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A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

2500 COMERICA BUILDING  
DETROIT, MICHIGAN 48226

TELEPHONE (313) 963-6420  
TWX-DETROIT 810-221-5007  
TELECOPIER (313) 496-7500

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REGISTRATION NO. \_\_\_\_\_ FILE NO. \_\_\_\_\_

MARK T. BOONSTRA  
(313) 496-7624

SEP 21 1987 - 11 10 AM

INTERSTATE COMMERCE COMMISSION September 17, 1987

Interstate Commerce Commission  
12th Street & Constitution Avenue  
Northwest  
Room 2303  
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Re: United States Rail Services, Inc.  
vs. Tuscola & Saginaw Bay Railway

Dear Ms. Lee:

On behalf of United States Rail Services, Inc., we submit for filing and recording, the original and two copies of an August 7, 1987 agreement between United States Rail Services, Inc. ("U.S. Rail") and Tuscola & Saginaw Bay Railway ("TSBY"), entitled Assignment of and Grant of Security Interest in Car Hire Revenues. This agreement secures U.S. Rail's interest in certain monies owed to TSBY by third parties as a result of the use of Railroad freight cars owned or controlled by TSBY.

Enclosed is a check in the amount of \$10.00 in payment of the recording fee. Please return a stamped copy of the Assignment to me upon filing.

Thank you for your assistance in this matter.

Very truly yours,

Miller, Canfield, Paddock and Stone

By: 

Mark T. Boonstra

MTB/klb  
Enclosures

9/21/87  
10:00  
ICC Washington, D.C.

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

9/21/87

Mark T. Boonstra, Esq.  
Miller, Canfield, Paddock & Stone  
2500 Comerica Building  
Detroit, MI 48226

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/21/87 at 11:10am, and assigned recordation number(s) . 15213

Sincerely yours,

*Norita R. McGee*  
Secretary

Enclosure(s)

SE-30  
(7/79)

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INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF AND GRANT OF  
SECURITY INTEREST IN CAR HIRE REVENUES

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AUG 20 1987  
RICHARD H. AUGER  
CLERK OF DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN 48119

THIS ASSIGNMENT OF AND GRANT OF SECURITY INTEREST ("Agreement") is made this 7<sup>th</sup> day of August 1987, by and between the Tuscola & Saginaw Bay Railway, a railroad corporation organized and existing under the laws of the State of Michigan, having its offices at Vassar, Michigan (hereinafter referred to as "Assignor") and U.S. Rail Services, Inc., having its offices at San Francisco, California, (hereinafter called "Assignee").

W I T N E S S E T H:

WHEREAS, the United States District Court for the Eastern District of Michigan entered a certain Consent Judgment ("Judgment") on the 24th day of December, 1986, wherein Judgment was entered in favor of Assignee and against Assignor in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), plus interest at seven percent (7%) per annum from the date of entry of the Judgment ("Indebtedness"); and

WHEREAS, the Judgment provides that payment of the same may be made on a deferred basis; and

WHEREAS, the Judgment further provides that the deferred payments shall be secured by an assignment of certain monies owed to Assignor by third parties as a result of the use of Railroad Freight Cars owned or controlled by Assignor (alone

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RICHARD H. AUSTIN  
SECRETARY OF STATE  
LANSING, MICHIGAN 48224

or with other parties) (hereinafter called "Car Hire Revenues"); and

WHEREAS, the Judgment further provides that such secured payments shall be made from a bank account established to receive and disburse proceeds of Car Hire Revenues to Assignee and Assignor, as appropriate.

NOW, THEREFORE, in consideration of the premises and the covenants and undertakings hereinafter set forth, the Assignor and the Assignee agree as follows:

1. Assignment and Grant. The Assignor conveys, transfers, grants, sets over and assigns to the Assignee all of its right, title and interest in and to the Car Hire Revenues and any and all amounts receivable by Assignor under any Car Hire Rental Agreement up to the amount of Five Thousand and 00/100 Dollars (\$5,000.00) each month for each of twenty-four (24) months beginning on January 15, 1987; Provided, that if the payments pursuant to the aforementioned Judgment do not average Five Thousand and 00/100 Dollars (\$5,000.00) for each of the preceding months, such assignment and security shall be as to all of the Car Hire Revenues for each succeeding month until the total paid to Assignee by and on behalf of Assignor totals the number of months since January 15, 1987, inclusive, times Five Thousand and 00/100 Dollars (\$5,000.00), and Provided, further, that such assignment and security shall continue until the sum of One Hundred Twenty

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Thousand and 00/100 Dollars (\$120,000.00) has been paid upon said Judgment by and on behalf of Assignor.

Assignor further grants an assignment of the proceeds of the bank account established at the Comerica Bank at 211 W. Fort St., Detroit, Michigan 48226 for the purpose of receiving the proceeds of the Car Hire Revenues, subject to the conditions set forth herein as to the Car Hire Revenues.

2. Warranties. Assignor represents and warrants to the Assignee that Assignor is the lawful owner of the Car Hire Revenues, free and clear of all liens, charges, and/or encumbrances of any nature whatsoever, other than the security interest of the Assignee.

3. Covenants and Agreements of Assignor. The Assignor covenants and agrees that it will, while this Agreement is in effect:

- A. Keep the Car Hire Revenues free at all times from any and all liens, security interests, and encumbrances, excepting only liens, encumbrances and security interests in favor of Assignee;
- B. Not make any other sale, lease or assignment of the Car Hire Revenues, or any portion thereof, and any such sale, lease or assignment shall be void;
- C. Maintain the office at 538 E. Huron Ave., City of Vassar, Tuscola County, Michigan, where all inventory and records concerning all accounts hereunder shall be kept;
- D. Deposit in the account at Comerica Bank the proceeds of all Car Hire Revenues to which Assignor is entitled and which are not transferred to Assignee by third party debtors or their agents;
- E. Immediately disclose to Assignee the identity of all third parties currently using the rail cars, and disclose the identity of all persons or

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entities who become users during the pendency of Assignor's payment obligations under the Judgment as soon as is practicable after they become contractually obligated to make payments to Assignor;

- F. Immediately notify in writing all third parties currently using the rail cars of the method and manner of payment provided for herein and in the Judgment, and similarly notify all persons or entities who become users during the pendency of Assignor's payment obligations under the Judgment as soon as is practicable after they become contractually obligated to make payments to Assignor; and at all such times provide Assignee with a copy of such notifications;
- G. Provide Assignee with a monthly statement of all Car Hire Revenues to which Assignor has or is to become entitled, and of all Car Hire Revenues for which it has been or is to be paid; and provide Assignee with all monthly statements reflecting the activity of the bank account described herein, as such statements become available;
- H. Sign such financing statement or statements, in form satisfactory to Assignee, which Assignee may at any time desire to file with the State of Michigan and the Interstate Commerce Commission, in order to perfect its security interest in the Car Hire Revenues; and it will execute and deliver to Assignee any instrument, document, assignment or other writing which may be necessary or convenient to Assignee to carry out the terms of this Agreement, and to perfect its security interest in and facilitate the collection of accounts, and the proceeds thereof;
- I. Assignee, or any persons designated by it, shall have the right to visit Assignor's place or places of business at any reasonable time, and without hindrance or delay, to inspect, audit, check and make extracts from Assignor's books, records, journals, orders, receipts and any correspondence and other data relating to Assignor's Car Hire Revenues, and shall have the right to make direct verification from third party debtors, or their agents, with respect to any or all Car Hire Revenues which are or are to become due and owing from third party debtors to Assignor;

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LANSING, MICHIGAN 48913

J. In the case of all Car Hire Revenues specifically assigned to Assignee which are not paid within 30 days after the net due date thereof, Assignor shall immediately pay to Assignee all amounts then due and owing pursuant to the terms of the Judgment. However, this provision shall not take effect if Assignor can demonstrate to Assignee's satisfaction that Assignor's failure to pay such Car Hire Revenues to Assignee is due not to the fault of Assignor, but to the failure of third party debtors to make timely payment to Assignor of the Car Hire Revenues due and owing.

4. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

A. Any failure or neglect to comply with, or breach of, any of the terms, provisions, warranties or covenants of this Agreement.

5. Remedies and Enforcement. Upon the occurrence of any Event of Default, Assignee may exercise any one or more of the following rights and remedies:

- A. Exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of the Uniform Commercial Code, by Title 49 U.S.C. § 10101 et seq., or any other applicable law;
- B. Institute legal proceedings to foreclose upon and against the lien and security interest granted by this Agreement, to recover judgment for all amounts then due and owing as Indebtedness secured hereby;
- C. Assignee may act as Assignor's agent in the collection of Car Hire Revenues. All checks, drafts and other instruments shall be indorsed by Assignor to Assignee and in the event of the failure of Assignor to make such indorsement, Assignee is hereby irrevocably authorized to indorse the same on Assignor's behalf. Assignor agrees that it will not commingle such collections or proceeds with any of Assignor's other funds or property but will hold them separate and apart therefrom and upon an express trust for Assignee;
- D. Assignee shall have the right at any time to notify the third party debtors, or their agents, to make

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payment of Car Hire Revenues due and owing to Assignor directly to Assignee.

6. Indemnification and Liability. Assignee assumes no liability for the use or operation of the Railroad Freight Cars subject to "Car Hire Revenues". Assignee shall not be liable under any circumstances for any loss or delay or for any damage of any kind to the shipments made in any of the Railroad Freight Cars. Assignee shall not be liable to Assignor because of any damage or injury caused directly or indirectly by any of the Railroad Freight Cars, or resulting in any way from the use thereof. Assignor shall fully indemnify Assignee against all claims, demands, or causes of action asserted against Assignee by any other person, firm, or corporation on account of damages or injury caused by any of the Railroad Freight Cars or resulting in any way from use thereof. Assignor shall defend, at Assignor's expense, any litigation arising from the operation of the Railroad Freight Cars subject to this Assignment of Car Hire Revenues.

7. No Waiver. No failure on the part of the Assignee to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any rights, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein granted are cumulative and not exclusive of any other remedies provided by law or at equity. The Assignor agrees that no security now or hereafter held by the

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LANSING, MICHIGAN 48219

Assignee for the payment of the Indebtedness of the Assignor, whether in the nature of a security interest, pledge, lien, assignment, set-off, suretyship, guaranty, indemnity, insurance or otherwise, shall affect in any manner the unconditional obligation of this Agreement, and that the Assignee, in its sole discretion, without notice to the Assignor, may release, exchange, enforce and otherwise deal with any such security without affecting in any manner the unconditional obligation of this Agreement.

8. Termination. This Agreement shall terminate when the sum of One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) has been paid upon the Judgment by and on behalf of Assignor.

9. Benefit. This Agreement shall bind and inure to the benefit of the parties hereto and the successors or assigns of Assignor, but shall not inure to the benefit of any other person, firm or corporation.

10. Construction. The laws of the State of Michigan and the United States of America shall govern the construction of this assignment, and the rights and duties of the parties hereunder and any and all security therefor. If any term of this Agreement or any application thereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement and of any other application of such term or provision shall not in any way be affected or impaired thereby.

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AUG 20 1987

RICHARD H. AUSTIN  
SECRETARY OF STATE  
LANSING, MICHIGAN 48918

In witness whereof, the parties hereto have caused this Agreement to be duly executed the 7th day of AUGUST 1987.

WITNESSETH:

TUSCOLA & SAGINAW BAY RAILWAY

Maureen A. Daddam  
Thomas J. Zittel

By: Margaret Ritter  
Its: Pres.

UNITED STATES RAIL SERVICES, INC.

By: W. J. Summers  
Its: PRESIDENT

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State of Michigan )  
                          ) ss  
County of Tuscola )

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RICHARD H. AUSTIN  
SECRETARY OF STATE  
LANSING, MICHIGAN 48918

On this 7th day of AUGUST, 1987, before me personally appeared MAYNARD BIRK and LAWRENCE JUDD to me personally known, who being by me duly sworn, say that they are the PRESIDENT and VICE-PRESIDENT, respectively, of Tuscola & Saginaw Bay Railway, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ernest E. Rodammer  
Notary Public, Tuscola County, MI  
My Commission Expires:

ERNEST E. RODAMMER  
Notary Public, Tuscola County, Mich  
My Commission Expires July 25, 1989.

State of California )  
                          ) ss  
County of San Francisco )

On this 10th day of August, 1987, before me personally appeared D. A. Summers and K. H. Dunbar, to me personally known, who being by me duly sworn, say that they are the President and Secretary, respectively, of United States Rail Services, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Norma B. Santos  
Notary Public, San Francisco County, MI CA  
My Commission Expires: 6/14/91

