



UPPER MERION & PLYMOUTH RAILROAD COMPANY

A SUBSIDIARY OF FSC CORPORATION

Box 404

CONSHOHOCKEN, PA., 19428

TELEPHONE: (215) 275-2066

13575

RECORDATION NO. Filed 1425

MAR 2 1982 - 10 15 AM

ICC INTERSTATE COMMERCE COMMISSION

No.
Date MAR 2 1982
Fee \$100.00

ICC Washington, D. C.

13575-A

RECORDATION NO. Filed 1425

MAR 2 1982 - 10 15 AM

February 23, 1982

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

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 Management Agreement, a primary document, dated September 11, 1979 and Security Agreement, a primary document, dated September 11, 1979.

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

A. Management Agreement

Lessor: Upper Merion & Plymouth Railroad Company
Box 404, 23 River Road
Conshohocken, Pennsylvania 19428

Lessee: Hillsdale County Railway Company, Inc.
50 Monroe Street
Hillsdale, Michigan 49242

B. Security Agreement

Secured Party: Upper Merion & Plymouth Railroad Company
Box 404, 23 River Road
Conshohocken, Pennsylvania 19428

Debtor: Hillsdale County Railway Company, Inc.
50 Monroe Street
Hillsdale, Michigan 49242

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

one hundred (100) rebuilt 50' XM boxcars bearing reporting mark and numbers HCRC 1001 through HCRC 1100 inclusive.

Ms. Agatha L. Mergenovich
Interstate Commerce Commission
February 22, 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, Illinois 60062.

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

I am an officer of Upper Merion & Plymouth Railroad Company and have knowledge of the matters set forth herein.

Very truly yours,

Upper Merion & Plymouth Railroad Company

By


James B. Shein

13575
RECORDATION NO. Filed 1425

Handwritten scribble

MAR 2 1982 10 15 AM

INTERSTATE COMMERCE COMMISSION

MANAGEMENT AGREEMENT

Dated as of Sept 11, 1979

BETWEEN

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

("LESSOR")

AND

HILLSDALE COUNTY RAILWAY COMPANY, INC.

("LESSEE")

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MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT, (this "Agreement") made as of the 11 day of September, 1979, between UPPER MERION AND PLYMOUTH RAILROAD COMPANY, a Pennsylvania corporation (the "Lessor") and HILLSDALE COUNTY RAILWAY COMPANY, INC. a Michigan corporation (the "Lessee"), as Lessee.

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor those certain items of railroad equipment (collectively the "Equipment" and individually an "Item of Equipment") as set forth in any equipment schedule or schedules (the "Schedule" or "Schedules") executed by the parties concurrently herewith or from time to time hereafter each of which when signed by both parties shall be part of this Agreement.

B. It is the intent of the parties of this Agreement that the Lessee shall have no interest in the Equipment other than the rights acquired as a lessee hereunder. 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 Agreement shall remain in full force until it shall have been terminated as to all of the Equipment. The term of this Agreement with respect to each Item of Equipment shall commence upon the date of delivery of such Item of Equipment as set forth in Section 3A hereof and shall continue with respect to such Item of Equipment for the term (the "Term") provided in the Schedule covering such Item of Equipment unless sooner terminated as hereinafter provided.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, the Term with respect to each Item of Equipment shall be automatically extended for not more than five (5) consecutive periods of six (6) months until terminated by either party by giving the other not less than six (6) months prior written notice of termination. Any such termination shall be effective only on the last day of the Term or the last day of any such extended period.

3. Supply Provisions

A. Lessor will inspect each Item of Equipment tendered by the manufacturer for delivery to Lessee. If the Item of Equipment conforms to the specifications of the equipment ordered by Lessor, and to all applicable governmental regulatory specifications, and this Agreement has not been terminated,

Lessor will accept delivery and shall notify Lessee in writing of this acceptance and the date of delivery. An Item of Equipment shall be deemed delivered to Lessee upon the date of its first loading on any railroad. Any Item of Equipment moved to Lessee's railroad shall be at no cost to Lessee. Due to the nature of railroad operations in the United States, Lessor can neither control nor determine when the Items of Equipment leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Items of Equipment leased hereunder, Lessee agrees to pay to Lessor the rental charges set forth in this Agreement. To move the Items of Equipment and insure optimal use of the Items of Equipment, Lessee agrees to use its best efforts to monitor the movement of the Items of Equipment and, when deemed necessary, Lessee will issue movement orders with respect to such Items of Equipment to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and American Association of Railroads ("AAR") interchange agreements and rules.

B. Except with respect to equipment presently owned or leased by Lessee, Lessee shall give preference to Lessor and shall load the Items of Equipment leased from Lessor hereunder prior to loading items of equipment owned or leased by Lessee during the Term of this Agreement or interchanged with other railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable requests therefor to shippers on its railroad tracks. With respect to equipment presently owned or leased by Lessee, Lessee agrees not to take any affirmative action which would result in the Items of Equipment being treated less favorably than equipment presently owned or leased by the Lessee.

C. Lessee agrees that it will not lease any additional items of railroad equipment similar to the Equipment from any third party until the earlier to occur of (i) Lessee shall have leased no less than one hundred (100) Items of Equipment from Lessor pursuant to this Agreement; or (ii) December 31, 1979.

4. Railroad Markings and Record Keeping

A. Lessor agrees that on or before delivery of the Items of Equipment to Lessee, the Items of Equipment will be lettered with the railroad markings of Lessee, and the name and/or other insignia used by Lessee. Such name or insignia shall comply with all applicable regulations.

B. Lessee shall, at no cost to Lessor, prepare all documents for filing relating to the registration, maintenance and record keeping functions with respect to the Items of Equipment and shall perform all record keeping functions related to the use of the Items of Equipment by Lessee and other railroads in accordance with AAR railroad interchange agreements. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Items of Equipment including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration for the Items of Equipment 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 with respect to the Items of Equipment.

C. Lessee shall register each Item of Equipment leased hereunder in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Such registration shall direct that correspondence from railroads using such Items of Equipment shall be addressed to Lessee.

D. Any record keeping performed by Lessee hereunder and all record of payments, charges, and correspondence related to Items of Equipment shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular business hours of Lessee. Lessee shall supply Lessor monthly with such reports regarding the use of Items of Equipment by Lessee on its railroad line as Lessor may reasonably request. In consideration for such record keeping, Lessor agrees to pay to Lessee the sum of \$3.00 per car per month.

5. Maintenance, Taxes and Insurance

A. Lessor will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Item of Equipment during the Term of this Agreement and any extension thereof, including but not limited to repairs, maintenance, and servicing and any transportation charges incurred by Lessee to transport each Item of Equipment to and/or from any contract maintenance facility unless the same was occasioned by the fault of Lessee while an Item of Equipment was in the physical possession of Lessee. Lessee shall be responsible to inspect all Items of Equipment interchanged to it to insure that such Items of Equipment 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*. Lessee hereby transfers and assigns to Lessor for and during the Term of this Agreement of each Item of Equipment all of its right, title and interest in any warranty in respect to the Items of Equipment. All claims or actions on any warranty so assigned shall be made

* Which repairs would be the responsibility of the handling line under AAR Rules. All other repairs are to be reimbursed.

and prosecuted by Lessor at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to Lessor. All proceeds from such recovery shall be used to repair or replace the Items of Equipment.

B. Lessee shall make minor repairs only with Lessor's permission to facilitate continued immediate use of an Item of Equipment, but shall not otherwise make any alterations, improvements, or additions to an Item of Equipment without Lessor's prior written consent. If Lessee makes an alteration to any Item of Equipment without Lessor's prior written consent, Lessee shall be liable to Lessor for any revenues lost due to such alteration. Title to any such alteration, improvement, or addition occurring in the course of or as a result of normal and customary maintenance shall be and remain with Lessor.

C. Lessor shall make or cause to be made such inspections of and maintenance and repairs to the Items of Equipment as may be required. Lessor shall also make, at its expense; all alterations, modifications, or replacements of parts as shall be necessary to maintain the Items of Equipment in good operating condition, as determined by Lessor, throughout the Term of this Agreement for such Items of Equipment. Lessee shall immediately notify Lessor of any necessary maintenance and repairs transmitted to Lessee by any other railroad or shipper. Lessor shall be responsible for arranging repairs and maintenance at its expense except as noted in 5A hereof.

D. Lessee will at all times during the Term of this Agreement and any extension thereof, while the Equipment is on Lessee's railroad tracks and at its own expense, cause to be carried and maintained insurance with respect to all Items of Equipment subject hereto, and property damage and public liability insurance in amounts and against risks customarily insured against by the Lessee. Lessor shall have the obligation to reimburse Lessee for premiums regarding property damage insurance it is required to carry pursuant to this Paragraph, with Lessor paying and responsible for maximum premium payment of \$7,000.00 and Lessee responsible and paying for any premium amount in excess of \$7,000.00. The insurance required by this Section 5D may be satisfied by a self-insurance program acceptable to Lessor and maintained by Lessee in accordance with sound actuarial principles. Lessee will furnish Lessor concurrently with the exception hereof, and thereafter at intervals of not more than twelve (12) calendar months, proof of insurance coverage for the ensuing year. Lessee will agree to advise Lessor promptly of any lapse of any such insurance or of any default of payment of any premium and of any other act or omission of Lessee of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Equipment. All insurance shall be taken out in the name of Lessee and Lessor (or its assignee) as their interests may appear. The policies or certificates shall provide that there shall be no recourse against Lessor for the payment of premiums and shall provide for at least 20 business

days prior written notice to be given to Lessor by the underwriters in the event of cancellation. If the Lessee shall default in the payment of any premium in respect of any such insurance policies, Lessor may, but shall not be obliged to pay such premium, and if Lessor does so, the Lessee shall repay the amount thereof to Lessor on demand.

E. Lessor agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Item of Equipment and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the Term of which remain unpaid as of the date of delivery of such Item of Equipment to Lessee, except taxes on net income imposed on Lessee. Lessor and Lessee will comply with all state and local law requiring the filing of ad valorem tax returns on the Equipment. Lessor shall review all tax returns prior to filing.

6. Rental Charges

Lessee agrees to pay Lessor, as rental for the Equipment, all mileage charges and revenue from the hire of each Item of Equipment (including both basic and incentive per diem charges obtained for each Item of Equipment) received by the Lessee. Said rental shall be paid within five (5) days of the close of each monthly accounting period in which Lessee has received any mileage charges and revenue from hire for any of the Equipment.

7. Fees Paid by Lessor

Lessor hereby agrees to pay to Lessee an amount equal to ten percent (10%) of said mileage charges and revenue from hire for any of the Equipment. Lessee may, each month, deduct this amount from the rentals required to be paid pursuant to Paragraph 6 above. In addition, Lessee shall be entitled to deduct from any amounts due pursuant to Paragraph 6, those expenses which were to have been reimbursed by Lessor to Lessee under Paragraph 5, if Lessor fails to reimburse same to Lessee within thirty (30) days after request by Lessee.

8. Termination by Lessor

A. Lessor may, at its option, terminate this Agreement on not less than thirty (30) days prior written notice to Lessee if the average utilization for the Equipment in any calendar quarter is less than 80%.

B. Lessor may, at its option, terminate this Agreement at any time if the ICC shall, at any time, (i) issue an order reducing incentive per diem for the Equipment on an annual basis to three (3) months or less without a commensurate increase in straight per diem or other revenues available to both Lessor and Lessee; or (ii) determine that the Lessee may not apply its net credit balance from incentive per diem settlements in payment of the rental charges set forth herein.

9. Except when an Item of Equipment is awaiting its initial loading, if any Item of Equipment remains on Lessee's railroad tracks for more than seven (7) days, Lessor may, at its option and on no less than forty-eight (48) hours prior written notice to Lessee, terminate this Agreement and remove said Equipment from Lessee's railroad tracks. If any such Item of Equipment remains on Lessee's railroad tracks more than seven (7) days because Lessee has not given preference to the Equipment as specified in Section 3B hereof, Lessee shall be liable to Lessor for an amount equal to the car hire revenues Lessee would have earned if such Item of Equipment were in the physical possession and use of another railroad for the entire period after the expiration of seven (7) days.

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 Equipment in accordance with the terms of this Agreement and in the manner and to the extent the Equipment is customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession of and can control use of the Equipment it 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 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 or with respect to the Equipment or any interest therein or in this Agreement or any Schedule thereto, except liens, claims or encumbrances created by the Lessor. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time by any person claiming by, through or under Lessee.

10. Remedies Upon Default

A. The occurrence of any of the following events shall be events of default ("Events of Default"):

(i) The nonpayment by Lessee of any sum required hereunder to be paid by Lessee within ten (10) days after the same has become due and payable;

(ii) The default by Lessee under any other term, covenant, or condition of this Agreement which is not cured within ten days after the receipt of written notice of said default from Lessor;

(iii) Any affirmative act of insolvency by Lessee, or 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 which substantially impairs Lessee's capacity to perform its obligations under this Agreement.

B. Upon the occurrence of any Event of Default, Lessor may, at its option, terminate this Agreement and may:

(i) Proceed by appropriate court action to enforce performance by Lessee of this Agreement or to recover direct financial damages which result from a breach thereof (including Lessor's costs and expenses, including court costs and reasonable attorney's fees, in securing such enforcements); or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession of the Equipment, whereupon all right and interest of Lessee in the Equipment shall terminate; and thereupon Lessor may by its agents enter upon any premises where the Equipment may be located and take possession of it and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall nevertheless have a right to recover from Lessee any and all rental amount which, under the terms of this Agreement, may then be due or which may have accrued to that date.

11. Termination

A. At the expiration or termination of this Agreement as to any Item of Equipment set forth on a Schedule attached herein, Lessee will surrender possession of such Item of Equipment to Lessor by delivering the same to Lessor. The assembling, delivery, storage and transporting of the Item of Equipment shall be at the expense and risk of Lessor. An Item of Equipment shall be deemed terminated and no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Item of Equipment and the placing thereon of such markings as may be designated by Lessor, either, at the option of Lessor, (1) upon delivery of such Item of Equipment to Lessee's railroad line subsequent to termination of the Term as to such Item of Equipment; or (2) removal and replacement of the markings by another railroad

line which has physical possession of the Item of Equipment at the time of or subsequent to termination of the Term as to such Item of Equipment. The expense of such remarking shall be borne by Lessor.

B. If such Equipment is on the railroad line of Lessee upon such expiration or termination or is subsequently returned to Lessee's railroad line, Lessee shall grant immediate access to Lessor or Lessor's agents to remove Lessee's railroad markings from the Equipment 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 Equipment with freight and deliver it to a connecting carrier for shipment.

C. If such Equipment is not on the railroad line of Lessee upon termination, all costs of assembling, delivering, storing and transporting such Equipment, except as provided above, to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessor.

D. If requested by Lessor, Lessee shall provide free, uninterrupted storage, on its tracks for the Equipment, for a period of time not to exceed ninety (90) days, provided that risk of loss during such storage shall be on Lessor. Lessee shall not be liable for per diem, incentive per diem or mileage charges on the Equipment while stored.

E. From and after termination of this Agreement with respect to any Item of Equipment and until its return to Lessor, all revenues earned by such Item of Equipment shall be paid to Lessor as additional rental for use of the Item of Equipment during the Term hereof and Lessor shall have no obligation to pay any fees with respect thereto to Lessee.

12. Indemnities

Lessor will defend, indemnify and hold harmless Lessee from and against (1) any and all loss or damage of or to the Equipment, usual wear and tear excepted, unless occurring through the fault of Lessee while Lessee has physical possession of the Equipment; and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which the Equipment may be subject or which may be incurred in any manner by or for the account of any such Equipment (unless occurring through the fault of Lessee) relating to the Equipment or any part thereof, including without limitation the construction, purchase, delivery of the Equipment to Lessee's railroad line, ownership, leasing or return of the Equipment, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by Lessor or Lessee).

13. Warranties and Covenants

Lessee represents, warrants and covenants that:

A. 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 Agreement.

B. 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 Equipment pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

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

D. There is no fact which the 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.

E. Lessee does not know of any requirements for recording, filing or depositing this Agreement other than pursuant to Section 20c of the Interstate Commerce Act (as Recodified), which is necessary to preserve or protect the title or interest of Lessor or its assignee or mortgagee, in the United States of America.

Upon request of Lessor or its assignee or mortgagee at any time or times, Lessee shall deliver to Lessor an opinion of its counsel addressed to Lessor or its assignee or mortgagee, in form and substance satisfactory to Lessor or its assignee or mortgagee, which opinion shall confirm and be to the effect of the matters set forth in this Paragraph 13.

14. Inspection

Lessor shall at any time during normal business hours have the right to enter the premises where the Equipment may be located for the purpose of inspecting and examining the Equipment 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 Equipment including in such report the time, place and nature of the accident and the damage caused to property, 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 Item of Equipment. Lessee shall furnish to Lessor promptly upon its becoming requested, 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.

15. Sublease and Assignment

The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

A. Lessee shall have no right to assign this Lease or sublease or loan any of the Equipment without the written consent of Lessor.

B. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease, chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by Lessor and Lessee agrees to confirm this in writing as and when requested by Lessor. If Lessor shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by Lessor shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

16. Miscellaneous

A. This Agreement 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.

B. Any notice required or permitted to be given by one party to another hereunder shall be promptly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Lessor at: Upper Merion and Plymouth
Railroad Company
P.O. Box 401
Conshohocken, PA 19428

ATTENTION: President

Lessee at: 50 Monroe Street
Hillsdale, MI, 49242

or such other address as either party may from time to time designate by such notice in writing to the other.

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 indulgence 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.

F. This Agreement shall be governed by and construed according to the laws of the State of Michigan.

G. Lessee is hereby designated as the collection and disbursing agent for all revenues including per diem, mileage, incentive per diem and repair bills.

17. Additional Insurance Provision

Lessor will at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained insurance with respect to the Equipment, and property damage and public liability insurance in amounts of not less than the following schedule:

	<u>Each Occurrence</u>	<u>Aggregate</u>
General Liability (Comprehensive)		
Bodily Injury	\$ 500,000	\$1,000,000
Property Damage	500,000	1,000,000
Special Pak Coverage	500,000	1,000,000
Excess Indemnity, Personal Injury & Property Damage Continued	2,500,000	2,500,000

provided, that such insurance continues to be available to Lessor at an annual premium which shall not escalate at a rate in excess of 20% per year. Said insurance shall provide for contractual coverage as the same arises from this Lease. Said insurance shall in no event be less than the most extensive in amount and coverage as that provided by Lessee in regard to any similar lease of equipment similar to the Equipment by it or by any related company. The insurance required by this Section 17 may be satisfied by a self-insurance program acceptable to Lessee and maintained by Lessor in accordance with sound actuarial principles. Lessor will furnish Lessee concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months, with a detailed report signed by an independent insurance broker with respect to the insurance carried on the Equipment together with the opinion of such brokers as to its compliance with the provisions of this Section 17. Lessor will cause such firm to agree to advise Lessee promptly of any lapse of or omission of Lessor of which it has knowledge which might, in its opinion, invalidate or render unenforceable, in whole or in part, any insurance on the Equipment. All insurance shall be taken out in the name of Lessee and Lessor (and its assignee) as their interests may appear. The policies or certificates shall provide that there shall be no recourse against Lessee for the payment of premiums and shall provide for at least twenty business days prior written notice to be given to Lessee by the underwriters in the event of cancellation. If the Lessor shall default in the payment of any premium in respect to any such insurance policies, Lessee may, but shall not be obliged to, pay such premium, and if Lessee does so, the Lessor shall repay the amount thereof to Lessee on demand. Nothing herein contained nor any provision of any policy obtained hereunder (including, but not limited to, any provision naming Lessee as named insured), shall have the effect of limiting, modifying, or terminating the obligations and responsibilities of Lessor under Section 12 of this Lease or of any other paragraph of this Lease.

18. The provisions below form part of this Agreement.

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

ATTEST:

Diane E. Hertzog

UPPER MERION & PLYMOUTH
RAILROAD COMPANY

By *[Signature]*
Title: Vice President &
General Manager

J. N. Bell
HILLSDALE COUNTY RAILWAY
COMPANY, INC.

By *[Signature]*
Title:



19. This Agreement is subject to State approval, if required, within ninety (90) days from the date of this Agreement.
20. There is no cost or obligation to be imposed upon the States of Michigan and Indiana as a result of this Agreement.
21. Whenever the term Lessor or Lessee shall be used in this Agreement, it may also mean Owner and Manager respectively.
22. All cars must be delivered not later than December 31, 1979.
23. Exhibit "A" and Appendixes A and B, attached hereto, are made a part hereof.

STATE OF Pa.)
COUNTY OF Montgomery) SS:

On this 12th day of September, 1979, before me personally appeared J. M. Ball, to me personally known, who being by me duly sworn, says that he is the U.S. Gen. Mgr. of Upper Merion and Plymouth Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Diane E. Hertog
Notary Public



[NOTARIAL SEAL]

DIANE E. HERTOG, Notary Public
Norristown, Montgomery Co., PA
My Commission Expires May 12, 1980

My Commission Expires:

STATE OF Pa.)
COUNTY OF Phila.) SS:

On this 11 day of September, 1979, before me personally appeared JOHN N. MARINO, to me personally known, who being by me duly sworn, says that he is the President of Hillside County Railway Company, Inc., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Linda Sims
Notary Public

[NOTARIAL SEAL]

LINDA SIMS
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires March 31, 1980

My Commission Expires: 3/31/80

EQUIPMENT SCHEDULE NO. 1

Equipment Schedule, dated as of the 11th day of September, 1979, by and between UPPER MERION AND PLYMOUTH RAILROAD COMPANY ("Lessor") and HILLSDALE COUNTY RAILWAY COMPANY, INC. ("Lessee") pursuant to a certain Management Agreement dated September 11, 1979, between Lessor and Lessee (the terms and conditions of said Lease are incorporated herein by reference).

DESCRIPTION OF EQUIPMENT: One hundred (100) rebuilt 50' XM boxcars

REPORTING NUMBERS AND MARKS: HCRC 1001 thru 1100

TERM: Fifteen (15) years

PLACE OF DELIVERY: Place of delivery by manufacturer

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

HILLSDALE COUNTY RAILWAY COMPANY, INC.

By

[Signature]
Title:

Secy

UPPER MERION & PLYMOUTH RAILROAD COMPANY

By

[Signature]
(Title: Vice President & General Manager

J. M. Bell
V.P. & GM

E X H I B I T "A"

ONE: No director, officer, or employee of the HCRC 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 A-1 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 Appendix A, 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: HCRC and the Lessor shall make available to the auditors of the State of Michigan or of any governmental agency having jurisdiction over HCRC 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.

APPENDIX A AND APPENDIX A-1
 IS ATTACHED HERETO AND MADE
 A PART HEREOF

PROHIBITION OF DISCRIMINATION IN STATE CONTRACTS

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 I 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 comply with the same.

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 (a), 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 action as may be 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 903 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 organizations 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 Rial 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 preceding 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 indentify 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.

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RECORDATION NO. Filed 1425

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INTERSTATE COMMERCE COMMISSION

September 11, 1979

John Marino, President
HILLSDALE COUNTY RAILROAD CO., INC.
50 Monroe Street
Hillsdale, Michigan 49242

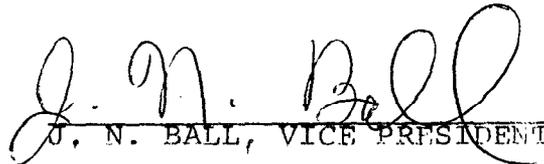
Re: Agreement for 100 XM Boxcars

Dear John:

Pursuant to the Agreement entered into between the Upper Merion and Plymouth Railroad Co., Lessor and Hillsdale County Railway Co., Inc. Lessee, for 100, 50 foot XM Boxcars, The UMP agrees as follows which shall be a part of the underlying lease agreement:

UMP agrees that should a governmental agency assess a tax for rolling stock or similar tax, for which HCRC would be obligated to pay, and if the tax due thereunder (which would have been the obligation of UMP) is reduced or eliminated by virtue of tax exemption or tax waivers (as a result of HCRC's rehabilitation work or of the applicable incentive programs) then, in that event, UMP agrees to pay to HCRC one-half of the tax that would have been due, in cash, within 14 days after requested by HCRC to pay same. This agreement forms part of the underlying lease agreement and is an incentive to HCRC and UMP and shall be considered as having been executed simultaneously with the lease.

UPPER MERION AND PLYMOUTH RAILROAD CO.


J. N. BALL, VICE PRESIDENT