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12208 A  
RECORDATION NO. .... Filed 1425

No. 0-267A135  
Date SEP 23 1980  
Fee \$ 200.00  
100 Washington, D.C.  
12208 C

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INTERSTATE COMMERCE COMMISSION

LEON C. BAKER  
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COUNSEL

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INTERSTATE COMMERCE COMMISSION

12208  
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September 23, 1980

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. .... Filed 1425

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INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECEIVED  
SEP 23 2 13 PM '80  
I.C.C.  
FEE OPERATION BR.

Dear Sir:

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) Security Agreement dated September 23, 1980 between Funding Systems Railcars, Inc., as debtor, and U.S. Steel Credit Corporation, as secured party, (ii) Non-Negotiable Installment Promissory Note -- Security Agreement dated September 23, 1980 between Funding System Railcars, Inc., as secured party, and The Weiler-Arnaw Investment Company, as debtor, (iii) Management and Maintenance Contract dated September 23, 1980 between The Weiler-Arnaw Investment Company, as owner, and Wisconsin & Southern Railroad Co., as manager; and (iv) Transferee Agreement dated September 23, 1980 between The Weiler-Arnaw Investment Company, as transferee, and U.S. Steel Credit Corporation, 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:

*Handwritten signature: C. Leonard Gordon*

One hundred (100) 52' 6" general purpose gondola cars bearing reporting marks and numbers WSOR 5164 through WSOR 5263, both inclusive.

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

(i) Security Agreement

Secured Party: U.S. Steel Credit Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15219

Debtor: Funding Systems Railcars, Inc.  
c/o FSC Corporation  
1000 RIDC Plaza  
Pittsburgh, Pennsylvania 15238

(ii) Non-Negotiable Installment Promissory Note -- Security Agreement

Debtor: The Weiler-Arn timer Investment 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 15238

(iii) Management and Maintenance Contract

Owner: The Weiler-Arn timer Investment Company  
1114 Avenue of the Americas  
New York, New York 10036

Manager: Wisconsin & Southern Railroad Co.  
c/o FSC Corporation  
1000 RIDC Plaza  
Pittsburgh, Pennsylvania 15238

*Rec. No. \_\_\_\_\_*

*Rec. No. \_\_\_\_\_ -A*

*Rec. No. \_\_\_\_\_ -B*

(iv) Transferee Agreement

*Rec. No. 1114*

Transferee: The Weiler-Arrow Investment Company  
1114 Avenue of the Americas  
New York, New York 10036

Secured Party: U.S. Steel Credit Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15219

Manager: Wisconsin & Southern Railroad Co.  
c/o FSC Corporation  
1000 RIDC Plaza  
Pittsburgh, Pennsylvania 15238

The undersigned is attorney-in-fact for Wisconsin & Southern Railroad Co. 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

12208-18

RECORDATION NO. .... Filed 1425

SEP 23 1980 -2 20 PM

INTERSTATE COMMERCE COMMISSION

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MANAGEMENT AND MAINTENANCE CONTRACT

Dated as of September 23, 1980

BETWEEN

WISCONSIN & SOUTHERN RAILROAD CO.

MANAGER

AND

THE WEILER-ARNOW INVESTMENT 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
- SCHEDULE C -- Report by Manager

MANAGEMENT AND MAINTENANCE CONTRACT

MANAGEMENT AND MAINTENANCE CONTRACT dated as of September 23, 1980 (this "Agreement") between WISCONSIN & SOUTHERN RAILROAD CO., a Wisconsin corporation (the "Manager"), and THE WEILER-ARNOW INVESTMENT 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 U.S. Steel Credit Corporation (the "Secured Party") pursuant to the Security Agreement referred to in Schedule A hereto (the "Security Agreement"), 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 DELIVERY 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) collected as result of 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, insurance proceeds and condemnation awards. "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 and repairs, except to the extent that the cost of such maintenance and repairs is in excess of the Maintenance Fee under Section 8.3 hereof; alterations, 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 Section 16; expenses for any car hire reclaim relief properly and reasonably allowed any railroad; and, only after payment of all other Operating Expenses, Management Fees (as hereinafter defined) and that portion, if any, of the Maintenance Fee provided in Section 8.3 hereof that is in excess of the actual costs of maintenance and repairs of the Equipment. 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; and further provided that if any portion of the Maintenance Fee provided in Section 8.3 hereof that is in excess of the actual costs of maintenance and repairs of the Equipment is advanced by Manager, such portion shall only be reimbursed by Owner to Manager out of future Revenues in excess of the amounts referred to in items (i) and (ii) below or, if such Revenues are insufficient to so reimburse Manager during the term hereof, such portion shall be reimbursed by Owner to Manager within 30 days after the end of the term or earlier termination of this Agreement. No debt service shall be deemed an Operating Expense.

Subject to Secured Party's rights to receive Revenues under the Security Agreement, 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, to pay all Operating Expenses other than the Management Fees provided in Section 2.2 hereof and that portion, if any, of the Maintenance Fee provided in Section 8.3 hereof that is in excess of the actual costs of maintenance and repairs of the Equipment;

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

(iii) Third, to pay that portion, if any, of the Maintenance Fee provided in Section 8.3 hereof that is in excess of the actual costs of maintenance and repairs of the Equipment, including, without limitation, any arrearages thereof;

(iv) Fourth, to pay the Management Fees provided in Section 2.2 hereof; and

(v) Fifth, to disburse any balance of such Revenues to Owner as provided in Section 2.3 hereof.

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 the following percentages of all Gross Receipts, excluding insurance or condemnation or sale proceeds, derived in each calendar year (or shorter period ending on any December 31 during the term hereof if this Agreement is not in for an entire year ending on such December 31) during or on account

of the term hereof: (a) 10% of such Gross Receipts up to a sum equal to the product of \$6,900 and the average number of Cars subject to this Agreement during such year (or shorter period); plus (b) such additional Gross Receipts that are in excess of the Gross Receipts described in (a) above, up to but not in excess of the product of \$690 and the average number of Cars subject to this Agreement during such year (or shorter period); plus (c) 20% of such Gross Receipts that are in excess of the Gross Receipts described in (a) and (b) above, it being the intent hereof to provide Manager with an economic incentive to increase utilization of the Cars. 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 Loan Agreement dated as of the date hereof between Seller, as debtor, and Secured Party, as lender (the "Loan Agreement") and the Security Agreement, Net Revenues (except for Owner Indebtedness then due and payable which, pursuant to the provisions of Section 2.1 hereof, is to be disbursed, in behalf of Owner, to the holder of a lien on the Equipment securing the payment of such Owner Indebtedness) shall be disbursed by Manager to Owner, at its address set forth elsewhere in this Agreement, in quarterly installments on the last day of each calendar quarter accompanied by the statements required to be furnished pursuant to Section 13.3(a) hereof, indicating the computation thereof. The first installment of such Net Revenues for each Item of Equipment shall be so disbursed on December 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. Any parts installed or replacements made by Manager upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in Owner without cost or expense to Owner. Manager shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. If Manager shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, Manager agrees that it will, prior to the return of such Item of Equipment to Owner hereunder, remove the same at its own expense without causing material damage to such Item of

Equipment. Title to any such readily removable additions or improvements shall remain with Manager.

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 reg-

ulations 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) and 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 \$1,000 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 or Secured Party. 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 or Secured Party.

(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 and Secured Party, 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 (or if such Item can be repaired but the Owner does not approve such repair), such proceeds of insurance 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. Subject to the rights of Secured Party, in the event Manager determines that such Item of Equipment can be repaired and Owner approves such repair, such proceeds of insurance shall be released to the Manager either (i) upon a written certification signed by the President, any Vice President or the Treasurer of Manager for the payment of, or to reimburse Manager for the payment of, the cost

(which shall be treated as an Operating Expense) of repairing, restoring or replacing the Item of Equipment which has been lost, damaged or destroyed so long as the restoration, replacement and repair parts become immediately subject to all of the terms and conditions of this Agreement (with a further statement that such Item of Equipment has been fully restored, replaced or repaired) and all public filings, recordings and registrations necessary or expedient to perfect title thereto in Owner are accomplished by Manager at its expense (which application shall be accompanied by satisfactory evidence of such cost and of the completion of such repair, restoration or replacement). If Manager is at the time of the application in default in the payment of any other liability of Manager to Owner or the Secured Party, such proceeds shall be applied against such liability.

In furtherance of the foregoing, the Owner and Manager do hereby irrevocably constitute and appoint the Secured Party as their true and lawful attorney with full power of substitution for them and in their name, place and stead, to ask, demand, collect, receive, receipt for, sue for, compound and given acquittance for any and all insurance proceeds, payments and other sums payable with respect to the Equipment or the foregoing damages or liabilities with full power to settle, adjust or compromise any claim thereunder as fully as either Owner or Manager could itself do, and to endorse the name of Owner and/or Manager on all commercial paper or instruments given in payment or part payment thereof, and in its discretion to file any claim or take any other action or proceeding, either in its own name or in the name of Owner or Manager or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such proceeds, payments and other sums and the rights to be afforded hereby. Third parties shall not be required to obtain the consent or approval of Owner or Manager in dealing with Secured Party in the exercise of its rights and powers hereunder, the authority of the Secured Party to be conclusively evidenced by its taking any such action. However, as between Owner, Manager and Secured Party, Secured Party shall act reasonably in the exercise of its rights and powers hereunder giving due consideration to the rights and interests of Owner and Manager.

### SECTION 13. STATUS REPORTS AND INSPECTION.

13.1 Status Reports. On or before April 15, in each year, commencing with the year 1981, 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 any 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 and Secured Party 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) Within 15 days after each disbursement date, a statement, substantially in the form of Schedule C hereto, summarizing Revenues, and the application of 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 Sections 12 and 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,

ments 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 Security Agreement and has notified Owner that Secured Party intends to exercise its rights under such Security Agreement;

then, in any such case, Owner, its successor and assigns, at its or their 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 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 of 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 ex-

ceed 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 hereunder 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 or which might impair the rights or security interest of Secured Party, or to be used in Unitrain service.

SECTION 22. COMPLIANCE WITH SECURITY AGREEMENT.

Manager has examined a full copy of the Security 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 Security 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:

Wisconsin & Southern  
Railroad Co.  
c/o FSC Corporation  
Suite 404  
1000 RIDC Plaza  
Pittsburgh, PA 15238

If to the Owner:

The Weiler-Arnou Investment Company  
1114 Avenue of the Americas  
New York, New York 10036

in each case with a copy to:

U.S. Steel Credit Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15230

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

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]

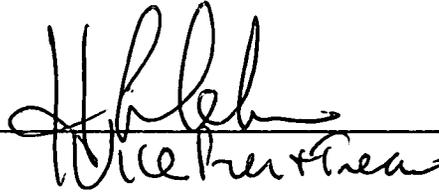
WISCONSIN & SOUTHERN  
RAILROAD CO.

ATTEST:

BY



BY



WITNESS:

THE WEILER-ARNOW INVESTMENT

BY



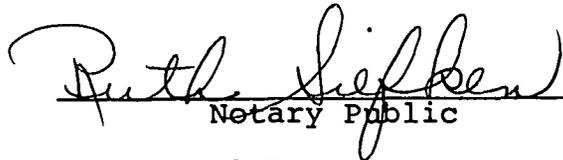
BY

COMPANY



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

On this 19<sup>th</sup> day of September, 1980, before me personally appeared ALAN G. WEILER, to me personally known, who being by me sworn did depose and say that he is Associate General Manager of The Weiler-Arnou Investment Company, the partnership which executed the foregoing document, that said document was signed by him on behalf of said partnership, that he had the authority to sign the same, and he acknowledged that the execution of the foregoing document was the free act and deed of said partnership.

  
\_\_\_\_\_  
Notary Public

**RUTH SIEFKEN**  
Notary Public, State of New York  
No. 41-898859  
Qualified in Queens County  
Certificate filed in New York County  
Commission expires March 30, 1982

STATE OF )  
 : ss.:  
COUNTY OF )

On this \_\_\_\_\_ day of September , 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did depose and say that he is a partner of The Weiler-Arnov Investment 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

*Pennsylvania*  
STATE OF ~~NEW YORK~~ )  
*Allegheny* ss.:  
COUNTY OF ~~NEW YORK~~ )

On this *2nd* day of September , 1980, before me personally appeared *Harold S. Berkman*, to me personally known, who, being by me duly sworn, did depose and say that he is *Vice President* Wisconsin & Southern Railroad Co., 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.

*Sandra L. Kropp*  
\_\_\_\_\_  
Notary Public

SANDRA L. KROPP, Notary Public  
Pittsburgh, Allegheny County, Pa.  
My Commission Expires June 27, 1981

SCHEDULE A

The Equipment consists of one hundred (100) 52'6" general purpose gondola cars bearing identifying numbers WSOR 5164 through WSOR 5263, inclusive, manufactured by Thrall Car Manufacturing Company under Purchase Order Agreement made with Funding Systems Railcars, Inc. ("Railcars") dated as of December 21, 1979, as amended.

The Equipment is subject and subordinate to the lien (the "Lien") of U.S. Steel Credit Corporation pursuant to the Security Agreement made with Railcars dated as of September 23, 1980.

SCHEDULE B

CERTIFICATE OF ACCEPTANCE UNDER  
MANAGEMENT AND MAINTENANCE CONTRACT

TO: The Weiler-Arnou Investment Company

I hereby certify that I am a duly appointed and authorized representative of Wisconsin & Southern Railroad Co. under that certain Management and Maintenance Contract dated as of September , 1980 with the The Weiler-Arnou Investment Company.

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

TYPE OF EQUIPMENT:	general purpose 52'6" gondola cars
PLACE ACCEPTED:	Griffith, Indiana
NUMBER OF UNITS:	100
MARKED AND NUMBERED:	WSOR 5164- 5263

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: September \_\_, 1980

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5.	Cumulative Deferred Maintenance Fees, Balance due from Prior Periods	
a.	Total excess of Maintenance Fees payable over actual expenditures from prior periods . . . . .	_____
b.	Subtotal (but not below zero) (4) . . . . . (Deficit remaining: )	\$ _____
6.	Management Fees (Current)	
a.	Total Management Fees due currently. . . . .	_____
b.	Subtotal (but not below zero) (5) (Deficit for Current Period is \$ )	\$ _____
7.	Cumulative deferred Management Fees; Balance due from Prior Periods	
a.	Total Management Fees due from prior periods. . . . .	_____
b.	Subtotal (but not below zero) (5) (Deficit from Prior Periods remaining: \$ )	\$ _____
8.	Cash Flow to Investor Entire balance of Revenues:	\$ _____

FOOTNOTES:

- (1) Insert here the lessor of (a) actual expenditures for Repair and Maintenance or (b) the Maintenance Fee, as per Management and Maintenance Contract.
- (2) If there is an excess of current debt service over available revenue such deficit shall be deferred pursuant to Installment Note Paragraph 5.2. Deficit amounts are noted in space provided.
- (3) If there is an excess of cumulative deferred debt service over available revenue, such deficit shall be deferred pursuant to Installment Note Paragraph 5.2. Amount of deficit is entered in space provided.
- (4) If there is an excess of Maintenance Contract fees due over available revenue, such Maintenance Contract fees shall be deferred. Amount of deficit is entered in space provided.
- (5) If there is an excess of Management Fees due over available revenue, such Management Fees shall be deferred. Amount of deficit is entered in space provided.

SCHEDULE A TO REPORT BY MANAGER

STATEMENT OF REVENUES/UTILIZATION

Car Nos. -

Period of Report: \_\_\_\_\_ through \_\_\_\_\_

A. Maximum Revenue Potential for Period - ICC Rates Totals

$$\text{Mileage} \frac{\text{Rate}}{\text{Rate}} \times \frac{60}{\text{Assumed Mileage}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

$$\text{Per Diem} \frac{\text{Hourly Rate}}{\text{Hourly Rate}} \times 24 \times \frac{\text{No. Days in Period}}{\text{No. Days in Period}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

$$\text{Incentive Per Diem} \frac{\text{Hourly Rate}}{\text{Hourly Rate}} \times 24 \times \frac{\text{No. Days in Period}}{\text{No. Days in Period}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

Total Potential Revenue \$

B. Revenue Actually Earned for Period

$$\text{Mileage} \frac{\text{Rate}}{\text{Rate}} \times \frac{\text{Actual Miles (Average)}}{\text{Actual Miles (Average)}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

$$\text{Per Diem} \frac{\text{Hourly Rate}}{\text{Hourly Rate}} \times 24 \times \frac{\text{Actual Days (Average)}}{\text{Actual Days (Average)}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

$$\text{Incentive Per Diem} \frac{\text{Hourly Rate}}{\text{Hourly Rate}} \times 24 \times \frac{\text{Actual Days (Average)}}{\text{Actual Days (Average)}} \times \frac{\text{No. Cars}}{\text{No. Cars}} = \$$$

Total Revenue Earned \$

C. Utilization

Percent utilization for the period (i.e. actual Revenue Earned divided by Potential Revenue) was

8

D. Collection of Revenue Earned

Revenue Earned (See Item B, above): \$

Revenues Collected for Current Period \$

Revenues Earned but not Collected for Current Period \$

E. Summary of Revenues

Revenues Collected for Current Period \$

Revenue Earned (but not collected) for prior periods but now collected \$ \_\_\_\_\_

Total Revenues Collected \$ \_\_\_\_\_