc.

TRI-STATE CENTER • SUITE 370 • 2215 SANDERS RD. • NORTHBROOK, IL 60062 • (312) 272-8350

20 July 1983

Mrs. Mildred R. Lee
Recordation Unit-Room 2303
Interstate Commerce Commission
Washington, DC 20423

Dear Mrs. Lee,

Attached please find an executed, original document bearing an original recordation number 11300 and entitled Non-Negotiable Installment Promissory Note - Security Agreement dated December 28, 1979 between The Swig Investment Company, payor and Funding Systems Railcars, Inc., payee, in the amount of $617,010.00. Please replace the executed, original document bearing the same recordation number and entitled identically presently in your file with document attached and return the document presently in your file to me. Apparently, our counsel did not provide adequate instructions to you at the time both of these documents were recorded by your office and the wrong copy was returned to Funding Systems Railcars, Inc.

If you have any questions, please contact me directly.

Very truly yours,

By Dennis T. Hurst
Dennis T. Hurst
Its Authorized Officer

DTH/cm

Enclosure

Document Received By: Dennis T. Hurst

Date Document Received: 21 July 1983

STATE OF ILLINOIS)
:
COUNTY OF Cook)

On this 20th day of July, 1983, before me personally appeared Dennis T. Hurst, to me personally known, who being by me duly sworn, says that he is an authorized officer of FUNDING SYSTEMS RAILCARS, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montagano

Notary Public

My Commission Expires October [illegible] 1984

(Notarial Seal)