



# UPPER MERION & PLYMOUTH RAILROAD COMPANY

P.O. Box 404 • Conshohocken, PA 19428 • (215) 275-2066

May 17, 1983

RECORDATION NO. 14082 Filed 1425 3-144A037

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

MAY 24 1983 - 3 40 PM  
INTERSTATE COMMERCE COMMISSION  
Date MAY 24 1983  
Fee \$ 50.00  
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 of Utilization Agreement, a primary document, dated April 28, 1983.

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

Lessor: Upper Merion & Plymouth Railroad Company  
P.O. Box 404  
Conshohocken, Pennsylvania 19428

Lessee: Providence & Worcester Railroad Company  
One Depot Square  
Woonsocket, Rhode Island 02895

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

Six (6) open top hopper railcars bearing reporting marks PW.

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

Also enclosed is a remittance in the amount of \$50.00 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 Dennis T. Hurst  
Dennis T. Hurst

DTH/sb

Enclosure

RECEIVED  
MAY 24 3 35 PM '83  
I.C.C.  
FEE OPERATION BR.

**Interstate Commerce Commission**  
Washington, D.C. 20423

5/24/83

OFFICE OF THE SECRETARY

**Ms. Sharon Schumacher**  
**Funding System Railcar, Inc.**  
**2215 Sanders Road, Suite 370**  
**Northbrook, Illinois 60062**

Dear

**Ms. Schumacher:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **5/24/83** at **3:40pm**, and assigned re-  
recording number(s). **14022 & 14023**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. **14022** Filed 1425

STATE OF ILLINOIS )  
COUNTY OF COOK )

**MAY 24 1983 - 3 40 PM**

**INTERSTATE COMMERCE COMMISSION**

On this 17th day of MAY, 1983, I hereby certify that I have compared the attached copy of the Utilization Agreement between Upper Merion & Plymouth Railroad Company and Providence & Worcester Railroad Company dated April 28, 1983 with the original and have found the copy to be complete and identical in all respects to the original document.



Sharon Schumacher  
Notary Public

My Commission Expires Jan. 27, 1985

[Seal]

MAY 24 1963 -3 40 PM

UTILIZATION AGREEMENT

INTERSTATE COMMERCE COMMISSION

This Utilization Agreement (hereinafter referred to as "Agreement") sets forth the terms and conditions under which Providence & Worcester Railroad Company (hereinafter referred to as "PW") with a principal place of business at One Depot Square, Woonsocket, RI, 02895, agrees to accept six (6) open top hopper railcars (hereinafter referred to as "car" or "cars") managed by Upper Merion & Plymouth R.R. Co. (hereinafter referred to as "UMP") with a principal place of business at P. O. Box 404, Conshohocken, Pennsylvania, 19428.

Inspection and Delivery

Cars are subject to inspection by PW before initial loading. If, upon such inspection, PW rejects any car as not being in interchange condition, UMP shall either repair the car at its sole expense or substitute another car of the same type. If any of the cars require cleaning before initial loading, such work will be done at PW's expense.

UMP shall bear the cost and expense for movement of the cars to PW. Any and all hourly and mileage revenues earned prior to initial arrival at PW will be remitted to UMP and not subject to any split with PW.

Possession and Use

UMP shall place PW identifying marks on the cars. PW shall provide in writing to UMP, prior to remarking of the cars, the PW identifying marks that will be covered by this Agreement.

It is the intent of the parties to this Agreement that PW shall have no title or interest in the cars other than the rights to use them as stated herein. PW 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.

PW shall not utilize the cars as collateral nor perform or permit any lien or encumbrance of whatever nature to be imposed on any of the cars; nor shall PW take or permit any action to be taken which would or could in any manner affect the clear title or interest of UMP or other car owners in said cars except for liens, if any, arising from the failure of UMP to pay for approved maintenance expenses, taxes, insurance and approved capital improvements.

The rights of PW to the use of the cars supplied pursuant to this Agreement are subject and subordinate to the rights of any owner, trustee, vendor or secured party given in connection with acquisition and financing of the cars. While the cars are on PW's line of railroad, UMP will not be liable for storage or demurrage charges.

PW will operate the cars only within the continental limits of the United States.

UMP shall not be liable for any loss of or damages to commodities loaded or shipped in or on the cars and PW agrees to assume financial responsibility for and to indemnify UMP against such loss or damage.

During the term of this Agreement, at the expense of UMP, UMP reserves the right to substitute any or all of the cars with similar or like cars and the rental in respect to the substituted car shall commence upon delivery of the substituted car to PW.

Term

The term of this Agreement shall commence on acceptance of the cars into service by PW and shall continue until October 15, 1983 unless sooner terminated as hereinafter provided. If agreeable to both UMP and PW, this Agreement will be extended on a month to month basis subsequent to October 15, 1983 in which case the Agreement can be cancelled by either party upon thirty (30) days written notice.

This Agreement shall terminate at the option of UMP upon thirty (30) days written notice to PW in the event that for any one (1) month period the average car hire collections, both time and mileage, average less than \$350.00 per car per month. ~~In the event this Agreement is terminated by UMP as a result of the provisions of this paragraph, reasonable movement costs to return the cars to UMP's possession shall be borne by PW.~~ *97*  
*4-22-83*  
*4-25-83*

Collections

PW shall collect all hourly (per diem) and mileage revenues earned by the cars each month. PW shall promptly remit to UMP all revenues collected. Revenues collected is defined as all hourly and mileage revenues received, less reclaims and all of UMP's expenses including but not limited to approved maintenance bills, movement charges, taxes, etc. within fifteen (15) days after receipt from the railroads.

PW hereby agrees to promptly reimburse UMP for any claimed deduction and/or offset of car hire revenues of the cars by any other railroad for any reason whatsoever.

PW shall bear no per diem or mileage costs while the cars are on its railroad. The PW's use of the cars without charge while on its lines shall constitute its sole and exclusive compensation under this Agreement.

PW agrees that it will not grant either full or partial car hire relief on any of the cars subject to this Agreement without the express written consent of UMP.

PW agrees that it will not change the applicable time or mileage charges for the cars without the express written consent of UMP.

#### Maintenance and Taxes

PW shall be responsible to inspect all cars interchanged to it to ensure that such cars are in good working order and condition and shall be liable to UMP for any repairs required for damage not noted at the time of interchange. PW shall be required to preserve the cars in operating condition while the cars are on PW's trackage. All repairs, whether on or off PW's trackage, shall be performed at UMP's expense unless said repairs are necessitated by PW's failure to preserve the cars in operating condition.

If a car, in PW's opinion, requires extensive repairs, PW will, upon prior written notice from UMP, bill the car to a repair shop off PW's trackage for necessary repair or modification. The repair shop shall be designated by UMP and all transportation costs off PW's trackage shall be at UMP's expense. PW shall not make any alterations, improvements or additions to a car without UMP's prior

written consent. If PW makes an alteration, improvement or addition to any car without UMP's prior written consent, PW shall be liable to UMP for such costs and for any revenues lost due to this alteration, improvement or addition.

All settlements for loss or destruction of any car occurring on PW's property shall be in accordance with terms set forth in the Office Manual of the AAR Interchange Rules.

UMP agrees to reimburse PW for all taxes, assessments and other governmental charges of whatsoever kind or character paid by PW relating to each car which may be accrued, levied, assessed or imposed on PW during the term of this Agreement. However, UMP reserves the right to contest any payments for taxes, assessments and other government charges.

#### Insurance

UMP agrees to keep the cars adequately insured; however, UMP reserves the right of subrogation against the responsible parties. PW shall be named as additional insured on UMP's insurance policies in respect to the cars. PW, however, shall endorse insured value checks as directed by UMP.

#### Termination

At the expiration of this Agreement as to any of the cars, PW agrees to remark the cars as designated by UMP and load the cars to an off-line termination on Consolidated Rail Corporation. In the event that PW is unable to obtain a final outbound load to a

Consolidated Rail Corporation termination, cars will be remarked per UMP's instructions and stored on PW free of all charges until a final outbound load to a Consolidated Rail Corporation termination is obtained.

UMP shall accomplish removal and replacement of the car identifying marks by either (i) directing PW to do so as to units in PW's possession, or (ii) arranging to have the railroad in possession perform such work, all at PW's expense.

In the event the cars supplied to PW shall be destroyed or otherwise become unavailable for service, this Agreement as to any such car shall automatically terminate and UMP shall be released from any further liability to PW as to any such car.

At the expiration or termination of this Agreement, PW shall deliver the cars to UMP in the same operating order, repair and condition as when originally delivered to PW, reasonable wear and tear excepted. Such cars shall be clean and free of commodity accumulation and deposits. If any of the cars require cleaning after the expiration or termination of this Agreement, such work will be at PW's expense.

#### Reports and Recordkeeping

PW shall provide to UMP within sixty (60) days after the end of a service month an accounting of car hire revenues from the railroads.

PW shall register the cars in the Official Railway Equipment Register and the Universal Machine Language Equipment Register.

PW agrees to use its best efforts consistent with PW's then current car utilization practices, to keep UMP's cars in regular service and load UMP cars prior to substantially similar foreign line cars.

PW agrees to use its best effort to maximize off-line utilization.

Unless prohibited from doing so, UMP shall, during the term of this Agreement, prepare and file all documents related to the registration, maintenance and recordkeeping function normally performed by PW with respect to equipment similar to the cars. UMP reserves the right to review the UMLER submissions pertaining to these cars.

PW shall, on behalf of UMP, keep and maintain all per diem and earnings records on the cars and PW will be the registered representative for all per diem and mileage reports. PW shall, on behalf of UMP, perform all other recordkeeping functions related to the use of the cars by PW and other railroads in accordance with AAR Railroad Interchange Agreements and Rules.

In the event PW receives any reports or bills related to the cars, PW will furnish monthly to UMP the originals of the reports received from the railroads and original AAR maintenance bills charged to PW relating to the cars covered by this Agreement. UMP will approve all bills prior to payment.

#### Non-Performance

UMP shall have the right to terminate this Agreement as to any or all of the cars due to the non-performance by PW under any term or condition of this Agreement.

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

LESSOR

Upper Merion & Plymouth R. R. Co.

By J. N. Ball  
Title President  
Date April 25, 1983

ATTEST Robert J. Blankmeyer

LESSEE

Providence & Worcester R. R. Co.

By Gordon R. DuBois  
Title Secretary  
Date April 28, 1983

ATTEST Gloria P. Hopkins

UTILIZATION AGREEMENT SCHEDULE NO. 1

Agreement Schedule, dated as of the 20th day of April, 1983, by and between Upper Merion & Plymouth R.R. Co. and Providence & Worcester Railroad Company, pursuant to a certain Utilization Agreement dated as of April 20, 1983 between Upper Merion & Plymouth Railroad Co. and Providence & Worcester Railroad Company (the terms and conditions of said Utilization Agreement are incorporated herein by reference).

DESCRIPTION OF EQUIPMENT: Six (6) 3570 cubic foot capacity, 100 ton capacity, triple pocket, open top hopper railcars with gravity gates.

REPORTING NUMBERS AND MARKS:

UMP 6445 to be PW 6445 ✓  
UMP 6546 to be PW 6546 ✓  
UMP 6503 to be PW 6503 ✓  
UMP 6505 to be PW 6505 ✓  
UMP 6507 to be PW 6507 ✓  
UMP 6466 to be PW 6466 ✓

TERM: April 20, 1983 through October 15, 1983

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

PROVIDENCE & WORCESTER RAILROAD CO. UPPER MERION & PLYMOUTH R. R. CO.

By: J. R. Stefan

Title: Secretary

By: J. N. Ball

Title: President

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF MONTGOMERY

SS.

On this 25th day of April, 1983 before me personally appeared J. Noel Ball, to me personally known, who being by me duly sworn, says that he is President of Upper Merion & Plymouth Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that he is authorized to sign and execute the foregoing instrument on behalf of the corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

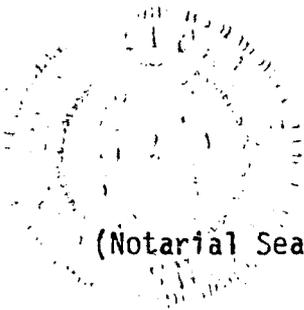
  
*Mary Ann Tuturice*  
Notary Public

MARY ANN TUTURICE, Notary Public  
Upper Merion Twp., Montgomery Co., Pa.  
My Commission Expires September 24, 1984

(Notarial Seal)

STATE OF Rhode Island :  
COUNTY OF Providence : SS.

On this 28<sup>th</sup> day of April, 1983, before me personally appeared Joseph R. M. Stefano, to me personally known, who being by me duly sworn, says that he is Secretary of Providence & Worcester Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that he is authorized to sign and execute the foregoing instrument on behalf of the corporation and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



(Notarial Seal)

Gloria P. Hopkins  
Notary Public

GLORIA P. HOPKINS  
My Commission Expires June 30, 1986