

11514

RECORDATION NO. Filed 1425

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11514-A

RECORDATION NO. Filed 1425

FEB 20 1980 - 12 55 PM

FEB 20 1980 - 12 55 PM

INTERSTATE COMMERCE COMMISSION

11514-B

February 20, 1980

INTERSTATE COMMERCE COMMISSION RECORDATION NO. Filed 1425

0-051A092

FEB 20 1980 - 12 55 PM

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FEB 20 1980

Secretary INTERSTATE COMMERCE COMMISSION

RECORDATION NO. Filed 1425

11514

Interstate Commerce Commission

FEB 20 1980 - 12 55 PM

Date 200.00

Washington, D.C. 20423

FEB 20 1980 Dear Sir:

INTERSTATE COMMERCE COMMISSION CC Washington, D.C.

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of 49 U.S.C. §11303(a) and the regulations thereunder are the original and two counterparts of each of the following documents: (i) Conditional Sale Agreement dated today between The Chessie Corporation, as vendor, and Upper Merion and Plymouth Railroad, as vendee; (ii) Agreement and Assignment dated today between The Chessie Corporation, as assignor, and The Ohio National Life Insurance Company, as assignee (assigning certain interests in the Conditional Sale Agreement); (iii) Non-Negotiable Installment Promissory Note -- Security Agreement dated today between Funding Systems Railcars, Inc., as debtor, and The W-A Equipment Company, as secured party, (iv) Management and Maintenance Contract dated today between The W-A Equipment Company, as owner, and Upper Merion and Plymouth Railroad Company, as manager; and (v) Transferee Agreement dated today between The W-A Equipment Company, as transferee, and The Ohio National Life Insurance Company, as secured party, (assigning an interest in the Management and Maintenance Contract), with the Consent and Agreement of the manager attached thereto.

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

Twenty (20) 100-ton open-top hopper cars bearing reporting marks and numbers UMP 7255 through UMP 7274, both inclusive.

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

A. Conditional Sale Agreement

Vendor: The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Handwritten notes:
C. Dudley
T. Kuyler

Handwritten notes:
11514-0001850
\$ 50

Vendee: Upper Merion and Plymouth Railroad
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15230

B. Agreement and Assignment

Assignor: The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Assignee: The Ohio National Life Insurance
Company
P. O. Box 237
Cincinnati, Ohio 45201
Attention: Securities Division

- A
\$0

C. Non-Negotiable Installment Promissory Note --
Security Agreement

Debtor: The W-A Equipment Company
1114 Avenue of the Americas
New York, New York 10036

Secured Party: Funding Systems Railcars, Inc.
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15230

- B
\$50

D. Management and Maintenance Contract

Owner: The W-A Equipment Company
1114 Avenue of the Americas
New York, New York 10036

Manager: Upper Merion and Plymouth Railroad
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15230

- C
\$50

E. Transferee Agreement

Transferee: The W-A Equipment Company
1114 Avenues of the Americas
New York, New York 10036

Secured Party: The Ohio National Life Insurance
Company
P. O. Box 237
Cincinnati, Ohio 45201
Attention: Securities Division

- D
\$50

Manager: Upper Merion and Plymouth Railroad
c/o FSC Corporation
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15230

The undersigned is attorney-in-fact for Upper Merion and Plymouth Railroad Company and Funding Systems Railcars, Inc. mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Please return the copies of the enclosed documents to Charles T. Kappler, Esq., Alvord and Alvord, 200 World Center Building, 918 Sixteenth Street, N.W., Washington, D.C. 20006, or to the bearer hereof.

Also enclosed is a remittance for the required recording fee.

Very truly yours,



C. Martin Goldenberg

Interstate Commerce Commission
Washington, D.C. 20423

2/20/80

OFFICE OF THE SECRETARY

John G. Buckley
Vice President & Treasurer
Canadian General Transit Co., Limited
Suite, 422
1010 St. Catherine Street, West
Montreal, Quebec, Canada
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 **2/20/80** at **11:10am**, and assigned re-
recording number(s). **11510 & 11510-A**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

NEW NUMBER.

11514

RECORDATION NO. Filed 1425

FEB 20 1980 - 12 35 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of February 20, 1980

Between

THE CHESSIE CORPORATION

And

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

CONDITIONAL SALE AGREEMENT dated as of February 20, 1980, between THE CHESSIE CORPORATION (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and UPPER MERION AND PLYMOUTH RAILROAD COMPANY (hereinafter called the Vendee).

WHEREAS, the Builder and Vendee (as assignee of Funding Systems Railcars, Inc.) entered into a certain Purchase Agreement dated as of June 12, 1979 (hereinafter called the Purchase Agreement), and Builder and Vendee desire to amend such Purchase Agreement, as herein provided, but only insofar as such Purchase Agreement relates to that number of units of railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, pursuant hereto, the Builder agrees to assemble and construct, and to sell and deliver to the Vendee, and the Vendee agrees to purchase, that number of units of the Equipment which are accepted hereunder by the Vendee on or prior to June 30, 1980 (and which, if less than the number specified in Annex B, are to be specifically described by supplement hereto subject to the provisions hereof); and

WHEREAS, THE OHIO NATIONAL LIFE INSURANCE COMPANY (hereinafter sometimes called the Assignee or the Vendor) is agreeing to finance as Investor 70% of the Purchase Price of the Equipment pursuant to a Participation Agreement (copy of which is annexed hereto as Annex C) dated as of the date hereof (hereinafter called the Participation Agreement), among the Assignee, the Vendee, and Funding Systems Railcars, Inc. and FSC Corporation as guarantors (hereinafter separately and collectively called Guarantor) of the payment in full of the indebtedness represented hereby;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated as of the date hereof between the Builder and the Assignee (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has assembled and manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the number of units of the Equipment described in the second WHEREAS clause of this Agreement, it being understood that the Equipment shown on Annex B hereto not accepted pursuant to this Article 2 on or before June 30, 1980, shall be excluded from this Conditional Sale Agreement and not included in the term Equipment, and the Vendor and the Vendee shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore accepted and settled for hereunder. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder and the Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of assembly and manufacture thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, including units intended for interchange, and each such unit will be new railroad equipment. As and when any Equipment shall from time to time be accepted by the Vendee hereunder within the limitations described in the second WHEREAS clause of this Agreement as evidenced by the Vendee's Certificate of Acceptance, the same shall be deemed accepted hereunder and shall ipso facto and without further instrument pass under and become subject to all the terms and provisions hereof.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid (to the extent included in the Purchase Price as herein set forth), in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Assignment have been filed pursuant to 49 U.S.C. §11303 of the Interstate Commerce Act; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Assignee of the commencement of any such proceedings or the occurrence of any such event, as aforesaid.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the second sentence of the first paragraph of this Article 3 and any Equipment not delivered and accepted hereunder (including payment therefor pursuant to the Assignment) on or prior to June 30, 1980, shall be excluded from this Agreement; provided, however, that neither the Vendee nor the Builder shall thereby be relieved of their respective obligations to purchase or sell such excluded units pursuant to the Purchase Agreement, it being the intent of this provision, and of the similar provisions appearing in the first paragraph of Article 2 and the first paragraph of Article 4 merely to exclude such units from the provisions of this Agreement intended to provide for the financing of the Equipment on an installment purchase basis. The Purchase Agreement shall be superseded by this Agreement only with respect to units of Equipment delivered and settled for hereunder and paid for pursuant to the provisions of the Assignment.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Prior to delivery, each unit of the Equipment shall be

presented to an inspector of the Vendee for inspection at the Builder's plant specified in Annex B hereto, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of inspection (hereinafter called the Certificate of Inspection) stating that such unit or units have been inspected on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof. Vendee shall execute a certificate of acceptance (hereinafter called the Certificate of Acceptance) upon delivery of the Equipment at the place specified for delivery of the Equipment. Such Certificate of Inspection and Certificate of Acceptance shall be in the forms, respectively, of Exhibits 1 and 2 to Annex B hereto.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provisions of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof or the second paragraph of this Article 3 shall be ineffective, ab initio, to impose on the Assignee any liability, obligation or responsibility with respect thereto.

ARTICLE 4. Purchase Price and Payment. The term "Purchase Price" as used herein shall mean the prices set forth in Annex B hereto (which prices are inclusive of freight charges, and applicable sales tax if any), all as further evidenced by the Builder's separate invoice or invoices delivered to the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this

sentence, exceed the Maximum Purchase Price specified in Item 4 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date or dates (not later than June 30, 1980, such date being hereinafter called the Cut-Off Date), occurring not more than ten days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Vendor by written notice delivered to the Vendee and the Assignee at least three business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Pennsylvania, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) on the Closing Date with respect to each Group
 - (i) an amount equal to 30% of the aggregate Purchase Price of such Group, plus
 - (ii) the amount, if any, by which
 - (x) 70% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds
 - (y) the Maximum Conditional Sale Indebtedness specified in Item 5 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 60 quarter-annual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness) shall be payable on the last day of each March, June, September and December, commencing September 30, 1980, to and including June 30, 1995 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness from time to time outstanding shall bear interest from the Closing Date in respect of which such indebtedness has occurred at the rate of 13.25% per annum. Such interest shall be payable, to the extent accrued, on March 31 and June 30, 1980 and thereafter on each Payment Date thereafter occurring. The installments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall, in the aggregate, be substantially level and equal (i.e. \$20,726.93 per quarter-annual combined installment of principal and interest). The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 16% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and shall be made by wire transfer of Federal or other immediately available funds not later than 11:00 a.m., local time, in the city where payable. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to any Group shall be subject to the receipt by the Vendee of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of such Group.

ARTICLE 5. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee as provided in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will, at Vendee's expense, (a) execute and deliver to the Vendee, at its address referred to in Article 20 hereof, such documents as Vendee may reasonably require to evidence the release of the Vendor's security interest in the Equipment, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the unencumbered title of the Vendee to the Equipment, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such documents or instruments, or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such documents or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income of the Vendor, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (so long as such fines or penalties are not imposed as the result of actions of the Builder or Vendor) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that, so long as the Vendee is not then in default under this Agreement, the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, together with interest thereon at the rate of 13.25% per annum, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance.

The Vendee shall maintain and keep each unit of the Equipment in good operating order, repair and condition and in compliance with the standards from time to time in effect under the Interchange Rules of the Association of American Railroads for use in interchange service. In addition, the Vendee agrees that it will be responsible for maintaining all governmental consents, approvals or authorizations required to keep all of the units of Equipment which are subject to this Agreement eligible for interchange service.

In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Vendee for a period of 90 consecutive days, except requisition for use by United States, state or municipal government (such occurrences being hereinafter called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit; provided, however, that the Vendee shall be obligated to make such payment, and thereby be entitled to the benefits of partial prepayment of the Conditional Sale Indebtedness (as hereinafter provided), only if such Casualty Value shall be in an amount not less than \$50,000. In the event that any Casualty Value, which would otherwise be payable in accordance with the provisions hereof, shall be less than \$50,000, payment shall be deferred until such time as the aggregate Casualty Value of units suffering a Casualty Occurrence shall be not less than such amount as aforesaid. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Assignee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request. In the event of the requisition for use by the United States, state or municipal government of any unit of the Equipment, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of and property in such unit shall pass to and vest in the Vendee free and clear of the security interest of the Vendor, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, shall execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price applicable to each such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7 with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, after having received payment of the Casualty Value hereunder, pay any remaining insurance proceeds or condemnation payments to the Vendee, provided that no default hereunder shall have occurred and be continuing. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

The Vendee will, at all times, cause to be carried and maintained all risk, physical loss and damage insurance in respect of the units of Equipment in an amount at least equal to the Casualty Value of such Units at the time subject hereto, and public liability insurance in amounts and against risks customarily insured against by others in the Vendee's

industry in respect of similar equipment. All policies evidencing such insurance shall contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder adversely changed without at least 30 days' prior written notice ~~(to be obtained in writing by the Vendor or its authorized representative)~~ ~~without at least 30 days' prior notice~~ to the Vendor by the insurers or the insurers' authorized representative, as the case may be. The benefits of such insurance shall be payable to the Vendor as its interests may appear, so long as any of the Conditional Sale Indebtedness shall not have been paid in full, and thereafter to the Vendee.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1981, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of Equipment. The Vendee shall cause each unit of the Equipment to be kept numbered with the road numbers set forth in Annex B hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed with the Interstate Commerce Commission", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced

promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

• Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation (except the name of a transferee permitted under Article 11 hereof) to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part of any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, if no default exists hereunder, the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement. The Equipment will be used, on a regular basis, only within the continental United States.

The Vendee/Purchaser shall not transfer, sell, part with the possession of, or otherwise dispose of the Equipment, while any of the Conditional Sale Indebtedness shall be outstanding, except under and pursuant to one or more of the following arrangements:

The Equipment may be sold by the Vendee to one or more purchasers, and resold by said purchasers to others (collectively and individually herein called a Purchaser/Owner) provided that (i) the intended use and operation of the Equipment shall be limited, on a regular basis, to the continental United States, (ii) the initial instrument of transfer shall be executed subsequent to the execution (as identified by the acknowledgments thereto or time stamp thereon) of this Agreement and the Assignment, (iii) the Purchaser/Owner shall explicitly acknowledge that the interests thus acquired by the Purchaser/Owner are secondary and subject to the rights of the Vendor (including its assigns) under Article 16 hereof upon the happening of an event of default hereunder, (iv) possession of the Equipment shall remain with and subject to the control of the Vendee, at least until all Conditional Sale Indebtedness shall have been paid in full, pursuant to a management agreement substantially in the form of Annex D hereto, and (v) the Purchaser/Owner agrees, upon request of the Vendor, to assign to Vendor all of Purchaser/Owner's right, in all sums due and to become due under such management agreement, together with the Purchaser/Owner's right to all claims for damages arising out of the breach thereof, and all rights of the Purchaser/Owner to terminate such agreement and to compel performance of the terms thereof. Upon written instruction from the Vendor to the Vendee, as manager, all sums payable under such management agreement shall thereafter be paid by the manager directly to the Vendor, it being understood and agreed by the parties hereto, however, that until default shall have occurred hereunder, the Vendor shall refrain from issuing any such instruction. In the event of a transfer of the Vendee's rights as aforesaid, any payments thereafter due hereunder and payable to Vendee, shall instead be paid to manager.

In the event of a transfer of the Vendee's rights as aforesaid, there shall be delivered to the Investor an opinion of counsel (who shall be acceptable to the Vendor) of the Purchaser/Owner to the effect that:

(i) the Purchaser/Owner is duly organized, validly existing and in good standing under the laws of its state of formation and is duly qualified to do business and in good standing in such other jurisdictions in which its business, properties or activities require such qualification;

(ii) the management agreement has been duly authorized, executed and delivered by the Purchaser/Owner and Vendee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a legal and valid instrument binding on the Purchaser/Owner and Vendee;

(iii) neither the execution and delivery of the management agreement, nor the consummation of the transactions therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, agreement or other instrument known to such counsel to which Purchaser/Owner, and Vendee is or are now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder or, pursuant to the provisions thereof, result in a lien on the Equipment which would be equal to or superior to the lien of the Vendor hereunder or in any manner affect adversely the security interest of the Vendor therein.

The utilization of units of the Equipment by one or more railroad companies in interchange service within the continental United States (on a regular basis) shall not be deemed a loss of possession or control of the Equipment by the Vendee.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim, so long as no default exists hereunder,

and so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts so paid the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

• This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when a security therein remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all of the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, it will transfer to the Vendee good and marketable title to such unit and the Vendee will have good and marketable title thereto, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement.

The Builder further represents and warrants to the Vendee, its successors and assigns, that at the time of delivery of each unit of Equipment to the Vendee, such units will constitute "new Section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended, and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of such Code from commencing with the Vendee.

The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Item 3 of Annex A hereto.

ARTICLE 14. Assignments. Except as provided in Article 11 hereof, the Vendee will not transfer ownership or the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of its rights under this Agreement. Every such transfer, and every such sale, assignment or other disposition shall be expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, its rights and remedies upon the happening of an event of default hereunder).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, the assignor shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's

interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever.

Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder, or under the Participation Agreement or the Assignment, and such default shall continue for five business days after the date such payment is due and payable; or

(b) the Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of the Participation Agreement, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) an event of default (as therein defined) under the form of management agreement set forth as Exhibit D hereto shall have occurred and be continuing and a substitute manager shall not, within a period of 30 days thereafter, have been agreed upon and consented to by the Vendor (which consent will not be unreasonably withheld); or

(d) any proceeding shall be commenced by or against the Vendee or a Guarantor for any relief which includes or might result in, any modification of the obligations of the Vendee or Guarantor hereunder or under the Participation Agreement or Guarantee, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee or Guarantor (as the case may be) under this Agreement or under the Participation Agreement or Guarantee, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or Guarantor (as the case may be), or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days or after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) the Vendee shall relinquish or lose title to, or possession or control of, any unit of the Equipment other than pursuant to, and in accordance with, the provisions hereof;

(g) an event of default (as therein defined) under any transferee agreement entered into in accordance with clause (v) of the second paragraph of Article 11 hereof shall have occurred and be continuing;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, wherever situated, it being understood, however, that the obligation of the Vendee to pay such amounts is not conditioned upon the Vendor reducing its claim to judgment or instituting legal or other proceedings of any kind. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Vendee and Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

Anything in this Article 15 and Article 16 hereof to the contrary notwithstanding, in the event that the Vendee does not pay, when due, any installment of Conditional Sale Indebtedness or other moneys payable by the Vendee to the Vendor hereunder (herein called a Payment Default), the Vendor nevertheless agrees not to exercise any of its rights or remedies under said Articles, including, without limitation, the acceleration of payments due hereunder, solely by reason of such Payment Default if, within 10 days after the Vendor shall have given written notice of such Payment Default to the Purchaser/Owner, (i) the Purchaser/Owner shall have made all payments required by this Agreement, non-payment of which shall have occasioned the Payment Default, including interest at the overdue rate set forth herein, and (ii) no event of default under this Agreement other than such Payment Default shall have occurred and be continuing; provided, however, that the Purchaser/Owner shall be entitled to cure not more than four Payment Defaults, no more than two of which may be consecutive. The Vendor agrees to give notice, as aforesaid, upon the occurrence of a Payment Default, but its failure to do so shall not affect its rights to proceed against the Vendee.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of Vendee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of any railroad controlled by the Vendee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided,

however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee or Purchaser/Owner should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee or Purchaser/Owner, as the case may be. The proceeds of such sale or other disposition, less attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited first to principal, and other amounts not constituting interest payments, due Vendor hereunder or under the Participation Agreement or the Assignment, and thereafter to interest due the Vendor hereunder or under said other instruments.

Any sale hereunder may be held or conducted at such place or places, and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16),

and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder. From and after the date of any such sale, the Vendee shall pay to the Vendor an amount equal to the interest rate (applicable in respect of overdue amounts as specified in Article 4 hereof) on the unpaid Conditional Sale Indebtedness with respect to such unit which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments of default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee; it being understood, however, that the Vendor shall not be required to resort first to any other party (whether such party has assumed the obligations of the Vendee, is a guarantor, or otherwise) nor shall the Vendor be required to resort first to any collateral security for the payment of the Conditional Sale Indebtedness (whether the Equipment or otherwise) before the Vendee is obligated to pay any amount due hereunder (whether on a regular installment date, at maturity, upon a Declaration of Default, or otherwise). If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with 49 U.S.C. §11303 of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except as otherwise stated herein, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Purchaser/Owner (if a transfer shall have occurred as permitted by Article 11 hereof).

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by certified mail, postage prepaid (return receipt requested), at the following addresses:

- (a) to the Vendee, at P. O. Box 404, Conshohocken, Pennsylvania 19428, Attn: President;
- (b) to the Builder, at the address specified in Item 1 of Annex A hereto;
- (c) to the Vendor, at P.O. Box 237, Cincinnati, Ohio 45201, Attention: Securities Division.
- (d) to the Guarantor, at 1000 RIDC Plaza, Pittsburgh, Pa. 15228, Attn: President;
- (e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, by such assignee.

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Copy of all notices required or permitted to be given to the Vendee shall, concurrently therewith, also be given to:

- (f) The W-A Equipment Company, 1114 Avenue of the Americas, New York, New York 10036, as Purchaser/Owner.

ARTICLE 21. Law Governing. This Agreement having been executed in the Commonwealth of Pennsylvania by one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations hereunder shall be governed by the laws of said Commonwealth; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

THE CHESSIE CORPORATION

(CORPORATE SEAL)

WITNESS:

By L.C. Fright
Vice President
and Treasurer

Patricia J. Hurady
Assistant Secretary

UPPER MERION AND PLYMOUTH RAILROAD
COMPANY

(CORPORATE SEAL)

WITNESS:

By John McHenry
Attorney-in-Fact

David J. Doucette

STATE OF Ohio :

COUNTY OF Cuyahoga :

SS:

On this 11th day of February, before me personally appeared R.C. Rong, Jr., to me personally known, who, being by me duly sworn, says that he is Past Vice President & Treasurer of The Chessie Corporation, 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.

(Notarial Seal)

H. Marlene Winchell
Notary Public

My Commission expires:

H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

STATE OF MINNESOTA

:

SS:

COUNTY OF HENNEPIN

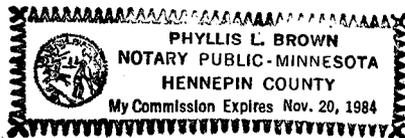
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On this 12th day of February, 1980, before me personally appeared JOHN F. McENERY to me personally known, who, being by me duly sworn, says that he is Attorney-in-Fact of Upper Merion and Plymouth Railroad Company, that one of the seals affixed to 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.

(Notarial Seal)

Phyllis L. Brown
Notary Public

My Commission expires:



ANNEX A

to

CONDITIONAL SALE AGREEMENT

Item 1: The Chessie Corporation
2 North Charles Street
Baltimore, Maryland 21201

Attention: Senior Assistant Treasurer

Item 2: The Equipment shall be settled for in Groups of not less than 20 units of Equipment delivered to and accepted by the Vendee unless another number shall be agreed to by the parties hereto.

Item 3: The Builder warrants to the Vendee that the Equipment will be built in accordance with the specifications, requirements and standards referred to in Article 2 of the Conditional Sale Agreement (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material and workmanship under normal use and service, the Builder's obligation under this Item 3 being limited to repairing or replacing any part or parts of any Item of Equipment which shall be returned to the Builder, at a location designated by the Builder which is determined in good faith and which is reasonable under the circumstances, within one year after delivery of such Equipment, with transportation charges prepaid, and which the Builder's examination shall disclose to its satisfaction to have been thus defective; provided, however, this warranty shall be subject to the following exclusions and conditions:

(a) Items or specialities, specified or supplied by the Vendee and not manufactured by the Builder, are excluded from this warranty.

(b) Warranty coverage on Equipment running gear and contact points to Equipment structure is limited to one (1) year or 50,000 miles, whichever first occurs. (Equipment running gear and contact points to Equipment structure utilize components conforming to A.A.R. specifications to provide maximum Equipment service life. The direct relationship between Equipment mileage and service life limits the coverage of these components as specified in this Item 3.)

(c) Normal use and service may require inspection, adjustment, maintenance, and compliance with all regulatory agencies' requirements. This obligation is the Vendee's responsibility and such performance is necessary to preserve stated warranty coverage.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE BUILDER EXCEPT AS SET FORTH HEREIN. THE BUILDER SHALL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

The Builder additionally agrees to indemnify the Vendee against any judgment for damages and costs which may be rendered against the Vendee in any suit brought on account of the alleged infringement of any United States patent by any Equipment supplied by the Builder hereunder, and shall procure for the Vendee the right to continue to use the Equipment or modify the Equipment so it becomes non-infringing. In the event the Equipment is made in accordance with materials, designs or specifications furnished or designated by the Vendee, the Vendee agrees to indemnify the Builder against any judgment for damages and costs which may be rendered against the Builder in any suit brought on account of the alleged infringement of any United States patent by such Equipment or by such materials, designs or specifications; provided that prompt written notice be given to the party from whom indemnity is sought of the bringing of the suit and that an opportunity be given such party to settle or defend it as that party may see fit and that every reasonable assistance in settling or defending it shall be rendered. Neither the Builder nor the Vendee shall in any event be liable to the other for special, direct, indirect, incidental or consequential damages arising out of or resulting from infringement of patents.

Any controversy arising out of or relating to the respective rights and obligations of the Builder and the Vendee, as set forth in this Annex A, or a breach thereof, excluding prices, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitration Panel may be entered in any court having jurisdiction thereof. The Arbitration Panel shall consist of three arbitrators, one to be appointed by each party hereto and the third to be designated by the two arbitrators so appointed.

Item 4: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$767,378.40.

Item 5: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$537,164.88.

ANNEX B

to

CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Purchase Price</u>	<u>Total Purchase Price</u>	<u>Place of Delivery</u>
100-Ton Open-Top Hopper Cars	Chessie System Specification No. H7-8978 dated August 8, 1978 and Supplement No. 1 dated March 13, 1979; General Arrangement Car Drawing No. 139-11-S32, Revision C	The shop of The Chessie Corporation in Russell, Kentucky	20	UMP 7255 through UMP 7274	\$38,368.92	\$767,378.40	At Russell, Kentucky or such other location as may be designated by Vendee.

CERTIFICATE OF INSPECTION

I, a duly appointed and authorized representative of the Vendee do hereby certify that I have inspected under the Purchase Agreement dated as of June 12, 1979 and under the Conditional Sale Agreement dated as of _____, 19__, both with The Chessie Corporation the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE INSPECTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and conform to the specifications, requirements and standards applicable thereto, that my inspection has disclosed no defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY
AGREEMENT FILED WITH THE INTERSTATE
COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.

Inspector and Authorized
Representative of the Vendee

Dated:

CERTIFICATE OF ACCEPTANCE

TO:

I, a duly appointed and authorized representative of the Vendee do hereby certify that I have inspected, received, approved and accepted delivery under the Conditional Sale Agreement dated as of _____, 19____, with The Chessie Corporation, of the following Items of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

NUMBER OF UNITS:

MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and that each Item has been labeled by means of a plate or a stencil printed upon each side of the Item in letters not less than one inch in height as follows:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it has made with respect to the Equipment.

Inspector and Authorized
Representative of the Vendee

Dated:

ANNEX C
TO
CONDITIONAL SALE AGREEMENT

PARTICIPATION AGREEMENT

AMONG

UPPER MERION AND PLYMOUTH RAILROAD COMPANY
("Vendee/Purchaser")

THE OHIO NATIONAL LIFE INSURANCE COMPANY
("Investor")

AND

FUNDING SYSTEMS RAILCARS, INC.
AND
FSC CORPORATION
("Guarantors")

Dated as of February __, 1980

PARTICIPATION AGREEMENT dated as of February __, 1980, among UPPER MERION AND PLYMOUTH RAILROAD COMPANY, a Pennsylvania corporation (hereinafter called the Vendee/Purchaser), THE OHIO NATIONAL LIFE INSURANCE COMPANY, a life insurance company (hereinafter called the Investor) and FUNDING SYSTEMS RAILCARS, INC., a Delaware corporation (FSR), and FSC CORPORATION, a Delaware corporation (FSC) (both FSR and FSC being separately and collectively sometimes hereinafter referred to as Guarantor).

WHEREAS, the Vendee/Purchaser, subject to the fulfillment of certain conditions as hereinafter provided, agrees to purchase certain units of railroad equipment (hereinafter called the Equipment) from The Chessie Corporation (hereinafter called the Builder), pursuant to a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) substantially in the form of Exhibit A hereto and the Builder will retain a security interest in such units until the Vendee/Purchaser fulfills its obligations under the Conditional Sale Agreement; and

WHEREAS, the Investor will finance 70% of the cost of the Equipment by investing in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

WHEREAS, the security interest of the Builder in the Equipment will be assigned to the Investor, pursuant to an Agreement and Assignment (hereinafter called the Assignment) in substantially the form of Exhibit B hereto, until the Vendee/Purchaser fulfills all its obligations under the Conditional Sale Agreement;

WHEREAS, as security, in part, for the payment by the Vendee/Purchaser of the Conditional Sale Indebtedness, each Guarantor will issue and deliver to the Investor its separate personal guarantee in substantially the form of Exhibit C hereto (hereinafter called a Guarantee);

NOW, THEREFORE, in consideration of the agreements and the covenants hereinafter contained, the parties hereto hereby agree as follows:

1. The Vendee/Purchaser will enter into the Conditional Sale Agreement and pursuant thereto (but subject to the fulfillment of the conditions precedent to its obligations thereunder, the performance by the Builder of its covenants, agreements and obligations thereunder, and the accuracy of the representations and warranties made by the Builder thereunder) purchase, as hereinafter provided, the units of Equipment described in Schedule A hereto, delivered and accepted under the Conditional Sale Agreement, and having an aggregate maximum Purchase Price not exceeding the amount set forth in said Schedule A. The Equipment shall be settled for pursuant to the Conditional Sale Agreement in a single group accepted by or on behalf of the Vendee/Purchaser upon issuance of a Certificate of Acceptance.

2. Subject to the terms and conditions hereof, the Investor will pay to the Builder, \$537,164.88 in Federal funds or funds immediately available at Baltimore, Maryland, on the date determined in the manner described below (such date being hereinafter called the Payment Date, such amount representing 70% of the purchase price (including freight) of the Equipment. Unless such notice is waived by the Investor, the Builder will give to the Investor written notice of the payment to be made by the Investor at least three business days prior to the Payment Date, which date shall coincide with the Closing Date (as defined in the Conditional Sale Agreement) to occur under the Conditional Sale Agreement.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Cincinnati, Ohio or Baltimore, Maryland, are authorized or obligated to remain closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-days months.

Pursuant to the Assignment, the Investor will acquire from the Builder all its right, security title and interest under the Conditional Sale Agreement, except as specifically excepted by the Assignment. Simultaneously with the final payment to the Investor of all amounts payable under the Conditional Sale Agreement, all rights of the Investor thereunder, pursuant to the Assignment, shall terminate.

The forms of the Exhibits annexed to this Agreement are hereby approved by the Investor. No modification or supplement to such forms shall occur without the prior written approval of the Investor, which approval will not unreasonably be withheld.

3. The Vendee/Purchaser and each Guarantor jointly and severally represents and warrants as follows:

(a) It is a corporation duly incorporated, validly existing and in good standing under the laws of the state of its incorporation and is duly qualified to do business, and is in good standing, in such other jurisdictions in which the ownership of its properties or the business and activities conducted by it require such qualification.

(b) It has full power, authority and legal right to carry on its business as now conducted, and is duly authorized and empowered to execute and deliver and to fulfill and comply with the terms, conditions and provisions of this Agreement and of the other agreements and documents referred to herein, or contemplated hereby or thereby; this Agreement and such other agreements and documents to which it is a party, have been duly authorized and have been duly executed and delivered and, assuming due authorization, execution and delivery thereof by the other parties thereto, constitute or will then constitute valid, legal and binding agreements, enforceable in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium, debtor relief or other similar laws affecting the enforcement of creditors' rights generally.

(c) No authorization or approval is required from any governmental or public regulatory body or authority of the United States of America, or of any of the States thereof or the District of Columbia, in connection with the execution by the Vendee/Purchaser of this Agreement or the Conditional Sale Agreement, or the fulfillment of or compliance with the terms, conditions and provisions hereof and thereof by the Vendee/Purchaser or arising from the Vendee/Purchaser's possession or use of the Equipment in connection with the terms, conditions and provisions of the Conditional Sale Agreement.

(d) It has filed all foreign, Federal, state and local tax returns which (to the best of its knowledge) are required to be filed, and has paid or made provisions for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by it, other than taxes which are being contested in good faith and which in the aggregate do not involve material amounts.

(e) It is not in default in the payment of principal of or interest on any indebtedness for borrowed money or in default under any instruments or agreements under or subject to which any indebtedness for borrowed money has been issued or in default under any rental obligation, and no event has occurred and is continuing under the provisions of any such instrument or agreement which, with the lapse of time or the giving of notice or both, would constitute an event of default thereunder.

(f) The Vendee/Purchaser is a "railroad" within the meaning of 11 U.S.C. §10133, and it agrees to remain a railroad as therein defined for the term of the Conditional Sale Agreement.

(g) The Vendee/Purchaser has not directly or indirectly offered or sold any of the Conditional Sale Indebtedness or other securities to, solicited offers to buy any of the Conditional Sale Indebtedness or other securities from, or otherwise approached or negotiated in respect of the purchase or sale or other disposition of any of the Conditional Sale Indebtedness or other securities with, any person so as to require registration of the Conditional Sale Indebtedness under the provisions of Section 5 of the Securities Act of 1933, as amended.

(h) FSC has furnished to the Investor consolidated balance sheets of FSC and its subsidiaries as at December 31, 1977 and December 31, 1978, and related consolidated statements of earnings and retained earnings and of changes in its financial position for the years then ended, in each case accompanied by the report of Arthur Young & Company, certified public accountants, as well as similar statements (unaudited) for the nine months period ended September 30, 1979. Such financial statements are in accordance with the books and records of FSC and its subsidiaries, and have been prepared in accordance with generally accepted accounting principles. The financial statements have been prepared on a consistent basis throughout the periods covered thereby, except as set forth therein. The financial statements present fairly the financial condition of FSC and its subsidiaries at such dates and the results of its operations for such periods. Since September 30, 1979, there has been no change except in the ordinary course of business, and there have been no changes which individually or in the aggregate have been materially adverse to the condition, financial or otherwise, of FSC and its subsidiaries as shown on the balance sheet as of such date.

(i) The Equipment will be used in interstate commerce.

(j) The Specifications (as defined in the Conditional Sale Agreement) have been approved by the Vendee/Purchaser, and in its opinion are sufficient to enable the Equipment to perform the functions for which it will be used.

(k) Neither the execution and delivery of this Agreement or the Conditional Sale Agreement, nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Vendee/Purchaser or Guarantor, will conflict with, or result in a breach of, any of the terms, conditions or provisions of its articles of incorporation (as amended) or by-laws (as amended), or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which it is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder.

(l) Neither the execution and delivery by the Vendee/Purchaser or Guarantor of this Agreement, the Conditional Sale Agreement or the Guarantee (as the case may be), nor the consummation of the transactions herein and therein contemplated, nor the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of any law, or any regulation, order, injunction or decree of any court or governmental instrumentality.

(m) No mortgage, deed of trust or other lien of any nature whatsoever (other than liens, if any, for taxes not yet due and payable), which now covers or affects any property or interest therein of the Vendee/Purchaser, now attaches or hereafter will attach to the Equipment (except pursuant to a transaction permitted by Article 11 of the Conditional Sale Agreement), or in any manner affects or will affect adversely the right and security interest of the Investor therein.

(n) There are no actions, suits or proceedings pending or threatened against or affecting the Vendee/Purchaser or the Guarantor, or any property rights of any thereof, at law or in equity, or before any commission or other administrative agency, arbitration board or

tribunal which could materially and adversely affect the condition, financial or otherwise, of the Vendee/Purchaser or Guarantor or the ability of any thereof to perform its obligations under this Agreement or the Conditional Sale Agreement, and none thereof is in default with respect to any order or decree of any court or governmental commission, agency or instrumentality.

(o) No Federal tax liens (including tax liens filed pursuant to section 6323 of the United States Internal Revenue Code of 1954, as amended), or, to the best of the knowledge and belief of the Vendee/Purchaser, other tax liens, have been filed and are currently in effect against the Vendee/Purchaser which could adversely affect the first and prior security interest of the Investor in the Equipment.

4. The Investor represents that it is acquiring its interest in the aggregate Conditional Sale Indebtedness for its own account, for investment and not with a view to, or for sale in connection with, the distribution of the same, nor with any present intention of distributing or selling the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

5. The obligation of the Investor to make the payment required of it under Paragraph 2 hereof, and under the Assignment, on the Payment Date shall be subject to the receipt by the Investor of the following documents dated the Payment Date:

(a) Original executed counterpart of this Participation Agreement.

(b) Original executed counterpart of the Conditional Sale Agreement and Agreement and Assignment, together with original receipt and letter of the Interstate Commerce Commission, separately evidencing the payment of the filing fee and the assignment of a recordation number to each of said documents.

(c) Original executed counterpart of a Transferee Agreement, dated the Closing Date, in form and substance satisfactory to the Investor, between The W-A Equipment Company ("W-A") and the Investor (hereinafter called the "Transferee Agreement"), granting to the Investor a security interest in certain revenues of the Equipment and in certain rights of W-A in, to and under the Management and Maintenance Contract therein referred to (the "Management Contract"), which Transferee Agreement shall have appended thereto a Consent and Agreement executed on behalf of the

Vendee/Purchaser, in form and substance satisfactory to the Investor, together with original receipt and letter of the Interstate Commerce Commission, separately evidencing the payment of the filing fee and the assignment of a recordation number to the Transferee Agreement.

(d) The Certificate of Interest, dated the Payment Date, executed and delivered by the Vendee/Purchaser and registered in the name of the Investor, and evidencing conditional sale indebtedness in the principal amount of \$537,164.88 under the Conditional Sale Agreement.

(e) The original counterparts (i.e., the counterparts deemed to constitute "chattel paper" as that term is defined under the provisions of the Uniform Commercial Code) of the Conditional Sale Agreement, the Assignment, each Guarantee, and the Management Contract.

(f) A certificate, dated the Closing Date, in form and substance satisfactory to the Investor, signed by an officer or attorney-in-fact of the Vendee/Purchaser, to the effect that there exists no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default under the Conditional Sale Agreement or Management Contract.

(g) A certificate, dated the Closing Date, in form and substance satisfactory to the Investor, signed by a general partner of W-A, to the effect that each of the Management Contract and its Non-Negotiable Installment Promissory Note - Security Agreement, dated the Payment Date (hereinafter called the "W-A Agreement") payable to Funding Systems Railcars, Inc. is in full force and effect and there exists no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default thereunder.

(h) The following documents relating to the purchase of the Equipment from the Builder:

(i) invoice for all items of Equipment;

(ii) bill of sale from the Builder to the Vendee/Purchaser transferring to Vendee/Purchaser title to all of such items and warranting to

the Vendee/Purchaser that at the time of delivery of each such item to the Vendee/Purchaser the Builder had legal title thereto and good and lawful right to sell the same, and title to each such item free of all claims, liens and encumbrances of any nature;

(iii) the favorable written opinion of counsel for the Builder as to title to the Equipment, and to the effect that the Conditional Sale Agreement and Assignment have each been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the other parties thereto, are each a legal and valid instrument binding on the Builder and enforceable against it in accordance with its terms; and

(iv) Certificate of Inspection and Certificate of Acceptance covering all items of Equipment executed by a duly authorized officer of the Vendee/Purchaser as to the condition of Equipment and markings.

(i) Certificates of insurance evidencing the insurance coverage required by the Conditional Sale Agreement and Management Contract.

(j) The favorable written opinions, in form and substance satisfactory to the Investor, of Messrs. McCann, Garland, Ridall & Burke, counsel to the Vendee/Purchaser and each Guarantor; Messrs. Bergreen & Bergreen, counsel to W-A; and Messrs. Faegre & Benson, special counsel to the Investor in connection with the transactions contemplated by this Participation Agreement.

(k) Such other certificates and documents as the Investor may reasonably request evidencing authorization for the execution and delivery of the foregoing operative documents and certificates.

6. In giving the opinions specified in Paragraph 5, counsel may qualify its opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

7. The obligation of the Investor to make any payment required of it hereunder or pursuant to the Assignment for units of Equipment, on the Payment Date shall be subject to the receipt by the Investor of the opinion, certificates and other documents specified by the Assignment (to the extent not also required by the foregoing provisions of Paragraph 5).

8. The obligation of the Investor to make any payment required of it hereunder or pursuant to the Assignment, on the Payment Date, is further conditioned upon all proceedings taken in connection with the transactions contemplated hereby and all documents and papers relating thereto being satisfactory to the Investor and its special counsel, and the Investor and its special counsel having received copies of such documents and papers as they may reasonably request in connection therewith or as a basis for the opinion of such special counsel, all in form and substance satisfactory to the Investor and its special counsel.

9. Subject to the terms and conditions hereof, upon the delivery to and acceptance by the Vendee/Purchaser under the Conditional Sale Agreement of the Equipment, and the receipt by the Investor of the delivery papers with respect thereto to be delivered by the Builder in accordance with the Assignment, on the Payment Date the Investor will pay to the Builder in accordance with the Assignment (and subject to the conditions specified in the Conditional Sale Agreement and/or Assignment) an amount equal to the Conditional Sale Indebtedness with respect to the Equipment.

10. The Investor will accept payments made to it pursuant to the Conditional Sale Agreement and the Assignment on account of the principal of and interest on the Conditional Sale Indebtedness and will apply such payments promptly first, to the payment of interest then due and payable to the Investor on its interest in the Conditional Sale Indebtedness, and second, to the payment of its interest in the installments of Conditional Sale Indebtedness then due and payable in the order of maturity thereof until the same shall have been paid in full.

The Investor will accept all sums paid to it pursuant to Article 7 of the Conditional Sale Agreement with respect to Casualty Occurrences (as therein defined) and will apply such sums to the pro rata prepayment of each of the installments of

the aggregate Conditional Sale Indebtedness remaining unpaid (in proportion to the principal amount of aggregate Conditional Sale Indebtedness represented by each such installment), without premium, together with interest thereon. The Vendee/Purchaser will furnish to the Investor a revised schedule or schedules of payments showing the reduction of the Investor's interest in the installments of the aggregate Conditional Sale Indebtedness remaining unpaid and the interest payable thereon.

The Investor's interest in the Conditional Sale Indebtedness shall be evidenced by a Certificate of Interest substantially in the form of Exhibit D hereto.

All payments to be made by the Vendee/Purchaser hereunder shall be made on the date such payment is due, in the manner specified in Schedule B hereto, or in such other manner as the Investor may specify in writing from time to time to the Vendee/Purchaser.

11. The Guarantor will deliver to the Investor (i) as soon as available and in any event within 90 days after the end of each fiscal year, a certificate signed by the President, any Vice President, the Treasurer or any Assistant Treasurer of the Guarantor stating that a review of the activities of the Vendee/Purchaser and Guarantor during such year has been made under his supervision with a view to determining whether the Vendee/Purchaser and the Guarantor have kept, observed, performed and fulfilled all of its obligations under this Agreement and the Conditional Sale Agreement and that to the best of his knowledge the Vendee/Purchaser and the Guarantor during such year have kept, observed, performed, and fulfilled each and every covenant, obligation and condition contained herein and in the Conditional Sale Agreement, or if an Event of Default (as defined in the Conditional Sale Agreement) shall exist or if an event has occurred and is continuing which, with the giving of notice or the passage of time or both, would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof, (ii) as soon as available and to the extent available, and in any event within 30 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Vendee/Purchaser and Guarantor copies of the balance sheet of the Vendee/Purchaser and Guarantor as of the end of such accounting period and copies of the related statements of earnings and retained earnings of the Vendee/Purchaser and Guarantor for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, satisfactory to the Investor, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year, and (iii) as soon as available, and in any event within 90 days after the end of each fiscal year, copies, in comparative form with the preceding fiscal year, of the balance sheet of the Vendee/Purchaser and Guarantor as at the end of such fiscal year, and of the statements of earnings and

retained earnings of the Vendee/Purchaser and Guarantor for such fiscal year, all in reasonable detail, satisfactory to the Investor, and stating in comparative form the figures as of the end of and for the previous fiscal year, and, as to FSC only, certified by the independent public accountants regularly auditing the consolidated financial statements of FSC; and (iv) a copy of the Annual Report to the Interstate Commerce Commission which is required to be filed by the Vendee/Purchaser.

12. The Vendee/Purchaser agrees to pay the reasonable fees and disbursements of the Investor (including the reasonable fees, and disbursements if any, of its counsel), whether or not the transactions contemplated hereby actually occur.

13. All documents, notices and funds deliverable hereunder to the Vendee/Purchaser, Guarantor or the Investor shall be delivered or mailed to them at their respective addresses set forth in Schedule A or B hereto, or as any of them may otherwise specify.

14. In the event that the Vendee/Purchaser or Guarantor shall have knowledge of an event of default under the Conditional Sale Agreement, it shall give prompt telephonic notice (confirmed in writing) thereof to the Investor.

15. This Agreement having been executed in the Commonwealth of Pennsylvania by at least one of the parties hereto, and having been delivered in said Commonwealth, all of the terms hereof, and all rights and obligations of the parties hereto hereunder shall be governed by the laws of said Commonwealth. Such terms, rights and obligations may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

16. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

(Corporate Seal)
WITNESS:

By _____

THE OHIO NATIONAL LIFE INSURANCE COMPANY

WITNESS:

By _____

FUNDING SYSTEMS RAILCARS, INC.

(Corporate Seal)
WITNESS:

By _____

FSC CORPORATION

(Corporate Seal)
WITNESS:

By _____

SCHEDULE A

Equipment

Type: 100-ton open top hopper cars

Identifying Numbers: UMP 7255 through
UMP 7274

Vendee/Purchaser

Upper Merion and Plymouth Railroad Company
20 cars

Maximum Purchase Price
(including freight)
#38,368
\$767,378.40

Address for delivery of documents:

P. O. Box 404
Conshohocken, Pa. 19428
Attention: J. Noel Ball,
President

Guarantor

Funding Systems Railcars, Inc.

Address for delivery of documents:

Suite 404
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238
Attention: James B. Shein,
President

Guarantor

FSC Corporation

Address for delivery of documents:

Suite 404
1000 RIDC Plaza
Pittsburgh, Pennsylvania 15238
Attention: H. L. Lehman,
Vice President-Treasurer

SCHEDULE B

Name:

The Ohio National Life Insurance Company

Mailing Address:

P. O. Box 237
Cincinnati, Ohio 45201
Attention: Securities Division

Address for manual delivery of documents:

William Howard Taft Road
at Highland Avenue
Cincinnati, Ohio 45219

Address for delivery of funds:

Wire transfer in immediately available
funds (with sufficient information to
indentify source and application of
funds) to:

The First National Bank of Cincinnati
P. O. Box 1038
Cincinnati, Ohio 45201
Attention: Mr. William Trimpe, for
the account of The Ohio National Life
Insurance Company No. 910-275-7

ANNEX D
TO
CONDITIONAL SALE AGREEMENT

MANAGEMENT AND MAINTENANCE CONTRACT

Dated as of February 20, 1980

BETWEEN

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

MANAGER

AND

THE W-A EQUIPMENT COMPANY

OWNER

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ATTACHMENTS TO MANAGEMENT AND MAINTENANCE CONTRACT

- SCHEDULE A -- Description of Equipment
- SCHEDULE B -- Certificate of Acceptance
Under Management and
Maintenance Contract

MANAGEMENT AND MAINTENANCE CONTRACT

MANAGEMENT AND MAINTENANCE CONTRACT dated as of February 20, 1980 (this "Agreement") between UPPER MERION AND PLYMOUTH RAILROAD COMPANY, a Pennsylvania corporation (the "Manager") and THE W-A EQUIPMENT COMPANY, a New York partnership (the "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of the Equipment described in Schedule A hereto (collectively, the "Equipment" or "Items of Equipment" or "Cars" and individually, an "Item of Equipment" or "Car"); and

WHEREAS, Manager is engaged in the business, among other things, of managing railroad cars and Owner and Manager desire that Manager manage the equipment, all upon the terms and conditions herein contained; and

WHEREAS, the Equipment is subject to (a) a lien (the "Lien") granted to the Vendor pursuant to the Conditional Sales Agreement referred to in Schedule A hereto (the "Conditional Sales Agreement"), which has been assigned by the Vendor to The Ohio National Life Insurance Company (the "Secured Party") and (b) a lien in favor of Funding Systems Railcars, Inc. ("Seller") securing payment of a portion of the purchase price paid by Owner for the Equipment.

NOW THEREFORE, in consideration of these premises and of the fees to be paid and the covenants hereinafter contained the parties hereby agree as follows:

SECTION 1. MANAGEMENT AND DELIVER OF EQUIPMENT

1.1 Engagement. Owner hereby engages Manager as exclusive agent of Owner to manage the Cars, all on the terms and conditions set forth herein, and Manager accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

1.2 Certification. Upon delivery of each Car, Manager shall execute and deliver to Owner a certificate of acceptance in the form of Schedule B hereto, certifying to Owner that the Car is in good working order and repair, meets all requirements and standards of the Association of American Railroads ("AAR"), U.S Department of Transportation ("DOT"), Interstate Commerce Commission ("ICC"), all other governmental agencies and authorities having jurisdiction, insurers, local laws of jurisdiction in which the Car is expected to be used, and all filings, registrations and approvals of all governmental authorities and the AAR have been received and made and that the Car may be placed in interchange service.

SECTION 2. REVENUES, MANAGEMENT FEES, OPERATING EXPENSES AND PAYMENT DATES.

2.1 Revenues From Equipment. As used in this Agreement, the term "Revenues" or "Gross Receipts" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars, including, but not limited to, car hire charges for mileage, per diem and incentive per diem, if any. "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of Cars, including, but not limited to, the following: Maintenance, repairs, except to the extent that the cost of such repairs is paid from the Maintenance Fee under Section 8 hereof; payments of Maintenance Fee; painting; costs of modifications and improvements; legal fees incurred in connection with enforcing Owner's rights or repossessing Cars; insurance; charges, assessments or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities; ad valorem, gross receipts and other property taxes; reasonable rent and storage expenses payable to third parties under Article 16; expenses for any car hire reclaim relief properly and reasonably allowed any railroad; Maintenance Fees under Section 8.3 hereof; and, only after payment of all other Operating Expenses, Management Fees (as hereinafter defined). Gross Receipts and/or Operating Expenses attributable to a calendar quarter which are received or paid after the date of disbursement for such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Receipts or Operating Expenses of that subsequent quarter. "Net Revenues" shall mean Gross Receipts less Operating Expenses. If the Revenues available are insufficient in any quarter to pay the Operating Expenses in such quarter,

the Manager shall advance, on behalf of Owner, an amount equal to such deficiency as and when required and Owner shall reimburse Manager therefor within 30 days after notice thereof following the end of such quarter, it being agreed that all Operating Expenses in excess of Gross Receipts shall be Owner's sole responsibility; provided, however, that, without limiting the provisions of the last sentence of Section 2.2, Manager shall not advance and Owner need not reimburse for Management Fees under this Section. No debt service or payments of the purchase price due under the Conditional Sales Agreement shall be deemed an Operating Expense.

Manager shall collect all Revenues and, to the extent thereof, disburse the same on behalf of Owner in the following order of priority:

(i) First, if and to the extent that the vendee under the Conditional Sales Agreement shall fail to make any payment required to be made thereunder, when due, to pay an amount equal thereto to Secured Party;

(ii) second, to pay the Maintenance Fee provided in Section 8 hereof;

(iii) third, to pay all Operating Expenses theretofore incurred; and

(iv) fourth, to pay to the holder of any lien on the Equipment securing indebtedness incurred by Owner in connection with the acquisition of the Equipment an amount equal to each payment thereunder, as and when the same shall become due and payable.

During the period from the date hereof to December 31, 1980, Manager's advance and Owner's reimbursement obligation provided in the first paragraph of this Section shall include Management Fees due for such period.

2.2 Management Fees. In consideration of the performance by Manager of services to be performed by Manager pursuant to this Agreement, Owner shall pay, and Manager shall accept, fees (the "Management Fees") equal to 20% of all Gross Receipts, excluding insurance or condemnation or sale proceeds. Management Fees shall be due as and when Gross Receipts are received from time to time. Any Management Fees accrued during but unpaid upon the end of the term hereof, shall be paid by Owner to Manager within 30 days after a final account thereof is rendered.

2.3 Revenue Disbursement Dates. Subject to the provisions of the Conditional Sales Agreement, Net Revenues shall be disbursed by Manager to Owner, at its address set forth elsewhere in this Agreement, in quarterly installments within 30 days after the end of each calendar quarter accompanied by a statement indicating the computation thereof. The first installment of such Net Revenues for each Item of Equipment shall be so disbursed on March 31, 1980. If any of the disbursement dates is not a business day, the disbursement otherwise to be made on such date shall be made on the next succeeding business day. For purposes of this Agreement, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the Commonwealth of Pennsylvania are authorized or required by law to remain closed.

2.4 Annual Reports. Within 90 days after the close of each calendar year, Manager will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to Manager, as to their review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the mathematical correctness of the computations made by Manager in the allocation of Gross Receipts, Operating Expenses and Net Revenues and the conformity of the accounting procedures followed by Manager to its obligations and duties under this Agreement. If such review shall disclose any overpayment or underpayment of Net Revenues or Management Fees, the amount thereof shall be promptly adjusted pursuant to the provisions of this Agreement.

SECTION 3. TERM OF THE AGREEMENT.

The term of this Agreement as to each Item of Equipment shall begin on the date of the delivery to and certification by Manager of such Item of Equipment as provided in Section 1.2 hereof and, subject to the provisions of Sections 15 and 19 hereof, shall terminate on December 31, 2000. The obligations of Owner and Manager hereunder arising during the term of this Agreement, or as may otherwise be specifically provided for herein, shall survive the expiration of the term of this Agreement.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1 Retention of Title. Owner shall, and hereby does, retain full legal title to the Equipment

notwithstanding the delivery thereof to, and management thereof by, Manager.

4.2 Duty to Number and Mark Equipment. Manager will cause each Item of Equipment to be kept numbered with the identifying number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed upon each side of each Item of Equipment in letters not less than one inch in height such labeling as from time to time may be required by law in order to protect the title of Owner to such Item of Equipment, its rights under this Agreement, the rights of the Secured Party and the rights of any other assignee of Secured Party and as required by any AAR or governmental requirements. Manager will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. Manager will not change the identifying number of any Item of Equipment except with the prior consent of Owner in accordance with a statement of new identifying numbers to be substituted therefor, which consent and statement previously shall have been filed with Owner by Manager and filed, recorded or deposited in all public offices where this Agreement shall have been or shall be required to be filed, recorded or deposited, and Manager shall have furnished to Owner an opinion of counsel to such effect.

4.3 Prohibition Against Certain Designations. Except as provided in this Section 4, Manager will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Manager may cause the Equipment to be lettered with the names or initials or other insignia customarily used for convenience of identification.

SECTION 5. ENFORCEMENT OF WARRANTIES.

So long as an Event of Default has not occurred and is not continuing hereunder, Owner hereby authorizes Manager, and Manager hereby agrees, during the term of this Agreement, to assert and enforce, from time to time, in the name and for the account of Owner whatever claims and rights Owner may have against any builders or contractors in respect of the Equipment.

SECTION 6. DUTIES OF MANAGER AND INDEMNIFICATION

6.1 Duties of Manager. Manager shall provide and perform, on behalf of Owner, the services set forth below during the term of this Agreement:

(a) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, take possession of the Cars as agent for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best effort to keep such Cars in use for the term of this Agreement, with railroads, shippers or other financially responsible parties ("Users") for that purpose on terms and conditions which are customary in the industry (but in no event shall Manager make leases without Owner's written consent) and pursuant to the interchange rules of the AAR and orders of the ICC, and taking such steps as may be required to insure that all obligations and duties arising thereunder are performed or complied with in an orderly and timely fashion, so as to maximize Revenues hereunder.

(c) Use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the AAR.

(d) Collect or cause to be collected all payments and charges due with respect to the Cars, identifying itself as agent for that purpose, pay Operating Expenses therefrom and account for and remit all sums due to Owner as herein provided.

(e) Recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed thereunder or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of Manager exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as and if permitted and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits.

(f) Place in Owner's name such insurance as is hereinafter described.

(g) Pay, in Owner's name, all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind

or nature and, in Manager's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(h) Monitor and record, or cause to be monitored and recorded, movement of the Cars.

(i) Maintain, or cause to be maintained, complete and accurate records of all transactions relating to the Cars.

(j) Provide Owner with advice and recommendations concerning the sale of the Cars.

(k) Furnish factual information reasonably requested by Owner in connection with Federal and State tax returns.

(l) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary. All of the foregoing duties of Manager shall be subject to the further detailed provisions of this Agreement relating thereto and shall be performed in good faith in the best interests of Owner.

6.2 Indemnification. Owner shall defend (if such defense is tendered to Owner), indemnify and hold Manager harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against Manager as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars; provided, however, that Owner shall not defend, indemnify or hold Manager harmless from and against, and Manager shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from the negligence, bad faith or misconduct of Manager or default by Manager hereunder.

SECTION 7. RULES, LAWS AND REGULATIONS.

Manager shall cause the Equipment to comply, and require every use of an Item of Equipment to comply, in all respects with all laws and interchange rules of the AAR and with all lawful rules of the DOT, the ICC and any other legislative, executive, administrative or judicial body exercising any power of jurisdiction over an Item of

Equipment. In the event that such laws or rules require any alteration of an Item of Equipment, or in the event that any equipment or appliance of an Item of Equipment shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on an Item of Equipment in order to comply with such laws or rules ("Mandatory Alteration"), Manager shall make such alterations, changes, replacements and additions; provided, however, that Manager shall, in good faith, contest the validity or application of any such law or rule which is customary in normal railcar operations to contest in any reasonable manner which does not, in the opinion of Owner, adversely affect the property or rights of Owner.

SECTION 8. MAINTENANCE OF EQUIPMENT.

8.1 Standards of Maintenance. Manager shall permit the Equipment to be used only in the manner for which it was designated and intended and so as to subject it only to ordinary wear and tear. Manager shall maintain and keep each Item of Equipment in good order, condition and repair so that each Item will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) desirable to and suitable for use by a Class I railroad.

8.2 Improvements. Except as required by the provisions of Section 7 hereof, Manager shall not make any permanent or other material modifications to any Item of Equipment without the prior written authority and approval of Owner, which consent shall not be unreasonably withheld or delayed.

8.3 Maintenance Fee. In order to maintain the Equipment in accordance with this Section, a Maintenance Fee of \$2.15 per day shall be set aside as an Operating Expense by Manager for each Item of Equipment under this Agreement. The aggregate amount of any such fees held from time to time by Manager shall be maintained by Manager as trust funds in a segregated and separately maintained and identified interest-bearing bank account and such fees in such account shall be used by Manager solely to maintain the Equipment in accordance with the requirements of this Section 8. Any expenses for the maintenance required by this Section 8 which are in excess of such fees (and any

increases thereof as provided below) in such account shall be paid by Manager and shall not be deemed an Operating Expense. Upon the expiration of this Agreement and the return of the Equipment pursuant to Section 14 hereof in the condition required by this Section 8, any excess amounts in such account or accounts shall be retained by and constitute the property of Manager, but if this Agreement is terminated by reason of default by Manager or cancellation by Manager, the excess amounts shall be paid to Owner forthwith.

If the labor rate established by the AAR and in effect on December 31 of any year commencing December 31, 1980 (the "Prevailing Labor Rate") shall differ from the labor rate so established and in effect on December 31, 1979 (the "Current Labor Rate"), the Maintenance Fee shall be increased or decreased by one half of the amount by which (i) the product of the Maintenance Fee and the quotient obtained by dividing the Prevailing Labor Rate by the Current Labor Rate is greater or lesser than (ii) the Maintenance Fee on the date hereof. If the U.S. Wholesale Price Index for Metal and Metal Products in effect on December 31 of any year commencing December 31, 1980 (the "Increased Rate") shall differ from such Index in effect on December 31, 1979 (the "Basic Index"), the Maintenance Fee shall be further increased or decreased by one half of the amount by which (i) the product of the Maintenance Fee and the quotient obtained by dividing the Increased Rate by the Basic Index is greater or lesser than (ii) the Maintenance Fee on the date hereof. Any such adjustment shall be instituted by notice from Manager to the Owner and shall take effect on and after the date of such notice. Anything herein to the contrary notwithstanding, the Maintenance Fee shall not be decreased below the minimum fee of \$2.15 per day for each Item of Equipment under this Agreement.

SECTION 9. LIENS CAUSED BY MANAGER.

Manager will promptly pay or discharge any and all sums claimed by any party as a result of the wrongful act or default in the performance by Manager of its obligations under this Agreement which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to any Item of Equipment, including any accession thereto, or any part thereof or the interest of Owner therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises;

provided, however, that Manager shall be under no obligation to pay or discharge such claim so long as it is contesting the validity thereof in good faith in a reasonable manner and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of Owner, adversely affect the title, property or rights of Owner or any assignee thereof. If any such claim shall have been charged or levied by anyone and in any manner against Owner directly and shall have been paid by Owner, Manager shall reimburse Owner, on presentation of an invoice therefor, provided that Owner shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for Owner) or Manager shall have approved the payment thereof.

SECTION 10. FILING, PAYMENT OF EXPENSES AND TAXES.

10.1 Filing, Expenses. Prior to delivery of an Item of Equipment, Manager will cause this Agreement to be duly filed, registered or recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. Section 11303 and in such other places within or without the United States as Owner may reasonably request for the protection of its title and will furnish to Owner the proof thereof. Manager will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or record whenever required) any and all further instruments required by law or reasonably requested by Owner for the purpose of protecting Owner's title to the Equipment to the satisfaction of Owner's counsel or for the purpose of carrying out the intention of this Agreement and, in connection with any such action, will promptly deliver to Owner proof of such filings and an opinion of Manager's counsel that such action has been properly taken. Manager shall prepare for filing all documents relating to the registration, maintenance and record-keeping functions for the Equipment in accordance with the rules and regulations of the AAR, ICC, the DOT and any other governmental or industry authority. Such matters shall include (without limitation) the preparation of the following documents: (i) Appropriate AAR interchange agreements with respect to the Equipment; (ii) registration of each Item of Equipment in the Official Railway Equipment Register (such registration directing that correspondence from Railroads using such Items of Equipment be addressed to the Manager); and (iii) such reports as may be required from time to time by the ICC and other

regulatory agencies with respect to the Equipment. Manager will pay all costs, charges and expenses incident to any such filing, refiling, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action and the same shall not be deemed an Operating Expense.

10.2 Payment of Taxes. Manager shall cause to be paid as an Operating Expense any local, state, federal or foreign taxes (other than any United States federal, state or local income tax payable by Owner on payments provided for herein) or license fees, assessments, charges, fines, interests and penalties (all such expenses, taxes, license fees, assessments, charges, fines, interests and penalties being hereinafter called Impositions) hereinafter levied or imposed upon or in connection with or measured by this Agreement or any sale, possession, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or in connection with the transactions contemplated herein. Manager will also cause to be paid as an Operating Expense promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Owner solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the title of Owner or result in a lien upon any such Item of Equipment; provided, however, that Manager shall not pay any Imposition of any kind so long as it is contesting such Imposition in good faith and by appropriate legal proceedings (and Manager agrees to contest those which it is customary in normal railcar operations to contest), provided, the non-payment thereof does not, in the opinion of Owner, adversely affect the title, property or rights of Owner hereunder; and provided, further, that Manager shall not be required to pay any Imposition or reimburse any person for any loss, cost or expense related to any Imposition which is the subject of any lien, charge, security interest or other encumbrance which Manager is not required by Section 9 hereof to pay or discharge.

In the event any reports or returns with respect to Impositions are required to be made, Manager will either make such reports in such manner as to show the interests of the Owner in such Items of Equipment or notify Owner of such requirements and make such reports in such manner as shall be satisfactory to Owner.

SECTION 11. CAR HIRE RELIEF.

Manager shall have the authority to enter into arrangements with railroads to grant car hire reclaim relief in Manager's discretion when deemed prudent to maximize revenues in respect to the Equipment.

SECTION 12. INSURANCE.

12.1 Insurance.

(a) Manager will maintain or cause to be maintained at all times during the term of this Agreement and any renewals thereof (and thereafter during the period in which the Equipment is being returned or stored pursuant to Section 14 hereof), with Aetna Life and Casualty or such other reputable insurance carriers and through such brokers as shall be directed in writing by Owner, such property insurance as is provided for below. Initially, and until otherwise directed by Owner, property insurance shall be in an amount equal to 105% of the initial purchase price per Car or, if a greater amount is required by the holder of the Lien, such greater amount, insuring against loss and destruction of, and damage to, such Item arising out of physical damage caused by fire, windstorm, explosion and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or operating property of a similar character or engaged in a business similar to that engaged in by Manager with a deductible amount not in excess of \$500 per Item of Equipment. Each such insurance policy shall (i) name Owner, Secured Party and any other party designated by Owner as insureds as their respective interests may appear, (ii) provide that such policy will not be invalidated as against Owner or Secured Party because of any violation of a condition or warranty of the policy or the application therefor by Manager, (iii) provide that such policy may be materially altered or cancelled by the insurer only after thirty (30) days' prior written notice to the Owner and Secured Party, (iv) provide that such policy shall be prepaid a minimum of ninety (90) days in advance, and (v) provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums shall operate in the same manner as if it were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by

Owner. Such insurance policies shall not have any co-insurance clauses or shall be in an amount sufficient to avoid co-insurance.

(b) Manager will procure and maintain during the term of this Agreement, and any renewals thereof (and thereafter during the period in which the Equipment is being returned or stored pursuant to Section 14 hereof), with Aetna Life and Casualty or such other reputable insurance carriers and through such brokers as shall be directed in writing by Owner, comprehensive general liability insurance against bodily injury and third party property damage for each Item of Equipment with liability limits not less than \$3,000,000 and with no deductible. Each such insurance policy shall (i) name Owner, Secured Party and any other party designated by Owner as insureds as their respective interests may appear, (ii) provide that such policy will not be invalidated as against Owner or Secured Party because of any violation of a condition or warranty of the policy or the application therefor by Manager, (iii) provide that such policy may be materially altered or cancelled by the insurer only after thirty (30) days' prior written notice to Owner and Secured Party, (iv) provide that such policy shall be prepaid a minimum of ninety (90) days in advance, and (v) provide that all of the provisions thereof except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums shall operate in the same manner as if it were a separate policy covering each insured and shall be primary without right of contribution from any insurance carried by Owner.

(c) Manager shall procure and maintain during the term of this Agreement such other insurance or different amounts or limits as Owner may, from time to time, direct in writing or, if Manager is unable so to do, Owner may do so and be reimbursed therefor from Revenues as an Operating Expense.

Manager shall deliver to Owner, prior to the commencement of the term hereof for any Item of Equipment (and at such other time or times as Owner may reasonably request) and from time to time, but within at least 15 days prior to the expiration date of each policy of such insurance in respect to insurance to be renewed by Manager, a certificate signed by a firm of independent insurance brokers appointed by Owner, or if not, appointed by Manager and not objected to by Owner, showing the insurance then maintained, or to be maintained in the case of renewals, by Manager pursuant to this Section 12 with respect to the

Items of Equipment and the expiration date of each policy of such insurance, and stating the opinion of said firm that the insurance then carried and maintained, or to be carried and maintained, on or with respect to the Items of Equipment complies, or will comply, as the case may be, with the terms hereof; provided, however, that Owner shall be under no duty to examine such certificate, opinion or other evidence of insurance, or to advise Manager in the event that its insurance is not in compliance with this Agreement. Copies of all policies will be furnished to Owner promptly upon request, and originals to the Secured Party.

In the event of failure on the part of the Manager to provide and furnish any of the aforesaid insurance, Owner, upon notice to Manager, may procure such insurance and Manager shall reimburse Owner out of Revenues for all expenditures made by the Owner for such insurance, provided, however, that such expenditures are and shall continue to be an Operating Expense.

12.2 Application of Insurance Proceeds. If any Item of Equipment is rendered unusable as a result of any physical damage to, or destruction of, the Equipment, Manager shall give to Owner immediate notice thereof. Manager shall determine, within fifteen (15) days after the date of occurrence of such damage or destruction, whether such Item of Equipment can be repaired. Subject to the rights of the Secured Party, in the event Manager determines that the Item of Equipment cannot be repaired, such proceeds shall be disbursed as provided above in Section 12.1(a)(i) and this Agreement shall terminate with respect to such Item of Equipment, except for obligations theretofore accrued hereunder. In the event Manager determines that such Item of Equipment can be repaired, Manager shall advise Owner of the cost thereof and, if approved by Owner, shall cause such Item of Equipment to be promptly repaired as an Operating Expense.

SECTION 13. STATUS REPORTS AND INSPECTION.

13.1 Status Reports. On or before April 15, in each year, commencing with the year 1980, Manager will furnish to Owner an accurate statement as of the end of the preceding calendar year signed by the President or any Vice President of Manager (a) showing the numbers of the Items of Equipment then managed hereunder, the amount, description and numbers of all Items of Equipment that have suffered any

damage or loss during such calendar year (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Owner may reasonably request, (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4 hereof shall have been preserved or replaced, (c) describing the insurance coverage maintained by Manager pursuant to Section 12.1 hereof, and (d) stating that a review of the activities of Manager during such year has been made under his supervision with a view to determining whether Manager has kept, observed, performed and fulfilled all of his obligations under this Agreement and that to the best of his knowledge, Manager has during such year kept, observed, performed and fulfilled all such covenants, obligations and conditions contained or referred to herein, or if an Event of Default, or an event which with the passage of time or the giving of notice or both would cause an Event of Default, has occurred and is continuing, specifying such Event of Default and all such events and the nature and status thereof and what action Manager proposes to take with respect thereto.

13.2 Owner's Inspection Rights. Owner shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and Manager's records with respect thereto, at such times during normal business hours as shall be reasonable to confirm to Owner the existence and proper maintenance thereof during the continuance of this Agreement.

13.3 Other Reports and Inspection Rights. Manager agrees that it will furnish, or cause to be furnished to Owner the following:

(a) Upon each disbursement date, a statement summarizing Gross Receipts, Operating Expenses and Net Revenues in respect to the Equipment for the three months prior to such disbursement date and, in addition, on each March disbursement date a statement certified as correct by the chief financial officer of Manager itemizing such utilization for the previous 12 months, the Gross Receipts, Operating Expenses, Maintenance Fees, Net Revenues and Management Fees charged by Manager in respect thereto and the disbursements made to Owner; and

(b) such additional information as Owner may reasonably request concerning Manager in order to enable Owner to determine whether the covenants, terms and provisions of this Agreement have been complied with by Manager.

Owner (or such persons as it may designate) may visit, inspect and examine, at such times and from time to time as shall be reasonable, the records or books of account of Manager relating to the Equipment and to discuss the affairs, finances and accounts of Manager relating to the Equipment with its officers and independent accountants, upon prior notice to Manager, during normal business hours.

SECTION 14. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Agreement or any extension thereof, Manager will, at the cost and expense of Owner, deliver possession of the Equipment to Owner upon such storage tracks within the continental United States and store the Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day period to any connecting carrier for shipment, all as directed by Owner upon not less than thirty-five (35) days prior written notice to Manager. During any such storage period, Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Item of Equipment may inspect the same. All movement and storage of each Item of Equipment is to be at the risk and expense of Owner except in the case of negligence or willful misconduct of Manager, or of its employees or agents, resulting in the death of any person, any injury to any person or property or any damage to the Equipment while delivering possession of it to Owner or storing it in accordance with this Section. All Revenues earned in respect to the Equipment after the date of termination of this Agreement, or any extension thereof, shall belong to Owner and, subject to the rights of Secured Party, if received by Manager, shall be promptly turned over to Owner.

SECTION 15. DEFAULT.

15.1 Events of Default. If, during the continuance of this Agreement, one or more of the following events (each such event being herein called an Event of Default) shall occur and, if not otherwise provided, Owner has given notice thereof to Manager (although Manager shall not have time to cure except as expressly provided below):

(a) Default shall be made in the disbursement to Owner of any part of the Net Revenues to be disbursed to Owner as provided in Section 2 hereof, and such default shall continue for twenty (20) days after receipt of written notice that the same is due and payable; or

(b) any representation or warranty made herein or pursuant hereto or in any statement or certificate furnished to Owner pursuant to or in connection with this Agreement shall have been untrue in any material respect when made; or

(c) Manager shall make or permit any unauthorized assignment or transfer of this Agreement or possession of the Equipment or any portion thereof; or

(d) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Manager contained herein and such default shall continue for (i) ten (10) days, as to Section 22, or (ii) in other events, thirty-five (35) days after written notice from Owner specifying the default and demanding the same to be remedied; or

(e) any proceedings shall be commenced by or against Manager for any relief which includes, or might result in, any modification of the obligations of Manager hereunder, under any bankruptcy or insolvency law or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of Manager under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for Manager or for the property of Manager in connection with any such proceeding in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceeding shall have been commenced, whichever shall be earlier; or

(f) any proceeding shall be commenced by or against Manager for any relief which includes, or might result in, modification of the obligations of Manager

under this Agreement under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue) and subsequently the Secured Party declares that an Event of Default has occurred under the Conditional Sales Agreement and has notified Owner that Secured Party intends to exercise its rights under such Conditional Sales Agreement;

then, in any such case, Owner, its successor and assigns, at its option, may:

(1) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Manager of the applicable covenants of this Agreement or to recover damages for the breach thereof, including reasonable attorneys' fees and expenses; or

(2) by notice in writing to Manager, terminate this Agreement, whereupon all right of Manager to manage the Equipment shall absolutely cease and terminate, but Manager shall remain liable as hereinafter provided; provided, however, that Owner shall have a right to recover from Manager any and all amounts which, under the terms of this Agreement, may be then due or which may have accrued to the date of such termination.

In addition, Manager shall be liable, during or after the exercise of any of the foregoing remedies, for all reasonable attorneys' fees and other expenses by reason of the occurrence of an Event of Default or the exercise of Owner's remedies in respect thereto and for damages as provided by law.

15.2 Cumulative Remedies. The remedies in this Agreement provided in favor of Owner shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently, and shall be in addition to all other remedies in its favor existing at law or in equity.

15.3 Owner's Exercise of its Rights. The failure or delay of Owner or its assigns to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The singular or partial exercise of any such right shall also not preclude any other or further exercise thereof, or the exercise of any other right of the hereunder.

SECTION 16. RETURN OF EQUIPMENT UPON DEFAULT.

16.1 Manager's Duty to Return. If the Owner shall terminate this Agreement pursuant to Section 15 hereof, Manager shall forthwith deliver possession of the Equipment to Owner in the condition such Equipment is required to be maintained hereunder. For the purpose of delivering possession of any Item of Equipment to Owner as above required, Manager shall, at its own cost, expense and risk:

(a) Forthwith, but in any event within thirty-five (35) days, assemble and place each such Item of Equipment upon such storage tracks as Owner may reasonably designate within the continental United States or, in the absence of such designation, as Manager may select;

(b) provide storage, at the risk of Manager, for each Item of Equipment on such tracks without charge for insurance, rent or storage until such Equipment has been sold, leased, or otherwise disposed of by Owner; and

(c) transport the Equipment to any place of interchange on the lines of a railroad within a 25-mile radius of such storage tracks, all as Owner may reasonably direct upon not less than thirty (30) days written notice to Manager.

16.2 Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are at the expense and risk of Manager and are the essence of this Agreement, and upon application to any court of equity having jurisdiction in the premises, Owner shall be entitled to a decree against Manager requiring specific performance of the covenants of Manager to so assemble, deliver, store and transport the Equipment.

16.3 Manager's Waiver. Manager hereby expressly waives any and all claims against Owner and its assigns or agents for damages of whatever nature in connection with the retaking of any Item of Equipment in any reasonable manner.

SECTION 17. PERFORMANCE STANDARDS.

Manager agrees to use its best efforts to minimize maintenance, insurance, repair and other Operating Expenses. If Manager shall, directly or through any affiliated entity, furnish any work, labor or materials as an Operating Expense, the cost thereof shall in no event exceed the normal and customary charges by private shops therefor.

If Manager shall fail to pay any Operating Expense when due, and after five (5) days written notice thereof by Owner, unless the payment thereof is deferred by contest being conducted by Manager, Owner may pay the same and Manager shall forthwith reimburse Owner out of Gross Receipts, which reimbursement shall be deemed an Operating Expense hereunder.

Manager agrees to perform its obligations hereunder with due diligence, in an efficient and proper manner, in accordance with the highest ethical and business standards of railcar management, and in the best interests of Owner.

SECTION 18. NO TRANSFER BY MANAGER.

Manager shall not, without first obtaining the written consent of Owner, which consent shall not be unreasonably withheld or delayed, sell, assign or transfer any or all of its rights or interests in, to or under this Agreement but, in any event, Manager named herein shall remain liable for the full performance of all of the obligations of Manager under this Agreement.

Nothing in this Section 18 shall be deemed to restrict the right of Manager to assign or transfer its interest under this Agreement to any corporation, now controlled, under common control with or controlling Manager (which shall have duly assumed in writing the obligations hereunder of Manager), into or with which Manager shall have become merged or consolidated or which shall have acquired all, or substantially all, of the property of Manager; provided, however, that any such assignee, successor or transferee will not, after giving effect to such merger or consolidation or acquisition of properties (a) be in default under any provisions of this Agreement, (b) have a net worth (determined in accordance with generally accepted principles of accounting) less than 90% of that

of Manager immediately preceding such merger, consolidation or acquisition, and (c) have altered in any way Manager's obligations to Owner hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 19. CANCELLATION.

Owner reserves the right to cancel and terminate this Agreement and all rights of Manager hereunder upon any sale or other disposition of any of the Equipment at any time after the fifth anniversary of the date of this Agreement. If only a portion of the Equipment is so sold or transferred, this Agreement shall terminate only to the extent thereof. Manager reserves the right to cancel and terminate this Agreement at any time after the fifth anniversary of the date of this Agreement, upon sixty (60) days' prior written notice to Owner. All payments due hereunder shall be promptly computed and paid as of the date of such cancellation.

SECTION 20. NO JOINT VENTURE OR PARTNERSHIP.

Owner and Manager recognize and acknowledge that this Agreement is not intended to create a partnership, joint venture or other entity between Owner and Manager. Manager shall not take any action or engage in any course or dealing which would suggest or create an inference that there is any such understanding or agreement. Manager shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct, or (ii) cause the Cars to be reclassified without the consent of Owner.

SECTION 21. FOREIGN USAGE.

Manager shall promptly report to Owner any usage of any Car outside the United States. Manager shall not permit any Car to be used in a manner or by an entity which might, immediately or upon the passage of time, cause a loss of the tax credit to Owner under Section 38 (and related sections) of the Internal Revenue Code of 1954, as amended.

SECTION 22. COMPLIANCE WITH CONDITIONAL SALES AGREEMENT.

Manager has examined a full copy of the Conditional Sales Agreement. Owner is relying upon Manager to perform its duties hereunder in a manner which complies with and will not cause a default to occur under the Conditional Sales Agreement or any subsequent agreement creating any lien or other interest in the Equipment to secure the payment of indebtedness, a copy of which shall be delivered to Manager, and, subject to Owner's reimbursement obligations under Section 2.1, Manager agrees so to perform.

SECTION 23. PARITY LOADING.

Manager represents that it heretofore has not, and agrees that it will not hereafter, enter into any agreement to load railroad cars not owned by Manager or any parent, affiliate or subsidiary ("Non-Owned Cars"), nor engage in any course of practice by which it loads Non-Owned Cars, in preference to any of the Equipment, and that all Non-Owned Cars, including the Equipment, will be treated with commercially reasonable parity, although Non-Owned Cars other than the Equipment may be treated with less than parity. In all events, Manager will load the Cars prior to loading any railcars owned by Manager or any parent, affiliate or subsidiary.

SECTION 24. SUBORDINATION.

This Agreement and Manager's authority and rights hereunder are subject and subordinate in all respects to the liens and security interests upon the Cars and Revenues generated thereby held by Secured Party and by Seller.

SECTION 25. REPRESENTATIONS.

25.1 Representations and Warranties of Manager.
Manager represents and warrants to, and covenants and agrees with, Owner as follows:

(a) Manager is a corporation duly and validly organized and existing in good standing under the laws of the state of its incorporation and has all corporate power and authority to own its properties and carry

on its business in the places where such properties are located and such business is conducted.

(b) Manager has the power and authority to enter into this Agreement. There is no action, suit or proceeding pending against Manager before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Manager of this Agreement.

(c) The execution and delivery of this Agreement by Manager and the performance by it of its obligations hereunder, have been duly authorized by all necessary corporate action of Manager and do not violate or conflict with (i) any provision of Manager's Certificate of Incorporation or By-Laws, (ii) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority, or (iii) any agreement to which Manager is a party or by which Manager is bound.

(d) This Agreement constitutes the valid and binding obligation of Manager enforceable in accordance with its terms, subject, however, to laws of general application affecting creditors' rights.

(e) Manager is not subject to any restriction, indenture or agreement (including, without limitation, any agreements creating or relating to the lien of Secured Party) which, with or without the giving of notice, the passage of time, or both, prohibits or would be violated by the execution, delivery and consummation of this Agreement or which, except for the lien of Secured Party, by its terms causes or will cause any security interest to attach to the Equipment. All consents necessary for such execution, delivery or consummation by Manager have been obtained.

(f) There is no action, suit or proceeding pending against Manager before or by any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution and delivery by Manager of this Agreement and the performance by Manager of its obligations hereunder.

25.2 Representations and Warranties of Owner.
Owner represents and warrants to, and agrees with, Manager as follows:

(a) Owner has the power and authority to enter into this Agreement and to carry out the transactions contemplated hereunder and the execution, delivery and performance of this Agreement by Owner have been duly authorized by all necessary action of Owner.

(b) The execution and delivery of this Agreement and the performance by it of its obligations hereunder do not violate or conflict with (i) any law or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority, or (ii) any agreement to which Owner is a party or by which Owner is bound. There is no action, suit or proceeding against Owner before any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair the execution, delivery or performance by Owner of this Agreement.

(c) This Agreement constitutes the valid and binding obligation of Owner enforceable in accordance with its terms, subject, however, to laws of general application affecting creditors' rights.

(d) Owner is not subject to any restriction or agreement which, with or without the giving of notice, the passage of time, or both, prohibits or would be violated by the execution, delivery and consummation of this Agreement and transactions herein referred to. No consents are necessary for such execution, delivery and consummation by Owner.

(e) Owner is not a party to any indenture, mortgage, deed of trust or other written agreement of any nature whatsoever which, by its terms, causes any security interest to attach or hereafter to attach to the Equipment in any manner except the lien held by Seller.

SECTION 26. MISCELLANEOUS.

26.1 Additional Documents. Each party hereto shall execute and deliver all such further instruments and documents as may reasonably be requested by the other party in order to fully carry out the intent and accomplish the purpose of this Agreement and the transactions referred to herein.

26.2 Notices. Any notice, request or other communication required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mail, first class, postage prepaid, addressed as follows:

If to the Manager:

Upper Merion and Plymouth
Railroad Company
c/o FSC Corporation
Suite 404
1000 RIDC Plaza
Pittsburgh, PA 15238

If to the Owner:

The W-A Equipment Company
1114 Avenue of the Americas
New York, New York 10036

plus such one additional addressee as either may designate by notice hereunder, or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

26.3 Approvals and Consents. Any approval or consent by Owner called for hereunder shall be deemed given if no objection has been received by Manager within thirty (30) days from the giving of notice or request for approval or consent relating thereto.

26.4 Amendments. This Agreement may be amended or varied only by a document, in writing, of even or subsequent date hereto, executed by Owner and Manager.

26.5 Successors and Assigns. Subject to the provisions of Section 18, all covenants and agreements contained in this Agreement shall bind Manager and Owner and shall inure to the benefit of the respective successors, assigns and transferees of Manager, to the extent assignment is permitted hereunder, and Owner, in the same manner and to the same extent and with like effect as if such successors and assigns were named in such covenants and agreements and were made parties to this Agreement. Except as provided for in this Section 26, nothing contained in this Agreement is intended to create any rights in any third persons, including, without limitation, any users of the Equipment or any persons claiming through or under any such users.

26.6 Execution in Counterparts. This Agreement may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Secured Party shall be deemed to be the original counterpart.

26.7 Law Governing. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 of Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

26.8 Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26.9 Severability; Effect and Modification of the Agreement. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereto duly authorized and Manager has caused its corporate seal to be hereto affixed as of the day and year first above written.

[CORPORATE SEAL]

UPPER MERION AND PLYMOUTH
RAILROAD COMPANY

ATTEST:

By _____

By _____

THE W-A EQUIPMENT COMPANY

By _____

By _____

STATE OF)
 : ss.:
COUNTY OF)

On this ____ day of _____, 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, did depose and say that he is a manager of The W-A Equipment Company, a general partnership organized under the laws of the State of New York, the partnership described in and who executed the foregoing Agreement and he acknowledged the foregoing Agreement as his free act and deed.

Notary Public

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

On this ____ day of _____, 1980, before me personally appeared _____, to me personally known, who, being by me duly sworn, did depose and say that he is a _____ of Upper Merion and Plymouth Railroad Company, the corporation which executed the foregoing Agreement and that the seal affixed to the foregoing Agreement is the corporate seal of said corporation, that said Agreement 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 Agreement was the free act and deed of said corporation.

Notary Public

SCHEDULE A

The Equipment consists of twenty (20) 100 ton Chessie System Design, open top hopper cars bearing identifying numbers UMP 7255 through UMP 7274, inclusive, manufactured by The Chessie Corporation ("Chessie") under Conditional Sales Agreement made with Upper Merion and Plymouth Railroad Company dated as of February 15, 1980 (the "Chessie Agreement").

The Equipment is subject and subordinate to the lien (the "Lien") originally held by Chessie (which has been assigned by Chessie to The Ohio National Life Insurance Company) pursuant to the Chessie Agreement.

SCHEDULE B

CERTIFICATE OF ACCEPTANCE UNDER
MANAGEMENT AND MAINTENANCE CONTRACT

TO: The W-A Equipment Company

I hereby certify that I am a duly appointed and authorized representative of Upper Merion and Plymouth Railroad Company under that certain Management and Maintenance Contract dated as of February 20, 1980 with the The W-A Equipment Company.

I further certify that I have inspected, received, approved and accepted deliver under said Management and Maintenance Contract of the following Items of Equipment:

TYPE OF EQUIPMENT:	100 ton open-top hopper cars
PLACE ACCEPTED:	Russell, Kentucky
NUMBER OF UNITS:	20
MARKED AND NUMBERED:	UMP 7255 to UMP 7274

and certify to the matters described in Section 1.2 of said Management and Maintenance Contract.

The execution of this Certificate will in no way relieve or decrease the responsibility of the Builder for any warranties it as made with respect to the Equipment.

Dated: February 20, 1980
