

Funding Systems Railcars, Inc.

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

January 16, 1985

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Washington, DC 20423

5-023A043

14556

RECORDATION NO. FILED 1425

JAN 23 1985 - 12 25 PM

RECORDED
INDEXED
JAN 23 12 19 AM '85
MOTOR VEHICLE DIVISION

Dear Sir:

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the U.S. Code and the regulations thereunder are the original and one copy of Lease Agreement, a primary document, dated October 5, 1984.

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

Lessor: Funding Systems Railcars, Inc.
2215 Sanders Road
Suite 370
Northbrook, IL 60062

Lessee: Tuscola & Saginaw Bay Railway Company, Inc.
538 East Huron Avenue
Vassar, MI 48768

JAN 23 1985
10.00

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

Fifty (50) gondola railroad cars bearing the identification marks TSBY.

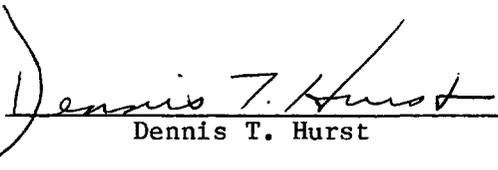
The original and all extra copies of the enclosed documents should be returned to Ms. Sharon Schumacher of Funding Systems Railcars, Inc., 2215 Sanders Road, Suite 370, Northbrook, IL 60062

Also enclosed is a remittance in the amount of \$10.00 for payment of recordation fees.

Mr. James H. Bayne
Interstate Commerce Commission
January 16, 1985
Page 2

I am an officer of Funding Systems Railcars, Inc. and have knowledge of the matters set forth herein.

Very truly yours,

By 
Dennis T. Hurst

DTH:pb
encl.

SENT VIA: Certified Mail

1/23/85

Interstate Commerce Commission
Washington, D.C. 20423

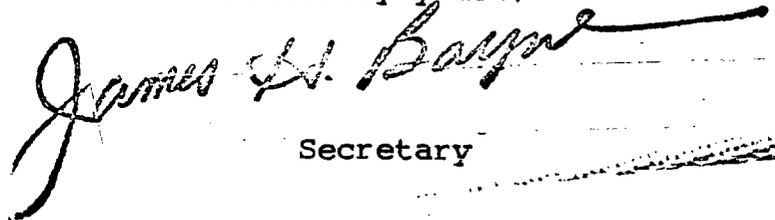
OFFICE OF THE SECRETARY

Sharon Schumacher:
Funding Systems Railcars, Inc.
2215 Sanders Road, Suite 379=
Northbrook, Illinois 60062

Dear Ms. Schumacher:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/23/85 at 12:25pm and assigned re-
recording number(s). 14556

Sincerely yours,


Secretary

Enclosure(s)

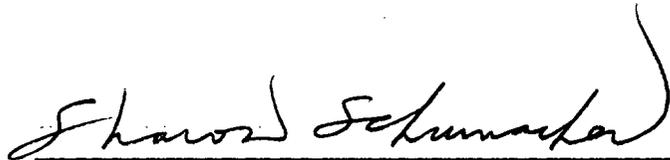
STATE OF ILLINOIS)
)
COUNTY OF DU PAGE)

14556
RECORDATION NO. _____ Filed 1425

JAN 23 1985 :12 25 PM

INTERSTATE COMMERCE COMMISSION

On this 16th day of January, 1985, I hereby certify that I have compared the attached copy of the Lease Agreement between Funding Systems Railcars, Inc. and Tuscola & Saginaw Bay Railway Company, Inc. dated October 5, 1984 with the original and have found the copy to be complete and identical in all respects to the original document.



Notary Public

My commission expires:

My Commission Expires Jan. 27, 1985

LEASE AGREEMENT **JAN 23 1985 12 25 PM**

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT (the "Agreement"), made as of this fifth day of October, 1984, between Funding Systems Railcars, Inc., a Delaware corporation, 2215 Sanders Road, Suite 370, Northbrook, Illinois 60062, ("Lessor"), as Lessor, and Tuscola & Saginaw Bay Railway Company, Inc., a Michigan corporation, 538 East Huron Avenue, Vassar, Michigan 48768, ("Lessee"), as Lessee.

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from the Lessor upon the terms and conditions set forth herein, a number of items of equipment of the number, type and description as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this agreement. The word "Schedule" as used herein includes the schedule or schedules executed herewith and any additional schedules, amendments and exhibits thereto, each of which when signed by both parties shall be a part of this agreement. The scheduled items of equipment are hereinafter called collectively the "Cars" and each individual scheduled item of equipment is hereinafter called a "Car".

B. It is the intent of the parties to this Agreement that Lessor shall at all times be and remain the Lessor of all Cars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and it will take such action and execute such documents as may be necessary to accomplish this intent.

C. On or before January 31, 1985, Lessee shall have the option to lease up to fifty (50) additional similar Cars, and make such Cars subject to this Agreement.

2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Cars as provided herein. The term of lease with respect to all of the Cars shall be for approximately three years commencing upon (a) the date when all Cars on Schedule I have been delivered as set forth in Section 3A hereof or (b) January 1, 1985, whichever is earlier, and ending on December 31, 1987.

3. Supply Provisions

A. The equipment shall be moved to Lessee's railroad line at no cost to Lessee as soon as is consistent with mutual convenience and economy.

To move the Cars to Lessee's railroad line and insure optimal use of the Cars after the first loading of freight for each Car on the railroad line of Lessee (the "Initial Loading"), Lessor agrees to assist Lessee in monitoring Car movements and, when deemed necessary by Lessee and Lessor, to issue movement orders with respect to such Cars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

If Lessor incurs expenses in having other railroads move the Cars in accordance with this Section, except for any expenses incurred in the initial delivery of the Cars to Lessee's railroad line pursuant to this Section, unless such movement is made with the concurrence of Lessor, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of invoice from Lessor.

B. Lessee has received a description of the railroad cars identified on Schedule 1. Lessee has approved the description and quantity of Cars identified in Schedule 1. Lessee may, at its option and expense, inspect any of the Cars at the present point of storage on the Wisconsin & Southern Railroad upon reasonable notice to Lessor and during regular business hours. If, upon inspection, Lessee rejects any Car as not being in good operating condition, Lessor shall have the right to substitute another Car of the same type as the Car rejected. Any Car not rejected by Lessee or any Car for which Lessee has not exercised its right of inspection shall be deemed to be acceptable to Lessee for its intended use thereof.

C. Lessee shall give preference to Lessor and shall load the Cars leased from Lessor prior to loading rail equipment similar to the Cars interchanged with other railroads or leased, purchased or managed by Lessee subsequent to the date of this Agreement, provided, however, that this shall in no event prevent Lessee from fulfilling its common carrier obligations to provide transportation services upon reasonable request therefore to shippers on its railroad.

D. Additional Cars may be leased from Lessor by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Cars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by Lessor and Lessee.

4. Railroad Markings and Record Keeping

A. Lessor agrees that it will pay actual costs incurred by Lessee in lettering any Car which has not been remarked with Lessee's reporting marks prior to delivery, but not to exceed \$100.00 per Car.

B. At no cost to Lessee, Lessor shall during the term of the Agreement cause to be prepared for Lessee's signature and filing all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include (i) appropriate AAR documents including an application, if applicable, for relief from AAR Car Service Rules; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such other reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Each Car leased hereunder shall be registered by Lessee at no cost to Lessor in the Official Railway Equipment Register and the Universal Machine Language Equipment Register (UMLER). Lessee, or its assignees shall, at Lessee's expense, on behalf of Lessor, perform all record keeping functions relating to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, including but not limited to, car hire reconciliation and issuance of claims.

D. All record keeping by Lessee hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular Lessee business hours. Lessee shall supply Lessor with such information regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during the term of this Agreement and any extension thereof, including, but not limited to repairs, maintenance and servicing, unless the

same was occasioned by the fault of Lessee or in instances which the interchange rules would assign responsibility for such loss, damage, destruction or liability to Lessee. In the event of damage caused by Lessee in accordance with the preceding sentence, Lessee shall pay rental to Lessor out of Lessee's share of revenues pursuant to Paragraph 6.B.(ii) for the time the applicable Car is out of service and on Lessee's line in accordance with Paragraph 6.A.(i) provided that Lessor provides Lessee repair facility disposition within forty-eight hours of a request for repair facility disposition by Lessee. In the event of other repairs and maintenance required for the Cars, Lessee shall provide to Lessor copies of invoices and billing repair cards for approval prior to payment by Lessee. Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and shall be liable to Lessor for any repairs required for damage not noted at the time of interchange.

B. Except as provided above, Lessor shall, at its expense, make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Lessee shall cooperate in these endeavors with Lessor so long as Lessee's operations are not interrupted. Upon request of Lessor, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks as may be reasonably requested by Lessor, provided that such work would otherwise normally have been performed by Lessee on other Cars owned, leased or managed by Lessee. Lessor shall also make, or cause to be made, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars. Lessee may make running repairs to facilitate continued immediate use of a Car, but shall not otherwise make any repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration, improvement, or addition to any Car without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alter-

ation, improvement or addition shall be and remain with Lessor. Lessor shall compensate Lessee for any repairs made by Lessee pursuant to this paragraph at 70% of the then current AAR labor rate.

C. As long as this Agreement shall remain in effect, Lessee shall be responsible for the Cars (i) while in Lessee's possession or control, and (ii) in the same manner that Lessee is responsible under Interchange Rules for similar equipment not owned by Lessee. Lessee shall, at all times while this Agreement is in effect, at its own expense, cause to be carried and maintained (a) physical loss or damage insurance with respect to the Cars while on Lessee's tracks; and (b) public liability insurance with respect to third party personal injury and property damage, in each case in such amounts and for such risks and with such insurance companies as are consistent with prudent industry practice, Lessee shall furnish to Lessor concurrently with the execution hereof, and thereafter at intervals of not more than twelve (12) calendar months, certificates of the aforesaid insurance signed by an independent insurance broker. All insurance shall be taken out in the name of Lessee and shall name Lessor and any assignee of Lessor as additional named insured on the public liability insurance with respect to third party personal injury and property damage, and shall also list Lessor and any assignee of Lessor as loss-payees on the property insurance. Said policies shall provide that Lessor and any assignee of Lessor shall receive thirty (30) days prior written notice of any material changes in coverage or cancellation thereof. Lessor and/or its assignee may, at its option, re-evaluate the insurance coverage provided by Lessee, and request additional coverage as deemed reasonable and prudent. Lessee hereby agrees to endorse insurance proceeds or railroad payments relating to loss or destruction of any Car or Cars at the direction of Lessor.

D. Lessor agrees to reimburse Lessee for all taxes or assessments actually paid by Lessee relating to the Cars and on the lease, delivery or operation thereof, except taxes on income imposed on Lessee, provided that Lessor received notice of assessment prior to payment, levied, assessed or imposed during the lease term. Lessee will comply with all state and local laws requiring the filing of personal property/ad valorem tax returns on the Cars. Lessee agrees to apply any personal property/ad valorem tax credits or deductions including those associated with rehabilitation or maintenance of way expenditures to the Cars, at no cost to Lessor, prior to the application of any tax credits or deductions for cars used in interchange service that are either owned, leased or managed by Lessee at this time or subsequent to this Agreement. In the event that personal property/ad valorem taxes are actually paid after application of the available credits or deductions as discussed above, such payment shall be made 50% by Lessor and 50% by Lessee. Lessee's portion of personal property/ad valorem taxes will be paid solely from revenues Lessee receives pursuant to Paragraph 6.B.(ii).

Lessor shall review all applicable tax returns prior to filing. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any city, county, state or other taxing or assessing authority. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill as relates to the Cars on behalf of Lessee. Lessor shall assume full responsibility for all expenses including legal fees resulting from such contest.

6. Lease Rental

A. Definitions

(i) "Revenues" shall be the total Revenues earned and due from other railroad companies for the use or handling of the Cars including hourly car hire and mileage, whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset. In the event Lessee is responsible for damage to a Car pursuant to Paragraph 5.A, revenues shall include payment from Lessee at the hourly rate at which the Car is registered in UMLER for all hours the Car is out of service. Lessee shall provide Lessor a report detailing the revenues earned in a particular service month within fifty (50) days after the end of that service month.

(ii) The "Base Rental" shall be defined as the sum equal to the Revenues which the Cars earn in the aggregate at the rate of \$300.00 per Car per month.

B. Lessee agrees to pay the following rent to Lessor for the use of the Cars:

(i) In the event that revenues in any calendar year or applicable portion thereof are less than or equal to the Base Rental, Lessee shall pay to Lessor a sum equal to one hundred percent (100%) of the Revenues.

(ii) In the event that Revenues in any calendar year or applicable portion thereof exceed the Base Rental, Lessee shall pay to Lessor an amount equal to the Base Rental plus fifty percent (50%) of the Revenues in excess of the Base Rental. Lessee shall receive fifty percent (50%) of the Revenues in excess of the Base Rental, except as provided in Section 5.D.

C. Lessor shall receive all car hire revenue earned by a Car prior to delivery of that Car to Lessee.

D. In the event damage beyond repair or destruction of a Car has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules-Freight and the appropriate amount due as a result thereof is received by Lessor, said damaged or destroyed Car will be removed from the coverage of this Agreement as of the date of damage or destruction.

E. Lessee shall not, without the prior written consent of Lessor, grant any reclaims with respect to the Cars nor, even if permitted by law, change the hourly or mileage charges applicable to the Cars. If there is a modification, alteration or change in the car hire compensation schedules in effect as of the signing of this Agreement then the cars will carry the highest rate permitted or a lesser rate determined by Lessor but such rate shall not be greater than the rate in effect prior to the modification, alteration or change in the car hire compensation for the cars unless agreed to by Lessor and Lessee. If the highest rate permitted is less than the rate in effect prior to the modification, alteration or change in car hire compensation then Lessor can cancel this Agreement. In the event a car owner is permitted to charge fees for the loading of cars by foreign railroads then Lessor shall determine such fees.

F. In the event that the portion of Revenues received by Lessor pursuant to Section 6.B. as rent for the immediately preceding quarter is less than an average of \$1100.00 per Car or if at any time during the calendar quarter the number of days that the Cars have not earned Revenues is such as to make it mathematically certain that the Lessor's Revenue cannot be equal to or greater than an average of \$1100.00 per Car per quarter, Lessor may, at its option and upon not less than 10 days prior written notice to Lessee, terminate this Agreement as to such Cars as Lessor shall determine. However, Lessee may, during such 10 day notice period, elect to pay any deficit such that the Lessor's Revenue averages the equivalent of \$1100.00 per Car in the calendar quarter. In such event, Lessor will be precluded from terminating this Agreement to any Cars.

G. On a monthly basis, Lessee shall collect all Revenues with respect to the Cars in connection with the use of the Cars by other railroads and shall pay to Lessor within seven (7) business days thereafter, all rental due Lessor which has then been collected during the month. Collection of Revenues in instances where Lessee has Interline Accounts offset against amounts including Revenues shall be deemed to have occurred when such offset is made. All rental due Lessor for a particular service month shall be paid to Lessor within one hundred (100) days of the end of the month during which such Revenues are earned. Payments, including details by Car of the Revenues collected during the month, shall be mailed to:

Funding Systems Railcars, Inc.
Drawer No. 639
Milwaukee, WI 53278

H. Lessor maintenance and repair costs which are the responsibility of Lessor and approved hereunder and paid by Lessee during the month shall be deducted from the monthly rental payments. Upon Lessor's reasonable request, Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate Revenues and Revenues actually received by Lessee. Further, Lessor shall be entitled, upon reasonable notice, to visit Lessee at any time during normal business hours to review any and all records pertaining to the Cars.

I. If, subsequent to the Initial Loading, any Car remains on Lessee's railroad tracks for more than fourteen (14) consecutive days, excluding those days such Car is undergoing servicing, repair or alteration as provided for in Section 5, unless such servicing, repair or alteration was occasioned by the fault of Lessee, Lessor may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Car and withdraw such Car from Lessee's railroad tracks. If any Car has remained on

Lessee's railroad tracks for more than fourteen (14) consecutive days because Lessee has not given preference to the Cars as specified in Section 3.C., Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period.

J. Lessor and Lessee anticipate that the Cars will be used in the service of Algoma Steel, Sault Ste. Marie, Ontario and that steel products will be trans-loaded from truck to the Cars on Lessee's trackage. Expected volume is at least 80 Car loads per month. If this anticipated movement is reduced from the expected level prior to July 1, 1985, then Lessor may make a proportional reduction in the number of Cars leased hereunder, the provisions of Section 6.F. hereof notwithstanding.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement and in the manner and to the extent freight cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any car owner or secured party under any financing or management agreement entered into by Lessor or its subsidiaries or affiliates from any such secured party or car owner, that an event of termination or default has occurred and is continuing under such financing or management agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned to such party and the number of Cars subject to this lease be reduced accordingly. Lessee agrees that to the extent it has physical possession and can control

the use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and order of the governmental bodies or officers having power to regulate or supervise the use of such property, except that either Lessor or Lessee may, in good faith and by appropriate proceedings, contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

C. Lessee will not load Cars off their railroad line to points outside the continental United States without the express written consent of Lessor.

D. While the Cars are on Lessee's railroad, Lessor will not be liable for storage charges, except after 90 days after the expiration or termination of the Agreement as provided in Section 9 hereof.

E. During the term of this Agreement, at the expense of Lessor, Lessor reserves the right to substitute any or all of the Cars with substantially similar Cars and the rental with respect to the substituted Car shall commence upon delivery of the substituted Car to Lessee.

F. Lessee warrants that the Cars will not be:

- (i) Used in extraordinary wear or tear or corrosive service; or
- (ii) Used in an Intra-Plant service; or
- (iii) Loaded in Intra-Line movements; or
- (iv) Used for the storage of commodities or goods without the express written consent of Lessor.

G. Lessee agrees to use its best efforts to maximize off-line use of the Cars.

8. Default

A. The occurrence of any of the following events shall be an event of default:

(i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due;

(ii) The breach by Lessee of any other term, covenant, or condition of this Agreement, which is not cured within ten (10) days thereafter;

(iii) The filing by or against the Lessee of any petition or the initiation by or against the Lessee of any proceeding: (a) for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder; or (b) any bankruptcy, reorganization, insolvency, moratorium or other laws relating to the relief of debtors, the readjustment of indebtedness, financial reorganization, arrangements with creditors, compositions of indebtedness, or extensions of indebtedness. If any such petition or proceeding is filed or initiated and Lessor does not enforce this event of default or such enforcement is prohibited by operation of law, the Lessee shall request within 30 days of the commencement of any proceeding under the United States Bankruptcy Code,

Title 11, United States Code, that the trustee or the debtor-in possession assume this contract within 60 days of the commencement of the bankruptcy proceeding. At Lessor's request the Lessee further agrees to use its best efforts, including a written request, to acquire the consent of any and all creditors committees, whether or not the committee or committees are appointed or elected pursuant to the Bankruptcy Code, to the assumption of the contract. Lessee further agrees that sixty (60) days from the date a proceeding under the Bankruptcy Code is commenced is a sufficient and reasonable period within which to decide whether this contract is to be assumed or rejected.

(iv) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

(v) Any action by Lessee to discontinue rail service on all or a portion of its track or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, provided such action might reasonably affect the Revenues earned by the Cars.

B. Upon the occurrence of any event of default hereunder, without limiting Lessor's rights and remedies otherwise provided by law which shall be available to Lessor in addition to the following rights and remedies (no right or remedy of Lessor being exclusive but all such rights and remedies being available at all times to Lessor and Lessor in any case being entitled to recover all costs, expenses and reasonable attorneys' fees incurred by Lessor in enforcing its rights and remedies hereunder), Lessor may, at its option, terminate this Agreement and/or may:

(i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof, and/or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all right and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of the Cars and, henceforth hold, possess and enjoy the same, free from any right of Lessee. Lessor shall in addition have the right to recover from Lessee any and all rental amounts which, under the terms of this Agreement may then be due or which may have accrued to that date, together with Lessor's costs and expenses, including reasonable attorney's fees incurred in securing such enforcement hereof.

9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Lessor by delivering the same to Lessor as provided herein. Prior to surrendering possession of the Cars at the expiration/termination of this Agreement, a joint inspection shall be made to determine that the Cars are in the same operating order, repair and condition as when originally delivered to Lessee, reasonable wear and tear excepted. Lessee is responsible for all repair work needed to bring any car into the condition stated in the preceding sentence. Such Cars shall be clean and free of commodity accumulation and deposits. If any of the Cars require cleaning after the expiration or termination of this Agreement, such work will be done at Lessee's expense. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and placing thereon of such markings as may be designated by Lessor, either, at the option of Lessor, (1) by Lessee upon return of such Cars to Lessor's railroad line or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon termination, any cost of

assembling, delivering, storing, and transporting such Cars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor. If such Cars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense, within five working days, remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. If requested by Lessor, Lessee shall deliver the Cars to any interchange point on its railroad designated by Lessor free of freight charges with transportation charges beyond to be paid by Lessor. Lessee shall provide up to ninety (90) days free storage on its railroad tracks for Lessor or the subsequent lessee of any terminated Car.

10. Loss or Damage to Cars.

Lessor will hold Lessee harmless from and against any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has control or possession of Cars.

11. Representation, Warranties and Covenants

Lessee represent, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of

Lessee or on the Cars pursuant to any instrument to which Lessee is a party of by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially, adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

12. Inspection

Lessor shall at any time during normal business hours have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars and any related records to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Lessor of any accident connected with the malfunctioning or operation of the Cars when such accident occurred while the Cars were in Lessee's possession or control, or in the possession of another handling road, including in such report, where available, the time, place and nature of the accident and the damage caused. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process which shall attach to any Car. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report or copies of any other income and balance sheet statements required to be submitted to the ICC and/or state agencies.

13. Miscellaneous

A. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing or management agreement entered into by Lessor or its assignees in connection with the acquisition or financing or use of the Cars in order to confirm the financing parties' interest in and to the Cars, this Agreement and Schedules hereto and to confirm the subordination provisions contained in Section 7 of this Agreement.

B. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a Lessee only.

C. No failure or delay by Lessor shall constitute a waiver or otherwise affect or impair any right, power or remedy available to Lessor nor shall any waiver or indulgency by Lessor or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

D. This Agreement shall be governed by and construed according to the laws of the State of Illinois and both parties hereby consent to the jurisdiction of the courts of the State of Illinois.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed to the Secretary of Lessee or President of Lessor at the address set forth herein.

F. The obligations and liabilities of Lessor and Lessee hereunder shall survive the expiration or earlier termination of this Agreement.

G. This Agreement represents the entire agreement between the parties. This Agreement shall not be modified, altered, or amended, except by an amendment in writing signed by the parties.

H. Lessor shall have the right to examine the physical facilities of the Lessee, loading data, and other pertinent information which may affect the use and earning capacity of the Cars. After such examination Lessor may notify Lessee in writing of any dissatisfaction and this Agreement shall be null and void by virtue of such notice. The right to so notify Lessee shall terminate ten (10) business days after the date of signing this Agreement by Lessee, unless Lessee has provided false data to Lessor.

I. The parties agree and acknowledge that Lessee must receive approval of this Agreement from the Michigan Department of Transportation. Should such approval not be received by December 31, 1984, then neither party shall be obligated to execute this Agreement, unless a written extension is granted by Lessor.

J. For any cars delivered prior to January 1, 1985, Lessee agrees that Lessor shall receive Revenues at least equal to the transportation and remarking costs incurred by Lessor. Such costs will include transportation of the Cars to and from Lessee, and remarking of the Cars to and from Lessee's reporting mark. In the event that Revenues received by Lessor are not equal to or greater than Lessor's costs, then Lessee shall pay to Lessor a sum which would make the Revenues equal to Lessor's costs. Lessee and Lessor agree to mutually assist each other in minimizing transportation and remarking costs.

K. Lessor reserves the right to have its subsidiary, including the Wisconsin & Southern Railroad, shown as Lessor, and reserves the right to assign this lease.

^{DELETED}
L. ~~In the event that Lessee, as of January 1, 1985, becomes the designated operator for trackage for which Michigan Northern Railway Company is the designated operator as of September, 1984, the Lessee shall pay Lessor termination charges of \$366.67 per Car per month for six (6) months for any Cars leased hereunder if Lessee's status as designated operator for such trackage is withdrawn subsequent to January 1, 1985, but prior to the end of term of this Agreement.~~ *JM*

M. Record keeping and conflict of interest provisions are covered by Rider #1 attached hereto and made a part of this Agreement.

N. Affirmative action and MBE/WBG requirements are covered by Appendices "A" and "A-1", attached hereto, and made a part of this Agreement.

O. Any provision of this Agreement which is or is rendered unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

TUSCOLA AND SAGINAW BAY
RAILWAY COMPANY

By: D. Newell
Title: President
Date: 1-7-85

FUNDING SYSTEMS RAILCARS, INC.

By: J. N. Bell
Title: Executive Vice President Operations
Date: January 10, 1985

APPROVED
Director, Michigan Department of
Transportation
Date 12-18-84

407
12/15/84

EQUIPMENT SCHEDULE NO. 1

FUNDING SYSTEMS RAILCARS, INC., hereby leases the following Equipment to Tuscola & Saginaw Bay Railway Co., Inc., subject to the terms and conditions of that certain Lease Agreement dated as of October 5, 1984.

Description	Reporting Marks and Numbers	Inside Dimensions			No. of Items of Equipment
		Length	Width	Height	
Gondolas		52'6"	9'6"	4'6" or 5'	50

FUNDING SYSTEMS RAILCARS, INC.

BY: J. N. Bell
Executive Vice President
TITLE: Operations

DATE: 10 January 1985

TUSCOLA & SAGINAW BAY RAILWAY CO.

BY: A. Wendt
TITLE: President

DATE: 1-7-85

TSBY
CAR NUMBERS

TSBY 5639
TSBY 5641
TSBY 5643
TSBY 5646
TSBY 5648
TSBY 5652
TSBY 5656
TSBY 5664
TSBY 5665
TSBY 5667
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TSBY 5825

RIDER #1

ONE: No director, officer or employee of the Lessee during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this lease or the proceeds thereof.

TWO: Lessee and the Lessor shall make available to the auditors of the State of Michigan or of any governmental agency having jurisdiction over Lessee the records of revenues and costs related to this lease. All such records for each year will be kept for a period of at least four (4) years after the end of that particular year, and any such records that are the subject of an auditing dispute shall be kept for the term of that dispute. The parties hereto shall allow inspection of the above described records by the authorized agents of the State of Michigan during regular business hours upon reasonable notice.

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

May, 1981

In connection with the performance of work under this contract the contractor agrees as follows:

1. In accordance with Act No. 453, Public Acts of 1976, the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, or marital status. Further, in accordance with Act No. 220, Public Acts of 1976 as amended by Act No. 478, Public Acts of 1980 the contractor hereby agrees not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of the above covenants shall be regarded as a material breach of this contract.
2. The contractor hereby agrees that any and all subcontracts to this contract, whereby a portion of the work set forth in this contract is to be performed, shall contain a covenant the same as hereinbefore set forth in Section 1 of this Appendix.
3. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight, marital status or a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.
5. The contractor or his collective bargaining representative will send to each labor union or representative of union with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this appendix.
6. The contractor will comply with all relevant published rules, regulations, directives, and orders of the Michigan Civil Rights Commission which may be in effect prior to the taking of bids for any individual state project.
7. The contractor will furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission, said forms may also elicit information as to the practices, policies, program, and employment statistics of each subcontractor as well as the contractor himself, and said contractor will permit access to his books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this contract and relevant with rules, regulations, and orders of the Michigan Civil Rights Commission.
8. In the event that the Civil Rights Commission* finds, after a hearing held pursuant to its rules, that a contractor has not complied with the contractual obligations under this agreement, the Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the Administrative Board of the State of Michigan, which Administrative Board may order the cancellation of the contract found to have been violated, and/or declare the contractor ineligible for future contracts with the state and its political and civil subdivisions, departments, and officers, and including the governing boards of institutions of higher education, until the contractor complies with said order of the Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the contractor is declared ineligible to contract as a contracting party in future contracts. In any case before the Civil Rights Commission in which cancellation of an existing contract is a possibility, the contracting agency shall be notified of such possible remedy and shall be given the option by the Civil Rights Commission to participate in such proceedings.
9. The contractor will include, or incorporate by reference, the provisions of the foregoing paragraphs (1) through (8) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or purchase order that said provisions will be binding upon each subcontractor or seller.

* The Civil Rights Commission referred to is the Michigan Civil Rights Commission.

Attachment A-1

REQUIREMENTS FOR PARTICIPATION

BY

MINORITY BUSINESS ENTERPRISE (MBE) AND

WOMAN BUSINESS ENTERPRISE (WBE)

1. POLICY:

It is the policy of the Department of Transportation that MBEs and WBEs as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole with State funds, in whole or in part with Federal funds. Consequently, the MBE and WBE requirements of 49 CFR Part 23 apply to this contract.

2. MBE OBLIGATION and
WBE OBLIGATION:

The contractor agrees to ensure that MBEs and WBEs as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole with State funds, in whole or in part in Federal funds. In this regard all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that MBEs and WBEs have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

SECURITY AGREEMENT

THIS SECURITY AGREEMENT is entered into as of 5 day of October, 1984; by and between FUNDING SYSTEMS RAILCARS, INC., (the "Secured Party") and TUSCOLA AND SAGINAW BAY RAILWAY COMPANY, (the "Debtor").

WHEREAS, the parties hereto propose to enter into a certain Lease Agreement (the "Lease") of even date herewith between Secured Party as lessor and Debtor as the lessee, whereby Debtor will lease from and manage for the Secured Party certain items of railroad equipment (collectively, the "Cars" and individually, a "Car"). Said Cars are more fully described on Schedule number 1 attached hereto and may be amended from time to time with the consent of both parties hereto.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do agree as follows:

1. Security Interest. In order to induce Secured Party to enter into the Lease and to secure the obligations of Debtor to Secured Party under the Lease, whether now existing or hereafter incurred and as may be amended from time to time, Debtor hereby grants to Secured Party a security interest in the Collateral described below.

2. Collateral. The Collateral referred to in Paragraph 1 above is Lessee's leasehold interest in the Cars and all of its right, title and interest in and to all accounts, chattel paper, contract rights, general intangibles, instruments, per diem and incentive per diem charges, mileage charges, income, revenue and other proceeds arising therefrom or in connection therewith or in connection with the use, lease, operation, control or possession of the Cars.

3. Covenants. Debtor covenants and represents as follows:

(a) Debtor will warrant and defend the Collateral against the claims and demands of all persons.

(b) Debtor shall execute and deliver UCC-1 financing statements or other documents required by Secured Party to perfect its security interest in the Collateral.

4. Representations and Warranties of Debtor. Debtor represents and warrants as follows:

(a) Debtor is a corporation legally incorporated, validly existing and in good standing under the laws of the state of its incorporation, with adequate corporate powers to own its properties, to carry on its business as now conducted and to enter into the Security Agreement.

(b) The Security Agreement has been duly authorized, executed and delivered by Debtor and constitutes a legal, valid and binding obligation of Debtor, enforceable in accordance with its respective terms.

5. Default. Any misrepresentation on the part of Debtor herein or any noncompliance or nonperformance of Debtor's obligations hereunder or the occurrence of an Event of Default under the Lease shall constitute a default hereunder.

6. Remedies. Upon the occurrence of a default hereunder, Secured Party shall have all the rights provided under the Interstate Commerce Act and under the Uniform Commercial Code as adopted in Illinois.

7. Inspection of Records. Secured Party may at any reasonable time, enter upon Debtor's premises to inspect Debtor's books and records pertaining to the Collateral, and Debtor shall, if requested, assist Secured Party in making such inspections.

8. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

9. Benefits. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

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

ATTEST:

Robert J. Blankmeyer

FUNDING SYSTEMS RAILCARS, INC.

By: J. N. Ball
Title Executive Vice President
Operations

ATTEST:

Paul P. Pardo

TUSCOLA & SAGINAW BAY RAILWAY CO.
Debtor

By: N. DeWitt
Title President

/lmt

STATE OF: Michigan :
COUNTY OF: Tuscola : SS.

On this 7th day of January ¹⁹⁸⁵ 1984, before me personally appeared P. J. DeWolf, to me personally known, who being by me duly sworn, says that he is President of Tuscola Saginaw Bay Rwy that one of the seal affixed to the foregoing instrument is the corporate seal of said corporation, that he is authorized to sign and execute the foregoing instrument on behalf of the corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

(Notarial Seal)

STATE OF PENNSYLVANIA :
COUNTY OF MONTGOMERY : SS.

On this 10th day of January, ¹⁹⁸⁵ 1984, before me personally appeared J. N. Ball, to me personally known, who being by me duly sworn, says that he is Executive Vice President-Operations of Funding Systems Railcars, Inc. that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that he is authorized to sign and execute the foregoing instrument on behalf of the corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

(Notarial Seal)

MARY ANN TUTURICE, Notary Public
Upper Merion Twp., Montgomery Co., P.