

RECORDATION NO. 13574
MAR - 2 1982 - 10 15 AM
INTERSTATE COMMERCE COMMISSION



RECORDATION NO. 13574-A

Funding Systems Railcars, Inc.

MAR - 2 1982 - 10 15 AM

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

INTERSTATE COMMERCE COMMISSION

25 February 1982

2-061A074

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Washington, DC 20423

No.
MAR 2 1982
Date.....
Fee \$100.00
ICC Washington, D. C.

Dear Madam:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one copy each of Lease Agreement, a primary document, dated 22 January 1982 and Security Agreement, a primary document, dated 22 January, 1982.

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

A. Lease Agreement

Lessor: Funding Systems Railcars, Inc.
Tri-State Center, Suite 370
2215 Sanders Road
Northbrook, Illinois 60062

Lessee: Lenawee County Railroad Company, Inc.
708 East Michigan Street
Adrian, Michigan 49221

B. Security Agreement

Secured Party: Funding Systems Railcars, Inc.
Tri-State Center, Suite 370
2215 Sanders Road
Northbrook, Illinois 60062

Debtor: Lenawee County Railroad Company, Inc.
708 East Michigan Street
Adrian, Michigan 49221

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

ten (10) 52' 6", 5' high side gondola cars bearing reporting mark and numbers LCRC 5086, LCRC 5115, LCRC 5136, LCRC 5138, LCRC 5149, LCRC 5096, LCRC 5117, LCRC 5124, LCRC 5161, LCRC 5169

Ms. Agatha L. Mergenovich
Interstate Commerce Commission
25 February 1982
Page 2

The original and all 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..

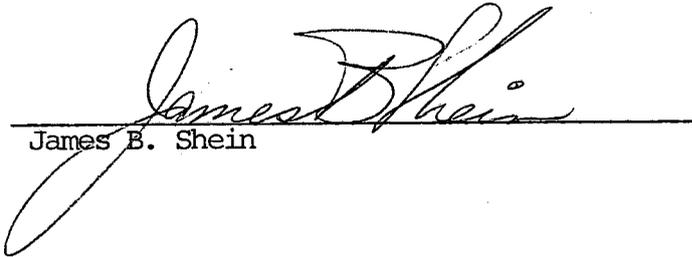
Also enclosed is a remittance in the amount of \$100.00 for payment of recordation fees.

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

Very truly yours,

Funding Systems Railcars, Inc.

By


James B. Shein

Interstate Commerce Commission
Washington, D.C. 20423

/2
3/2/82

OFFICE OF THE SECRETARY

Ms. Sharon Schumacher
Funding Systems Railcars, Inc.
2215 Sanders Road, Suite 370
Northbrook, Illinois 60062

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 **3/2/82** at **10:15am**, and assigned re-
recording number (s).

11948-E & 11948-F

13574 & 13574-A Sincerely yours,

13575 & 13575-A

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

13574
MAR - 2 1982 - 10 15 AM
INTERSTATE COMMERCE COMMISSION

The Lease Agreement is made the 22ND day of January 1982 by and between FUNDING SYSTEMS RAILCARS, INC., of Conshohocken, Pennsylvania, hereinafter referred to as Lessor, and the LENAWEE COUNTY RAILROAD COMPANY, INC., a Michigan corporation, of Adrian, Michigan, hereinafter referred to as Lessee; WITNESSETH:

1. Purposes

- A. Lessor agrees to lease to Lessee and Lessee agrees to lease from Lessor, ten (10) used, fifty-two foot six inch (52'6"), one hundred (100) ton Gondolas as set forth in any lease schedules executed by the parties concurrently herewith or hereafter and made a part of this Lease.

The word "Schedule" as used herein includes the Schedule or Schedules executed herewith and any additional Schedules and amendments thereto, each of which when signed by both parties shall be a part of this Lease. The scheduled items of equipment are hereinafter called collectively the "Cars".

- B. It is the intent of the parties to this Lease 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 that it will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term

- A. This Lease shall remain in full force until it is terminated as to all of the Cars as provided herein. The term of the Lease with respect to all of the Cars described on each Schedule shall be for One (1) year (the "Initial Term") commencing upon the date when all Cars on such Schedule have been remarked as set forth in Section 3A hereof.
- B. If this Lease has not been earlier terminated and no default has occurred, which is continuing, the Lease shall automatically be extended for not more than five consecutive periods of twelve months each (the "Extended Term") with respect to all of the Cars described on each Schedule, provided, however, that Lessor or Lessee may terminate this Lease on or after the Initial Term as to all, but not fewer than all, of the Cars on any such Schedule by written notice delivered to the other not less than thirty (30) days prior to the end of the Initial Term or any Extended Terms.

3. Supply Provisions

- A. Lessee hereby approves the specifications on the attached drawing for the Cars delivered to it by Lessor. Lessor shall, at its own expense, remark the Cars with the railroad markings of Lessee in compliance with all applicable regulations. The Cars shall be deemed delivered and subject to the terms and provisions

of this Lease at 12:00 P.M. on the date each car is re-marked. The Cars shall be moved to Lessee's railroad line at no cost to Lessee as soon after remarking as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Cars Leased hereunder, Lessee agrees to pay the rent set forth in this Lease. To move the Cars to Lessee's railroad line and to ensure use of the Cars, Lessor agrees to assist Lessee in monitoring car movements and, when deemed necessary by Lessee and Lessor, to take movement orders with respect to such Cars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules.

- B. Lessee shall give preferential treatment to Lessor by loading the Cars leased from Lessor before loading substantially similar Cars leased from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. Lessor shall pay Lessee a minimum of the first \$15.00 of car earnings for each individual car per month for its performance of all record keeping functions.

4. Record Keeping

- A. At no cost to Lessor, Lessee shall during the term of this Lease prepare and file all documents relating to the registration, maintenance and record keeping functions involving the Cars. Such documents shall include but are not limited to the following: (i) appropriate AAR documents; (ii) registration in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies.
- B. Each Car leased hereunder shall be registered by Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee and only Lessee shall perform all record keeping functions which relate to the use of the Cars by Lessee and other railroads including, but not limited to car hire accounting. Said record keeping shall be performed in accordance with AAR railroad interchange agreements and rules. Correspondence from railroads using such Cars shall be addressed to Lessee.
- C. All records maintained by Lessee hereunder and all other records 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. Upon Lessor's request, Lessee shall supply Lessor with such records, including daily telephone reports regarding the number of Cars on Lessee's tracks and the use of the Cars by the Lessee on its railroad line.

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 its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing, unless the same was damaged by the Lessee, Lessee shall inspect all Cars interchanged to it to insure that such Cars are in good working order and condition and Lessee shall be liable to Lessor for any repairs required for damage not noted at the time of interchange as well as for handling line responsibility and any repairs for damage otherwise incurred while a car is on the tracks of the Lessee.

- B. Except as provided above, Lessor shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as may be required. Upon request of Lessor, Lessee shall perform any necessary maintenance and repairs to Cars on Lessee's railroad tracks. Lessor shall also make, at its expense, all alterations, modifications or replacement of parts as shall be necessary to maintain the Cars in good operating condition throughout the Initial Term or any Extended Term of such Cars. Lessee shall not make any repairs other than minor running repairs, alterations, improvements or additions to the Cars without Lessor's prior written consent. If Lessee makes a repair other than minor running repairs, 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, improvement or addition. Lessor shall instruct Lessee as to that car repair facility that Lessor shall from time to time select to do any such repairs, alterations, modifications or addition. Title to any such alteration, improvement or addition shall be with and remain with Lessor.
- C. At all times while this Lease is in effect, Lessee shall be responsible for Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the Code of Car Hire Rules and Interpretations - Freight for freight cars not owned by Lessee on Lessee's railroad tracks.
- D. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car and the lease, delivery or operation thereof which may remain unpaid as of the date of delivery of such Car to Lessee or which may be accrued, levied, assessed or imposed during the lease term, including but not limited to all personal property taxes on rolling stock, except taxes on income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. Lessor shall review all applicable tax returns prior to filing and shall have the right to contest any payment of the same. In addition, Lessee shall pay any penalties on interest thereon imposed by any state, provincial, federal or local government upon any Car and Lessee shall reimburse Lessor for any demands, or expenses resulting from failure to pay or discharge any items to be paid under any paragraph which were not due to Lessor's exercising its right to contest the same.

Lessor agrees that should a governmental agency assess a tax for rolling stock or similar tax, for which Lessee would be obligated to pay, and if the tax due thereunder (which would have been the obligation of Lessor) is reduced or eliminated by virtue of tax exemption or tax waivers (as a result of Lessee's rehabilitation work or of the applicable incentive programs) then, in that event Lessor agrees to pay to Lessee the lesser of the tax due on the equipment leased to Lessee by Lessor or the tax paid by the Lessee as a whole, in cash, within 14 days after requested by Lessee to pay same.

6. Revenue Sharing

- A. For the purposes hereof, the following definitions are provided:
- (i) "Revenues" shall be the total car hire payments, both time and mileage, collected from other railroad companies for the use or handling of the Cars.
 - (ii) The "Base Amount" shall be defined as the sum equal to the revenues which were collected in a particular service month divided by the total number of cars.
- B. If the Base Amount is equal to or less than \$449.99 for a particular service month Lessor shall receive all the Revenues, but Lessor shall pay to Lessee a car management fee of the first \$15.00 earned by each individual car to cover Lessee's management expenses. If the Base Amount is equal to or greater than \$450.00 for a particular service month Lessee shall receive 10% of the total Revenues and Lessor shall receive the remainder of the Revenues.

- C. The Cars will be car hire free, both time and mileage, while on the tracks of Lessee.
- D. Any reclaim allowance or offsets of "netting" of funds otherwise due Lessee from other railroads for car hire and mileage will come from the Lessee portion of earnings. Lessee's share of Revenues for a car shall begin to accrue upon the individual car being initially interchanged with Lessee. Any Revenues, both time and mileage, earned prior to initial interchange with Lessee and after termination of this Agreement will be wholly for the account of Lessor. Payments to Lessor are due immediately upon receipt of car hire payments, both time and mileage, by Lessee.
- E. If Lessee incurs expenses in having other railroads move cars and movements were at the direction of Lessee in accordance with Section 3A, except for any expenses incurred in the initial delivery of such cars to Lessee's railroad line pursuant to this lease, Lessee shall reimburse Lessor for such expenses only out of Revenues received by Lessee pursuant to this lease, Lessee shall reimburse Lessor for such expenses only out of revenues received by Lessee pursuant to Section 6A(i).
- F. The Revenue charges payable to Lessor by Lessee shall be paid in the following order until Lessor receives the total amounts due it pursuant to this Section: (1) per diem; (2) mileage.
- G. In the event damage beyond repair or destruction of a car has been reported in accordance with Rule 7 of the AAR Code Hire Rules and Interpretations-Freight, upon Lessor's receipt of the appropriate amount due as a result thereof, said damaged or destroyed car will be removed from the coverage of this Lease as of the date that payment of car hire payments ceased.
- H. Lessee shall provide Lessor with any records of Lessee, including car hire summaries and detailed reports, as Lessor deems necessary to substantiate revenue earned and received by Lessee for the use and handling of the Cars. Further, Lessor shall retain the right to visit Lessee at any time during normal business hours to review any and all records required to complete the calculations outlined in Section 6A(i).
- I. If for any consecutive three-month period during the Initial Term or Extended Terms hereof, the base amount should average less than \$450.00 per car per month, Lessor may, at any time, at its option, and upon not less than ten (10) days prior written notice to Lessee, terminate this Lease as to such Cars as Lessor shall determine.
- J. Upon execution of this Lease, the Cars are subject to the rates prescribed in the Code of Car Hire Rules and Interpretations-Freight. If, at any time during the Initial Term or any Extended Terms of the Lease, either Lessor Lessee possesses or acquires the right under any ICC regulation or order to make any rate change or changes ("Rate Change") from any of the existing car rates prescribed in the Code of Car Hire Rules and Interpretations-Freight, Lessor and Lessee agree that the written consent of the other party shall be obtained before any Rate Change is made, whether such Rate Change alters the rates prescribed in the Code of Car Hire Rules and Interpretations-Freight or any previously agreed upon rate. Any Rate Change made by Lessee without the prior written consent of the Lessor shall constitute an event of default.

- K. No per diem reclaim shall be given to any railroad without the express written consent of Lessor. Any per diem reclaim given to any railroad without the prior written consent of the Lessor shall constitute an event of default.
- L. If, subsequent to initial arrival at Lessee's property, any car(s) remains on Lessee's railroad track for more than fourteen (14) consecutive days, excluding those days such car(s) is undergoing servicing, repair or alteration at the direction of Lessor, Lessor may at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such car(s) and withdraw such car(s) from Lessee's railroad tracks. If any such car(s) has remained on Lessee's railroad tracks for more than fourteen (14) consecutive days because Lessee has not given preferential treatment to the car(s) as specified in Section 3B, Lessee shall be liable for and remit to Lessor an amount equal to the Revenues which would have been generated if such car(s) had been in the physical possession and use of another railroad for the entire period.
- M. Notwithstanding the provisions contained in 6A(i) above, Lessee hereby agrees that with respect to payments due from any other railroad company, no act or omission of Lessee shall result in any claimed reduction or offset thereto or defense to the payment thereof, upon the breach of this Lease, Lessee shall pay to Lessor upon demand an amount equal to any payments due but not made by such other railroad company because of any such claimed reduction, offset or defense.

7. Possession and Use

- A. So long as Lessee shall not be in default under this Lease, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease and in the same manner and to the extent Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of Cars; i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be immediately returned to such party. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars shall 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 orders of any 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 Lease or Schedule hereto. 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 by any person or party claiming by or through Lessee.

- C. Lessee warrants that the Cars will not be put into stone service without Lessor's express written approval.

8. Default

- A. The occurrence of any of the following events shall be an event shall be an event of default:
- (i) The nonpayment by Lessee of any sum required herein to be paid by Lessee within ten days after the date any such payment is due.
 - (ii) The breach of Lessee of any other terms, covenant or condition of this Lease, which is not cured within ten days thereafter.
 - (iii) The filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
 - (iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.
 - (v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.
 - (vi) Any action by Lessee to discontinue rail service on all of its tracks or the Adrian line or abandon all of its rail properties pursuant to the applicable provisions of the Intersate Commerce Act or the laws of any state.
 - (vii) Any Rate Change made by Lessee without the prior written consent of Lessor.
 - (viii) Any per diem reclaim made by Lessee without the prior written consent of Lessor.
- B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Lease for all the Cars or for such Cars as Lessor shall determine (which termination shall not release Lessee from any obligation to pay to Lessor any and all rent or other sums that may then be due or accrued to such date or from the obligation to perform any duty or discharge any other liability occurring prior thereto) and may
- (i) Proceed by and lawful means to enforce performance by Lessee of such obligations or to recover damages for a breach thereof (and Lessee agrees to bear Lessor's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), 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 them and henceforth hold, possess and enjoy the same free from any right to Lessee or direct the Lessee to send the Cars to a location designated by Lessor at no charge to Lessor.

9. Termination

- A. Upon the expiration or earlier termination of this Lease with respect to a car, Lessee shall promptly return such car to Lessor by delivering such car to such LCRC interchange as Lessor shall specify. Lessee's railroad markings shall thereafter be removed from such car and such markings as may be designated by Lessor shall be placed therein, by Lessee at a cost to Lessor of \$50.00 per car. Upon the expiration of this Lease, Lessor shall bear the expense of repainting and remarking in accordance with the preceding paragraph; upon the earlier termination of this Lease, pursuant to Section 8 hereof or otherwise, Lessee shall bear the expense of repainting and remarking. After repainting and remarking, Lessee shall load the Cars with freight and deliver them to a connecting carrier for shipment at no expense to Lessee. Lessee shall, at Lessor's option, provide, with respect to any car with respect to which this Lease has expired or earlier terminated, up to sixty (60) days free storage on its railroad tracks. If Lessor shall exercise its option to have Lessee remark, load or store the Cars in accordance with the above, necessitating possession of the Cars by Lessee, and Lessee does not have such possession, whether pursuant to the first sentence of this Section or otherwise, Lessor shall cause the Cars to be delivered to Lessee at Lessor's expense.

10. Representations, Warranties and Covenants

Lessee represents, warrants and covenants

- (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, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Lease. Lessor acknowledges that it is aware that Lessee is subsidized by the State of Michigan and operates as designated operator for the State of Michigan which leases trackage from the Penn Central Trustees.
- (ii) The entering into and performance of this Lease 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 or by which it or its assets may be bound.

11. 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 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 including in such report the time, place and nature of the accident and the damage caused, the names and addresses of any persons injured and of witnesses, and other information pertinent

to Lessee's investigation of the accident. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any car. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

12. Miscellaneous

- A. This Lease and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not, without the prior express written consent of Lessor assign this Lease or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.
- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Lease and in furtherance of any financing agreement entered into by Lessor in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Lease and Schedules hereto and to confirm the subordination provisions contained in Section 7.
- C. It is expressly understood and agreed by the parties hereto that this Lease 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.
- D. 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.
- E. This Lease shall be governed by and construed according to the laws of the State of Illinois.

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

LESSOR
Funding Systems Railcars, Inc.

By J. N. Bull
Title Executive Vice President
Date Jan 22, 1982

LESSEE
Lenawee County Railroad Company, Inc.

BY OB Lockwood
Title VP & General Manager
Date January 28, 1982

LEASE SCHEDULE NO. 1

LEASE SCHEDULE, dated as of the 2nd day of February, 1982 by and between FUNDING SYSTEMS RAILCARS, INC. ("LESSOR") and LENAWEE COUNTY RAILROAD COMPANY ("LESSEE") pursuant to a certain Lease Agreement (the "LEASE") dated as of January 22, 1982 between LESSOR and LESSEE (the terms and conditions of said LEASE are incorporated herein by reference).

DESCRIPTION OF EQUIPMENT: 10 - 52' 6" Long, 5' High Side, 100 Ton Gondola Cars.

REPORTING NUMBERS AND MARKS:	OCTR 5086	TO BE	LCRC 5086
	OCTR 5115	TO BE	LCRC 5115
	OCTR 5136	TO BE	LCRC 5136
	OCTR 5138	TO BE	LCRC 5138
	OCTR 5149	TO BE	LCRC 5149
	OCTR 5096	TO BE	LCRC 5096
	OCTR 5117	TO BE	LCRC 5117
	OCTR 5124	TO BE	LCRC 5124
	OCTR 5161	TO BE	LCRC 5161
	OCTR 5169	TO BE	LCRC 5169

TERM: One (1) Year

WITNESS the due execution hereof as of the day and year first above written.

LENAWEE COUNTY RAILROAD COMPANY

FUNDING SYSTEMS RAILCARS, INC.

BY

[Signature]

BY

[Signature]

TITLE:

VP + General mgr

TITLE:

PRESIDENT

EXHIBIT "A"

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

TWO: In connection with this lease the parties hereto (hereinafter in Appendix "A" and "B" referred to as the "Contractor") agree to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts," as set forth in Appendices "A" and "B" attached hereto and made a part hereof. The parties hereto further covenant that they will comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241 as amended, being Title 42 U.S.C. Sections 1971, 1975a-1975d and 2000a-2000h-6.

THREE: ----- and the Lessor shall make available to the auditors of the State of Michigan or of any governmental agency having jurisdiction over ----- 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 and the Federal Railroad Administration during regular business hours upon reasonable notice.

411s

APPENDIX A
PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

April, 1977

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. Breach of this covenant may 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 or marital status. 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 or marital status.
5. The contractor or his collective bargaining representative will send to each labor union or representative of workers 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.

APPENDIX B

AFFIRMATIVE ACTION

Section 1. Definitions

As used in this Appendix:

- (a) "Act" means the Railroad Revitalization and Regulatory Reform Act of 1976 (P.L. 94-210)
- (b) "Administrator" means the Federal Railroad Administrator or his delegate.
- (c) "Affirmative action program" means the program described in Sections 265.9 through 265.15 of 49 CFR Part 265.
- (d) "Agency" means the Federal Railroad Administration.
- (e) "Contractor" means a prime contractor or a sub-contractor who will be paid in whole or in part directly or indirectly from financial assistance under the Rail Acts.
- (f) "Minority" means women, Blacks, Hispanic Americans, American Indians, American Eskimos, American Orientals and American Aleuts.
- (g) "Rail Acts" means the Act and the provisions of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 701 et seq.) and the Rail Passenger Service Act (45 U.S.C. 501 et seq.) amended by the Act.
- (h) "Regulations" means the Regulations relative to non-discrimination in Federally-assisted programs of the DOT Title 49, CFR, Part 21, as they may be amended from time to time.
- (i) "Subsidizer" means Michigan State Transportation Commission through the Michigan Department of Transportation.

Section 2. Affirmative Action Requirements

In connection with the performance of rail freight services under this Agreement, the Contractor agrees as follows:

(a) The Contractor shall comply with the Regulations, which are herein incorporated by reference and made a part of this Agreement.

(b) The Contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c) In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of its obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

(d) The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Subsidizer or the Agency to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Subsidizer or to the Agency, whichever is appropriate, and shall set forth what efforts it has made to obtain the information.

(e) In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the Subsidizer shall impose such contract sanctions as it or the Agency may determine to be appropriate, including but not limited to:

- (1) Withholding of payments to the Contractor under this Agreement until it complies; and/or
- (2) Cancellation, termination or suspension of this Agreement in whole or in part.

(f) The Contractor shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurement of materials and lease of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the Subsidizer or the Agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Subsidizer to enter into such litigation to protect the interests of the Subsidizer and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(g) The Contractor shall comply with all applicable provisions of the Rail Acts, Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49 (u), Public Law No. 94-210 (90 Stat. 31), and Section 905 of the Act:

(h) As a condition to receiving Federal financial assistance under the Act or the provisions of the Rail Acts, the Contractor hereby agrees to observe and comply with the following:

(1) No person in the United States shall on the ground of race, color, national origin or sex be excluded from participation in, or denied the benefits of, or be subjected to discrimination under, any project, program or activity funded in whole or in part through such assistance.

(i) The following specific discriminatory actions are prohibited:

(1) The Contractor under any projects, program or activity to which these clauses apply shall not, directly or through contractual or other arrangements, on the ground of race, color, national origin, or sex:

(A) Deny a person any service, financial aid, or other benefit provided under such project, program or activity;

(B) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under such project, program or activity;

(C) Subject a person to segregation or separate treatment in any matter related to their receipt of any service, financial aid or other benefit under such project, program or activity;

(D) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid or other benefit under such project, program or activity; or

(E) Deny a person an opportunity to participate in such project, program or activity through the provision of services or otherwise or afford them an opportunity to do so which is different from that afforded others under such project, program or activity.

(2) The Contractor in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such project, program or activity or the class of persons to whom, or the situations in which such services, financial aid, other benefits, or facilities will be provided under any such project, program or activity, or the class of persons to be afforded an opportunity to participate in any such project, program, or activity shall not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the project, program or activity with respect to individuals of a particular race, color, national origin or sex.

(3) In determining the site or location of facilities, the Contractor shall not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any project, program, or activity to which these clauses apply on the grounds of race, color, national origin or sex, or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of these clauses.

(4) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or sex. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, national origin or sex. Such action shall include, but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided by the agency's representative setting forth the provisions of these non-discrimination clauses. The Contractor understands and agrees that it shall not be an excuse for failure to provide affirmative action that the labor organizations with which the Contractor has a collective bargaining agreement failed or refused to admit or qualify minorities for admission to the union, or that the provisions of such agreements otherwise prevent the Contractor from implementing its affirmative action program.

(5) The Contractor shall not discriminate against any business organization in the award of any contract because of race, color, national origin or sex of its employees, managers or owners. Except as otherwise required by the regulations or orders of the Administrator, the Contractor shall take affirmative action to insure that business organizations are permitted to compete and are considered for awards of contracts without regard to race, color, national origin or sex.

(j) As used in these clauses, the services, financial aid, or other benefits provided under a project, program or activity receiving financial assistance under the Rail Acts include any service, financial aid, or other benefit provided in or through a facility funded through financial assistance provided under the Rail Acts.

(k) The enumeration of specific forms of prohibited discrimination does not limit the generality of prohibition in paragraph (h) (1) of this Section.

(l) These clauses do not prohibit the consideration of race, color, national origin or sex if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the Contractor's operations or activities on the grounds of race, color, national origin or sex. Where prior discriminatory or other practice or usage tends on the grounds of race, color, national origin or sex, to exclude individuals or businesses from participation in, to deny them the benefits of, or subject them to discrimination under any project, program or activity to which these clauses apply, the Contractor must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage to which this part applies, the Contractor is expected to take affirmative action to insure that no person is excluded from participation in or denied the benefits of the project, program or activity on the grounds of race, color, national origin or sex, and that minorities and minority businesses are afforded a reasonable opportunity to participate in employment and procurement opportunities that will result from financial assistance provided under the Rail Acts.

(m) The Contractor agrees to take such actions as are necessary to monitor its activities and those of its contractors who will be paid in whole or in part with funds provided by the Rail Acts, or from obligations guaranteed by the administrator pursuant to the Rail Acts, except obligations guaranteed under section 602 of the Rail Passenger Service Act, in order to carry out affirmatively the purposes of paragraph (h) above, and to implement the affirmative action program developed and implemented pursuant to 49 CFR 265.

(n) The Contractor shall, in all advertisements for employees, or solicitations for services or materials from business organizations placed by or on behalf of the recipient, in connection with any project, program or activity funded in whole or in part with financial assistance under the Rail Acts, state that all applicants for employment will receive consideration for employment, and all business organizations will receive consideration for an award of a contract without regard to race, color, national origin or sex.

(o) The Contractor shall send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency's representative, advising the labor organization or worker's representative of the Contractor's commitments under Section 903 of the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(p) The Contractor shall comply with all provisions of Section 905 of the Act, the Civil Rights Act of 1964, any other Federal civil rights act and with the rules, regulations, and orders issued under such acts.

(q) The Contractor shall furnish all information and reports required by the rules, regulations, and orders of the Administrator, and will permit access to its books, records, and accounts by the Administrator for purposes of investigation to ascertain compliance with rules, regulations, and orders referred to in paragraph (p) hereof.

(r) The Contractor shall furnish such relevant procurement information not included in its affirmative action program, as may be requested by the Minority Business Resource Center. Upon the request of the Contractor, the Minority Business Resource Center shall keep such information confidential to the extent necessary to protect commercial or financial information or trade secrets to the extent permitted by law.

(s) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement, or with the provisions of Section 905 of the Act, the Civil Rights Act of 1964, or with any other Federal civil rights act, or with any rules, regulations, or orders issued under such acts, this Agreement will, after notice of such noncompliance, and after affording a reasonable opportunity for compliance, be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Federal financial assistance in accordance with procedures authorized in Section 906 of the Act, or as otherwise provided by law.

(t) The Contractor shall not enter into any contract or contract modification whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction, in connection with a project, program or activity which receives financial assistance under the Rail Acts with a contractor debarred from or who has not demonstrated eligibility for Federal or federally assisted contracts, and will carry out such sanctions and penalties for violation of this part as may be imposed upon contractors and subcontractors by the Administrator or any other authorized Federal official. The Contractor shall insure that the clauses required by Section 4 of this Appendix implementing Executive Order No. 11246 will be placed in each non-exempt federally assisted construction contract.

(u) The Contractor agrees to comply with and implement the written affirmative action program as approved by the Administrator pursuant to Section 265.17 of Title 49 CFR.

(v) The Contractor agrees to notify the Administrator promptly of any law suit or complaint filed against the recipient alleging discrimination on the basis of race, color, national origin or sex.

(w) The Contractor shall include the preceding provisions of paragraphs (h) through (v) in every contract or purchase order, whether for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, or for construction relating to project; programs or activities financed in whole or in part under the Rail Acts. The Contractor shall cause each such contractor or vendor to include the provisions of paragraphs (h) through (v) in every subcontract. The Contractor will take such action with respect to any such contract or purchase order as the Administrator may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Administrator, the Contractor may request the United States to enter into such litigation.

Section 3. Affirmative Action Programs

(a) General. A prerequisite to the development of a satisfactory affirmative action program is the identification and analysis of problem areas inherent in minority employment and utilization of minority employment and utilization of minority businesses, and an evaluation of opportunities for utilization of minority group personnel and minority businesses. Therefore, an affirmative action program to guarantee employment and contractual opportunities shall provide for specific actions keyed to the problems and needs of minority persons and minority businesses including, where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and minority businesses with respect to programs, projects and activities subject to this part.

(b) Employment practices

(1) The affirmative action program for employment showing the level of utilization of minority employees, and establishing a plan to insure representative opportunities for employment for minority persons shall be developed in accordance with the regulations of the Department of Labor at 41 CFR 60-2.

(2) Railroad applicants or recipients shall develop their program for each establishment in their organization and by job categories in accordance with the requirements of the Joint Reporting Committee of the Equal Employment Opportunity Commission and the Department of Labor. Other applicants recipients or contractors may use any program format or organization which has been approved for use by other Federal agencies enforcing equal opportunity laws.

(3) The affirmative action program shall show the source of statistical data used.

(4) The affirmative action program shall include a listing by job category of all jobs which may be established or filled by the applicant, recipient or contractor as a result of the project, program or activity funded by federal financial assistance under the Rail Acts for the first five (5) years of such project, program or activity or the period during which such project, program, or activity will be undertaken, whichever is the lesser ("program period").

(5) The affirmative action program shall set forth in detail a plan to insure that with respect to the project, program, or activity financed in whole or in part through financial assistance under the Rail Acts, minority persons have an opportunity to participate in employment in proportion to the percentage of the minority work force in the area where the applicant's, recipient's or contractor's operations are located as compared to the total work force, and that such minority persons have an equal opportunity for promotion or upgrading. Where appropriate because of prior underutilization of minority employees, the program shall establish specific goals and timetables to utilize minority employees in such projects, programs or activities in the above-mentioned proportion.

(c) Contracts

(1) The affirmative action program shall include details of proposed contracts in excess of Ten Thousand Dollars (\$10,000.00) to be awarded in connection with projects, programs, and activities funded in whole or in part through financial assistance under the Rail Acts, including contracts for professional and financial services, for the program period. The details shall include a description of the services or products which will be sought including estimated quantities, the location where the services are to be provided, the manner in which proposals will be solicited (e.g., cost plus fixed fee, fixed price), the manner in which contracts will be awarded (e.g., competitive or sole source). The plan shall also give details as to bidding procedures and information as to other qualifications for doing business with the applicant, recipient or contractor. Upon request by the applicant, recipient or contractor, any information submitted to the Administrator shall be kept confidential to the extent permitted by law.

(2) The affirmative action program shall review the procurement practices of the applicant, recipient or contractor for the full year preceeding the date of the submission of the affirmative action program and evaluate the utilization of minority business in its procurement activities. Such evaluation of utilization of minority business shall include the following:

(i) An analysis of awards of contracts to minority businesses during such year describing the nature of goods and services purchased and the dollar amount involved; and

(ii) A comparison of the percentage of awards of contracts to minority businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the applicant, recipient or contractor for said year.

(3) The affirmative action program shall set forth in detail the applicant's, recipient's or contractor's plan to insure that minority businesses are afforded a fair and representative opportunity to do business with the applicant, recipient or contractor (both in terms of number of contracts and dollar amount involved) for the program period. Such plan shall identify specific actions to be taken to:

(i) Designate a liaison officer who will administer the minority business program;

(ii) Provide for adequate and timely consideration of the availability and potential of minority businesses in all procurement decisions;

(iii) Assure that minority businesses will have an equitable opportunity to compete for contracts, by arranging solicitation time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of minority businesses who are potential contractors in preparing bid materials and in obtaining and maintaining suitable bonding coverage in those instances where bonds are required;

(iv) Maintain records showing that the policies set forth in this part are being complied with,

(v) Submit quarterly reports of the records referred to in subparagraph (iv) above in such form and manner as the Administrator may prescribe; and

(vi) Where appropriate because of prior underutilization of minority businesses, establish specific goals and timetables to utilize minority businesses in the performance of contracts awarded.

(d) Successor organizations. Where applicant, recipient or contractor is a successor organization, its affirmative action program shall review the hiring and procurement practices of its predecessor organizations.

Section 4. Equal Opportunity Clause

During the performance of this Agreement the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

(b) 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, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Subsidizer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (f) of this Section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Subsidizer may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Subsidizer, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

STATE OF Illinois)
)
COUNTY OF Cook)

On this 25th day of February, 1982, I hereby certify that I have compared the attached copy of the Lease Agreement between Funding Systems Railcars, Inc. ("Lessor") and Lenawee County Railroad Company, Inc. ("Lessee") dated January 22, 1982 with the original and have found the copy to be complete and identical in all respects to the original document.

[Seal]



Sharon Schumacher
Notary Public

My commission expires My Commission Expires Jan. 27, 1985