

# Funding Systems Railcars, Inc.

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

4-219A091

No. \_\_\_\_\_  
Date AUG 6 1984  
Fee \$ 50.00  
ICC Washington, D.C.

14394  
RECORDATION NO. .... Filed 1425

July 31, 1984

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

AUG 6 1984 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed for recordation pursuant to the provisions of Section 11303 of Title 49 of the United States Code and the regulations thereunder are the original and one copy of the Reporting Mark Agreements, a primary document, dated May 17, 1983.

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

Funding Systems Railcars, Inc.  
Suite 370  
2215 Sanders Road  
Northbrook, IL 60062

Wisconsin & Southern Railroad Company  
511 Barstow  
Horicon, WI 53032

Wisconsin & Southern Leasing Co.  
Suite 370  
2215 Sanders Road  
Northbrook, IL 60062

Upper Merion and Plymouth Railroad Company  
P.O. Box 404  
Conshohocken, PA 19428

Upper Merion and Plymouth Leasing Co.  
Suite 370  
2215 Sanders Road  
Northbrook, IL 60062

ICC OFFICE OF  
THE SECRETARY  
AUG 6 11 29 AM '84  
MOTOR OPERATING UNIT

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

Two hundred (200) Open-Top Hopper Cars

*See Amended Agreed Order in doc, page 6 - (Exhibit 1)*

*VMP 6820-6919*

*PVS 1000-1099*

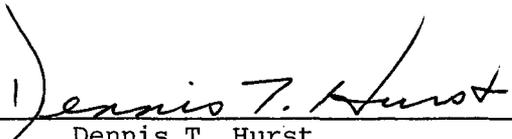
Mr. James H. Bayne  
Interstate Commerce Commission  
July 31, 1984  
Page 2

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

Also enclosed is a remittance in the amount of \$50.00 for payment of primary document recordation fees.

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

Very truly yours,

By   
Dennis T. Hurst

DTH:pb  
encl.

SENT VIA: Certified Mail

14394

RECORDATION NO. Filed 1425

STATE OF ILLINOIS )  
 )  
COUNTY OF DUPAGE )

AUG 6 1984 11 25 AM

INTERSTATE COMMERCE COMMISSION

On this 31<sup>st</sup> day of JULY, 1984, I hereby certify that I have compared the attached copy of the Reporting Mark Agreement between Funding Systems Railcars, Inc. and Wisconsin & Southern Railroad Company/Wisconsin & Southern Leasing Company/Upper Merion and Plymouth Railroad Company/Upper Merion and Plymouth Leasing Company dated MAY 17, 1983 with the original and have found the copy to be complete and identical in all respects to the original document.



*Sharon Schumacker*

Notary Public

My Commission Expires Jan. 27, 1985

REPORTING MARK AGREEMENT

This Agreement is entered into as of the 17th day of May, 1983 by and between Funding Systems Railcars, Inc., a Delaware Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("FSR") and Wisconsin & Southern Railroad Co., a Wisconsin Corporation having one of its principal places of business at 511 Barstow Street, Horicon, Wisconsin 53032 ("WSOR").

WHEREAS, FSR is principally engaged in the business of managing and leasing railcars for railcar owners; and

WHEREAS, FSR, pursuant to the terms and provisions of a proposed management contract appended as Exhibit B to that certain Stipulation for Amended Agreed Order dated May 17, 1983, all of which is annexed hereto as Exhibit 1, performs certain managerial services for Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America and Northern Life Insurance Company (collectively the "Northwestern Companies"), with respect to certain railcars owned by the Northwestern Companies; and

WHEREAS, WSOR is a Class III shortline railroad, wholly owned by FSR, principally engaged in the business of railroad freight operations; and

WHEREAS, WSOR is the owner of a registered railroad reporting mark; and

WHEREAS, by unwritten agreement and course of dealings, the WSOR Mark has been or may be affixed to certain railcars managed by FSR, including certain of the railcars owned by the Northwestern Companies; and

WHEREAS, the parties now desire to memorialize their agreement, and remain bound thereby.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, FSR and WSOR hereby agree as follows:

1. Definitions.

1.1 "AAR" means: Association of American Railroads.

1.2 "Car(s)" means: any railcar owned by the Northwestern Companies and managed by FSR pursuant to the Management Contract.

1.3 "Car Owner" means: the Northwestern Companies, the entities having legal title to the Cars, or such entities' duly authorized assignee.

1.4 "Costs" means: all expenses, charges or liabilities which may be assessed against WSOR on account of the lease or use of a Car bearing the WSOR Mark, including, but not limited to, maintenance, repairs, transportation, insurance, taxes and remarking.

1.5 "ICC" means: Interstate Commerce Commission

1.6 "Management Contract" means: the Stipulation for Amended Agreed Order between FSR and the Northwestern Companies dated May 17, 1983, under which FSR performs certain management services relating to the Cars for Car Owner.

1.7 "Revenues" means: all monies due or received on account of the lease or use of a Car including, but not limited to, per diem, mileage, rental, lease and guarantee payments, deposits and insurance proceeds.

1.8 UMLER means: Universal Machine Language Equipment Register.

1.9 "WSOR Mark" means: the registered reporting mark of WSOR.

1.10 "Unrelated Third Party" means: Car Owner, customers along WSOR's railroad track, or WSOR's connecting carriers and other non-affiliated railroads.

1.11 Other Terms. Unless elsewhere specifically defined herein, other terms shall have the meanings normally ascribed to them in the railroad industry.

## 2. Term.

A) The original term of this Agreement shall be from May 1, 1983 through December 31, 1985, unless terminated in writing by FSR prior thereto upon written notice to WSOR. The parties hereto expressly acknowledge that because this written instrument memorializes the unwritten past agreements and dealings of the parties, the commencement of the term of this Agreement antedates the execution of this document.

B) This Agreement shall automatically renew for one-year periods, unless FSR shall give written notice of non-renewal.

C) This Agreement shall terminate upon written notice from FSR to WSOR with respect to any Car which is lost or totally destroyed or which is withdrawn from the terms of this Agreement; provided, however, that FSR or WSOR, as the case may be, shall be obligated to collect all rental payments, mileage allowances and other sums, and to arrange for payment of all expenses, taxes, and other charges in accordance with the provisions of this Agreement attributable to the Cars with respect to periods prior to the termination of this Agreement. Notwithstanding any termination provision herein, if any Cars are placed in service which go beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned to FSR or the Car Owner by the user or lessee and all Revenues have been collected.

Notwithstanding the foregoing, in all events, this Agreement shall remain expressly subject to the terms and conditions of the Management Contract.

## 3. Use of the WSOR Mark.

WSOR hereby grants to FSR the limited right to use the WSOR Mark, as follows: FSR shall have the absolute right to affix, or cause to be affixed, to any Car the WSOR Mark or to cause the WSOR Mark to be removed from any Car. FSR shall be entitled to any information with respect to any Car bearing the WSOR Mark which is available from the AAR, ICC or any other source. Provided that the Car is in WSOR's possession, at the direction and expense of FSR or the Car Owner, WSOR shall change or cause to be changed the Car's reporting markings and/or numbers, at a cost to be negotiated by WSOR and FSR which shall not exceed the then current AAR rates. Use of the WSOR Mark shall in all respects be in accordance with AAR rules and regulations.

FSR agrees that it or the Car Owner, as the case may be, shall be responsible for any Costs which may be levied against WSOR solely resulting from the WSOR Mark being affixed to any Car.

4. Use of Cars by WSOR.

WSOR may use any Car, free of per diem and mileage charges to WSOR, on WSOR's railroad track, unless such car is on WSOR's railroad track in intraline service, in which case WSOR shall cause the Car to be kept free of product accumulation or corrosive materials. Notwithstanding anything herein to the contrary, WSOR remains responsible for handling carrier repairs to the Cars pursuant to AAR interchange rules.

WSOR shall not direct the movement of any Car whether or not such Car is on WSOR railroad tracks, without the prior consent of FSR.

5. Use of Track and Storage by FSR.

FSR shall have the right to place any Car on WSOR's railroad track at no cost to FSR. However, any switching or transportation charges with respect to the Cars paid to WSOR by Unrelated Third Parties shall be retained by WSOR.

FSR may direct WSOR to store or move any Car on WSOR's railroad tracks and such Car will be stored or moved at no cost to FSR. However, any storage fees relating to the Cars paid by an Unrelated Third Party shall be retained by WSOR.

6. Compensation to WSOR.

Except as otherwise expressly provided herein, as sole compensation to WSOR for all services performed by WSOR hereunder and for the use of the WSOR Mark, FSR shall pay to WSOR a fee, calculated on a calendar quarterly basis, as follows:

"50 percent of the aggregate gross Revenues (exclusive of switching and transportation charges payable to WSOR by Unrelated Third Parties and exclusive of railroad indemnity payments and insurance proceeds) collected on the Cars bearing the WSOR Mark, net of reclaims, in excess of 90% utilization for the aggregate number of Cars bearing the WSOR Mark in that calendar quarter."

As used in the foregoing, "utilization" shall be determined by the following formula:

(hourly per diem charges x 24 hours x 90 days)  
+ (per diem mileage rate x 50 miles x 90 days).

As used in the foregoing formula, "hourly per diem charges" and "per diem mileage rate" mean those charges and rates set forth in the UMLER tables. In the event a Car bears the WSOR Mark for less than 90 days in the applicable calendar quarter, the precise number of days which it bore the WSOR Mark shall be inserted in the above formula.

The first calculation of compensation payable to WSOR pursuant to this Agreement shall include the period commencing on the inception date of the Management Contract through June 30, 1984.

7. Disclaimer of Car Ownership and Disclaimer of Interest in Revenues by WSOR.

WSOR hereby acknowledges that it is not the owner of any of the Cars, and that the Revenues are not its property but that of the Car Owner and/or FSR as expressly set forth in the Management Contract. All Revenues received by WSOR are received by it as agent and shall, therefore, be held in trust, and shall be remitted immediately in kind to FSR. WSOR further acknowledges and covenants that it claims no security interest in Revenues and shall not in the future assert any security interest therein, and shall waive, release and agree not to enforce any claim to such Revenues, even if arising by operation of law.

8. Procurement and Termination of Leases.

FSR and WSOR, subject to the terms of the Management Contract and FSR's approval, shall have the right to procure assignments, operating leases, and other utilization agreements for any Car. In no event may any such agreement be terminated, modified or amended by WSOR, without the prior written consent of FSR. WSOR acknowledges and agrees that car assignments, operating leases, and utilization agreements relating to the Cars may be entered into in its name by FSR. WSOR further acknowledges and agrees that it shall not have any rights under any such agreements beyond those afforded to it hereunder.

WSOR hereby authorizes FSR during the term of this Agreement, and FSR hereby agrees, to assert and enforce from time to time, in the name of WSOR and for the account of FSR, whatever claims and rights WSOR may assert pursuant to any railcar usage agreement relating to the Cars.

9. Limitation of WSOR's Duties.

Notwithstanding WSOR's ownership of the WSOR Mark:

A) WSOR shall cooperate with FSR in collecting from any user, assignee and/or lessee all payments, car hire allowances and any other revenue or proceeds allocable or attributable to the Cars, including insurance benefits or railroad indemnity payments in the event of damage to or total destruction of a Car, which are not duly and promptly paid with respect to the Cars. Any such proceeds collected by WSOR shall be remitted in kind to FSR and shall belong to FSR and/or the Car Owner as provided in the Management Contract. FSR shall reimburse WSOR for its reasonable actual costs incurred in the collection of revenues and proceeds.

B) WSOR shall have no obligation for general accounting functions relating to Revenues or Costs allocable or attributable to the Cars. However, WSOR shall forward to FSR in a timely manner all information, including, but not limited to, financing, accounting, maintenance, repair, mileage, and movement data, which WSOR receives with respect to the Cars.

C) WSOR shall have no obligation regarding any Car to: (1) perform inspections of Cars not on its tracks; (2) review, reject, approve and audit each maintenance and repair invoice; (3) make arrangements for the routing of the Cars to repair shops; (4) arrange for alterations, modifications, improvements or additions to the Cars; or (5) register the Cars and file or have filed all required initial and ongoing reports with the AAR, ICC, Department of Transportation, UMLER,

or any other regulatory authorities having jurisdiction over the Cars. However, WSOR shall cooperate with FSR, if requested to accomplish the foregoing at FSR's or Car Owner's expense.

D) WSOR shall not be obligated to procure and administer public liability insurance or property damage insurance for the Cars, but shall pay the cost thereof if reimbursed by FSR or the Car Owner. WSOR shall endorse insurance reimbursement or insured value checks relating to the Cars as directed by FSR.

#### 10. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to FSR:       Funding Systems Railcars, Inc.  
                  2215 Sanders Road, Suite 370  
                  Northbrook, Illinois 60062  
                  Attention: President

If to WSOR:      Wisconsin & Southern Railroad Co.  
                  511 Barstow Street  
                  Horicon, Wisconsin 53032  
                  Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

#### 11. Miscellaneous.

A) Controlling Agreement. Notwithstanding anything herein to the contrary, the rights, interests and liabilities of FSR and WSOR set forth herein shall remain expressly subject to and governed by the Management Contract.

B) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois and both parties hereby consent to the jurisdiction of the courts of the State of Illinois.

C) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D) Headings. Titles and headings of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

E) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

F) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.

G) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, WSOR shall have no authority to bind FSR or incur any liability for which FSR may be responsible without the prior written consent of FSR.

H) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

I) Severability. Any provision of this Agreement which is or is rendered unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year set forth above.

FUNDING SYSTEMS RAILCARS, INC.

Dated: July 27, 1984

By: *James B. Heir*

Its President

Attest: *Dennis T. Hurst*

WISCONSIN & SOUTHERN RAILROAD CO.

By: *J. Noel Ball*

Its President

Attest: *Robert J. Barken*

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 1984, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, says that he/she is President of Funding Systems Railcars, Inc., that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montano  
Notary Public

(Notarial Seal)

My commission expires:  
**My Commission Expires October 20, 1984**

---

STATE Pennsylvania )

) SS.

COUNTY OF Montgomery )

On this 27th day of July, 1984, before me personally appeared J. Noel Ball, to me personally known, who, being by me duly sworn, says that he/she is President of Wisconsin & Southern Railroad Co., that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Ann Tuturice  
Notary Public

(Notarial Seal)

My commission expires:

MARY ANN TUTURICE, Notary Public  
Department of Public Safety, Montgomery Co., Pa.  
My Commission Expires September 24, 1984

## REPORTING MARK AGREEMENT

This Agreement is entered into as of the 17th day of May, 1983 by and between Funding Systems Railcars, Inc., a Delaware Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("FSR") and Upper Merion and Plymouth Railroad Company, a Pennsylvania Corporation having one of its principal places of business at P.O. Box 404, Conshohocken, Pennsylvania 19428 ("UMP").

WHEREAS, FSR is principally engaged in the business of managing and leasing railcars for railcar owners; and

WHEREAS, FSR, pursuant to the terms and provisions of a proposed management contract appended as Exhibit B to that certain Stipulation for Amended Agreed Order dated May 17, 1983, all of which is annexed hereto as Exhibit 1, performs certain managerial services for Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America, and Northern Life Insurance Company (collectively the "Northwestern Companies"), with respect to certain railcars owned by the Northwestern Companies; and

WHEREAS, UMP is a Class III shortline railroad, wholly owned by FSR, principally engaged in the business of railroad freight operations; and

WHEREAS, UMP is the owner of a registered railroad reporting mark; and

WHEREAS, by unwritten agreement and course of dealings, the UMP Mark has been or may be affixed to certain railcars managed by FSR, including certain of the railcars owned by the Northwestern Companies; and

WHEREAS, the parties now desire to memorialize their agreement, and remain bound thereby.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, FSR and UMP hereby agree as follows:

### 1. Definitions.

1.1 "AAR" means: Association of American Railroads.

1.2 "Car(s)" means: any railcar owned by the Northwestern Companies and managed by FSR pursuant to the Management Contract.

1.3 "Car Owner" means: the Northwestern Companies, the entities having legal title to the Cars, or such entities' duly authorized assignee.

1.4 "Costs" means: all expenses, charges or liabilities which may be assessed against UMP on account of the lease or use of a Car bearing the UMP Mark, including, but not limited to, maintenance, repairs, transportation, insurance, taxes and remarking.

1.5 "ICC" means: Interstate Commerce Commission

1.6 "Management Contract" means: the Stipulation for Amended Agreed Order between FSR and the Northwestern Companies dated May 17, 1983, under which FSR performs certain management services relating to the Cars for Car Owner.

1.7 "Revenues" means: all monies due or received on account of the lease or use of a Car including, but not limited to, per diem, mileage, rental, lease and guarantee payments, deposits and insurance proceeds.

1.8 UMLER means: Universal Machine Language Equipment Register.

1.9 "UMP Mark" means: the registered reporting mark of UMP.

1.10 "Unrelated Third Party" means: Car Owner, customers along UMP's railroad track, or UMP's connecting carrier and other non-affiliated railroads.

1.11 Other Terms. Unless elsewhere specifically defined herein, other terms shall have the meanings normally ascribed to them in the railroad industry.

## 2. Term.

A) The original term of this Agreement shall be from May 1, 1983 through December 31, 1985, unless terminated in writing by FSR prior thereto upon written notice to UMP. The parties hereto expressly acknowledge that because this written instrument memorializes the unwritten past agreements and dealings of the parties, the commencement of the term of this Agreement antedates the execution of this document.

B) This Agreement shall automatically renew for one-year periods, unless FSR shall give written notice of non-renewal.

C) This Agreement shall terminate upon written notice from FSR to UMP with respect to any Car which is lost or totally destroyed or which is withdrawn from the terms of this Agreement; provided, however, that FSR or UMP, as the case may be, shall be obligated to collect all rental payments, mileage allowances and other sums, and to arrange for payment of all expenses, taxes, and other charges in accordance with the provisions of this Agreement attributable to the Cars with respect to periods prior to the termination of this Agreement. Notwithstanding any termination provision herein, if any Cars are placed in service which go beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned to FSR or the Car Owner by the user or lessee and all Revenues have been collected.

Notwithstanding the foregoing, in all events, this Agreement shall remain expressly subject to the terms and conditions of the Management Contract.

## 3. Use of the UMP Mark.

UMP hereby grants to FSR the limited right to use the UMP Mark, as follows: FSR shall have the absolute right to affix, or cause to be affixed, to any Car the UMP Mark or to cause the UMP Mark to be removed from any Car. FSR shall be entitled to any information with respect to any Car bearing the UMP Mark which is available from the AAR, ICC or any other source. Provided that the Car is in UMP's possession, at the direction and expense of FSR or the Car Owner, UMP shall change or cause to be changed the Car's reporting markings and/or numbers, at a cost to be negotiated by UMP and FSR which shall not exceed the then current AAR rates. Use of the UMP Mark shall in all respects be in accordance with AAR rules and regulations.

FSR agrees that it or the Car Owner, as the case may be, shall be responsible for any Costs which may be levied against UMP solely resulting from the UMP Mark being affixed to any Car.

#### 4. Use of Cars by UMP.

UMP may use any Car, free of per diem and mileage charges to UMP, on UMP's railroad track, unless such car is on UMP's railroad track in intraline service, in which case UMP shall cause the Car to be kept free of product accumulation or corrosive materials. Notwithstanding anything herein to the contrary, UMP remains responsible for handling carrier repairs to the Cars pursuant to AAR interchange rules.

UMP shall not direct the movement of any Car whether or not such Car is on UMP's railroad tracks, without the prior consent of FSR.

#### 5. Use of Track and Storage by FSR.

FSR shall have the right to place any Car on UMP's railroad track at no cost to FSR. However, any switching or transportation charges with respect to the Cars paid to UMP by Unrelated Third Parties shall be retained by UMP.

FSR may direct UMP to store or move any Car on UMP's railroad tracks and such Car will be stored or moved at no cost to FSR. However, any storage fees relating to the Cars paid by an Unrelated Third Party shall be retained by UMP.

#### 6. Compensation to UMP.

Except as otherwise expressly provided herein, as sole compensation to UMP for all services performed by UMP hereunder and for the use of the UMP Mark, FSR shall pay to UMP a fee, calculated on a calendar quarterly basis, as follows:

"50 percent of the aggregate gross Revenues (exclusive of switching and transportation charges payable to UMP by Unrelated Third Parties and exclusive of railroad indemnity payments and insurance proceeds) collected on the Cars bearing the UMP Mark, net of reclaims, in excess of 90% utilization for the aggregate number of Cars bearing the UMP Mark in that calendar quarter."

As used in the foregoing, "utilization" shall be determined by the following formula:

$$\begin{aligned} & \text{(hourly per diem charges x 24 hours x 90 days)} \\ & + \text{(per diem mileage rate x 50 miles x 90 days)}. \end{aligned}$$

As used in the foregoing formula, "hourly per diem charges" and "per diem mileage rate" mean those charges and rates set forth in the UMLER tables. In the event a Car bears the UMP Mark for less than 90 days in the applicable calendar quarter, the precise number of days which it bore the UMP Mark shall be inserted in the above formula.

The first calculation of compensation payable to UMP pursuant to this Agreement shall include the period commencing on the inception date of the Management Contract through June 30, 1984.

7. Disclaimer of Car Ownership and Disclaimer of Interest in Revenues by UMP.

UMP hereby acknowledges that it is not the owner of any of the Cars, and that the Revenues are not its property but that of the Car Owner and/or FSR as expressly set forth in the Management Contract. All Revenues received by UMP are received by it as agent and shall, therefore, be held in trust, and shall be remitted immediately in kind to FSR. UMP further acknowledges and covenants that it claims no security interest in Revenues and shall not in the future assert any security interest therein, and shall waive, release and agree not to enforce any claim to such Revenues, even if arising by operation of law.

8. Procurement and Termination of Leases.

FSR and UMP, subject to the terms of the Management Contract and FSR's approval, shall have the right to procure assignments, operating leases, and other utilization agreements for any Car. In no event may any such agreement be terminated, modified or amended by UMP, without the prior written consent of FSR. UMP acknowledges and agrees that car assignments, operating leases, and utilization agreements relating to the Cars may be entered into in its name by FSR. UMP further acknowledges and agrees that it shall not have any rights under any such agreements beyond those afforded to it hereunder.

UMP hereby authorizes FSR during the term of this Agreement, and FSR hereby agrees, to assert and enforce from time to time, in the name of UMP and for the account of FSR, whatever claims and rights UMP may assert pursuant to any railcar usage agreement relating to the Cars.

9. Limitation of UMP's Duties.

Notwithstanding UMP's ownership of the UMP Mark:

A) UMP shall cooperate with FSR in collecting from any user, assignee and/or lessee all payments, car hire allowances and any other revenue or proceeds allocable or attributable to the Cars, including insurance benefits or railroad indemnity payments in the event of damage to or total destruction of a Car, which are not duly and promptly paid with respect to the Cars. Any such proceeds collected by UMP shall be remitted in kind to FSR and shall belong to FSR and/or the Car Owner as provided in the Management Contract. FSR shall reimburse UMP for its reasonable actual costs incurred in the collection of revenues and proceeds.

B) UMP shall have no obligation for general accounting functions relating to Revenues or Costs allocable or attributable to the Cars. However, UMP shall forward to FSR in a timely manner all information, including, but not limited to, financing, accounting, maintenance, repair, mileage, and movement data, which UMP receives with respect to the Cars.

C) UMP shall have no obligation regarding any Car to: (1) perform inspections of Cars not on its tracks; (2) review, reject, approve and audit each maintenance and repair invoice; (3) make arrangements for the routing of the Cars to repair shops; (4) arrange for alterations, modifications, improvements or additions to the Cars; or (5) register the Cars and file or have filed all required initial and ongoing reports with the AAR, ICC, Department of Transportation, UMLER,

or any other regulatory authorities having jurisdiction over the Cars. However, UMP shall cooperate with FSR, if requested to accomplish the foregoing at FSR's or Car Owner's expense.

D) UMP shall not be obligated to procure and administer public liability insurance or property damage insurance for the Cars, but shall pay the cost thereof if reimbursed by FSR or the Car Owner. UMP shall endorse insurance reimbursement or insured value checks relating to the Cars as directed by FSR.

#### 10. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to FSR: Funding Systems Railcars, Inc.  
2215 Sanders Road, Suite 370  
Northbrook, Illinois 60062  
Attention: President

If to UMP: Upper Merion and Plymouth Railroad Company  
P.O. Box 404  
Conshohocken, Pennsylvania 19428  
Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

#### 11. Miscellaneous.

A) Controlling Agreement. Notwithstanding anything herein to the contrary, the rights, interests and liabilities of FSR and UMP set forth herein shall remain expressly subject to and governed by the Management Contract.

B) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois and both parties hereby consent to the jurisdiction of the courts of the State of Illinois.

C) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D) Headings. Titles and headings of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

E) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

F) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.

G) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, UMP shall have no authority to bind FSR or incur any liability for which FSR may be responsible without the prior written consent of FSR.

H) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

I) Severability. Any provision of this Agreement which is or is rendered unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year set forth above.

FUNDING SYSTEMS RAILCARS, INC.

Dated: July 27, 1984

By: *James B. Klein*

Its President

Attest: *Jannis T. Hurst*

UPPER MERION AND PLYMOUTH RAILROAD COMPANY

By: *J. Noel Bell*

Its President

Attest: *Albert J. Kneller*

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 1984, before  
me personally appeared James B. Shein, to me  
personally known, who, being by me duly sworn, says that he/she  
is President  
of Funding Systems Railcars, Inc.,  
that the foregoing instrument was signed on behalf of said corporation  
by proper authority therefor, and he/she acknowledged that the  
execution of the foregoing instrument was the free act and deed of  
said corporation.

Carmen Montagnano  
Notary Public

(Notarial Seal)

My commission expires:  
**My Commission Expires October 20, 1984**

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STATE Pennsylvania )  
 ) ss.  
COUNTY OF Montgomery )

On this 27th day of July, 1984, before me personally appeared J. Noel Ball, to me personally known, who, being by me duly sworn, says that he/she is President of Upper Merion and Plymouth Railroad Company, that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Mary Ann Tutunice  
Notary Public

(Notarial Seal)

My commission expires:

MARY ANN TUTUNICE, Notary Public  
Upper Merion, Montgomery County, Pa.  
My Commission Expires September 21, 1994

REPORTING MARK AGREEMENT

This Agreement entered into as of the 17th day of May, 1983 by and between Funding Systems Railcars, Inc., a Delaware Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("FSR") and Wisconsin & Southern Leasing Co., a Wisconsin Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("WSOX").

WHEREAS, FSR is principally engaged in the business of managing and leasing railcars for railcar owners; and

WHEREAS, FSR, pursuant to the terms and provisions of a proposed management contract appended as Exhibit B to that certain Stipulation for Amended Agreed Order dated May 17, 1983, all of which is annexed hereto as Exhibit 1, performs certain managerial services for Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America, and Northern Life Insurance Company (collectively the "Northwestern Companies"), with respect to certain railcars owned by the Northwestern Companies; and

WHEREAS, WSOX is a railcar leasing company, wholly owned by FSR, principally engaged in the business of managing and leasing railcars having private reporting markings; and

WHEREAS, WSOX is the owner of a registered private reporting mark; and

WHEREAS, by unwritten agreement and course of dealings the WSOX Mark has been or may be affixed to certain railcars managed by FSR, including certain of the railcars owned by the Northwestern Companies; and

WHEREAS, the parties now desire to memorialize their agreement, and remain bound thereby.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, FSR and WSOX hereby agree as follows:

1. Definitions.

1.1 "AAR" means: Association of American Railroads.

1.2 "Car(s)" means: any railcar owned by the Northwestern Companies and managed by FSR pursuant to the Management Contract.

1.3 "Car Owner" means: the Northwestern Companies, the entities having legal title to the Cars, or such entities' duly authorized assignee.

1.4 "Costs" means: all expenses, charges or liabilities which may be assessed against WSOX on account of the lease or use of a Car bearing the WSOX Mark, including, but not limited to, maintenance, repairs, transportation, insurance, taxes and remarking.

1.5 "ICC" means: Interstate Commerce Commission

1.6 "Management Contract" means: the Stipulation for Amended Agreed Order between FSR and the Northwestern Companies dated May 17, 1983, under which FSR performs certain management services relating to the Cars for Car Owner.

1.7 "Revenues" means: all monies due or received on account of the lease or use of a Car including, but not limited to, mileage, rental, lease and guarantee payments, deposits and insurance proceeds.

1.8 UMLER means: Universal Machine Language Equipment Register.

1.9 "WSOX Mark" means: the registered reporting mark of WSOX.

1.10 Other Terms. Unless elsewhere specifically defined herein, other terms shall have the meanings normally ascribed to them in the railroad industry.

## 2. Term.

A) The original term of this Agreement shall be from May 1, 1983 through December 31, 1985, unless terminated in writing by FSR prior thereto upon written notice to WSOX. The parties hereto expressly acknowledge that because this written instrument memorializes the unwritten past agreements and dealings of the parties, the commencement of the term of this Agreement antedates the execution of this document.

B) This Agreement shall automatically renew for one-year periods, unless FSR shall give written notice of non-renewal.

C) This Agreement shall terminate upon written notice from FSR to WSOX with respect to any Car which is lost or totally destroyed or which is withdrawn from terms of this Agreement; provided, however, that FSR or WSOX, as the case may be, shall be obligated to collect all rental payments, mileage allowances and other sums, and to arrange for payment of all expenses, taxes, and other charges in accordance with the provisions of this Agreement attributable to the Cars with respect to periods prior to the termination of this Agreement. Notwithstanding any termination provision herein, if any Cars are placed in service which go beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned to FSR or the Car Owner by the user or lessee and all Revenues have been collected.

Notwithstanding the foregoing, in all events, this Agreement shall remain expressly subject to the terms and conditions of the Management Contract.

## 3. Use of the WSOX Mark.

WSOX hereby grants to FSR the limited right to use the WSOX Mark, as follows: FSR shall have the absolute right to affix, or cause to be affixed, to any Car the WSOX Mark or to cause the WSOX Mark to be removed from any Car. FSR shall be entitled to any information with respect to any Car bearing the WSOX Mark which is available from the AAR, ICC or any other source. Use of the WSOX Mark shall in all respects be in accordance with AAR rules and regulations.

FSR agrees that it or the Car Owner, as the case may be, shall be responsible for any Costs which may be levied against WSOX solely resulting from the WSOX Mark being affixed to any Car.

4. Movement of Cars by WSOX.

WSOX shall not direct the movement of any Car, without the prior consent of FSR.

5. Compensation to WSOX.

Except as otherwise expressly provided herein, as sole compensation to WSOX for all services performed by WSOX hereunder and for the use of the WSOX Mark, FSR shall pay to WSOX a fee, calculated on a calendar quarterly basis, as follows:

"50 percent of the aggregate gross Revenues (exclusive of railroad indemnity payments and insurance proceeds) collected on the Cars bearing the WSOX Mark, net of reclaims, in excess of 90% utilization for the aggregate number of Cars bearing the WSOX Mark in that calendar quarter."

As used in the foregoing, "utilization" shall be determined by the following formula:

(hourly per diem charges x 24 hours x 90 days)  
+ (per diem mileage rate x 50 miles x 90 days).

As used in the foregoing formula, "hourly per diem charges" and "per diem mileage rate" mean those charges and rates set forth in the UMLER tables for each Car assuming that it bore a railroad reporting marking. In the event a Car bears the WSOX Mark for less than 90 days in the applicable calendar quarter, the precise number of days which it bore the WSOX Mark shall be inserted in the above formula.

The first calculation of compensation payable to WSOX pursuant to this Agreement shall include the period commencing on the inception date of the Management Contract through June 30, 1984.

6. Disclaimer of Car Ownership and Disclaimer of Interest in Revenues by WSOX.

WSOX hereby acknowledges that it is not the owner of any of the Cars, and that the Revenues are not its property but that of the Car Owner and/or FSR as expressly set forth in the Management Contract. All Revenues received by WSOX are received by it as agent and shall, therefore, be held in trust, and shall be remitted immediately in kind to FSR. WSOX further acknowledges and covenants that it claims no security interest in Revenues and shall not in the future assert any security interest therein, and shall waive, release and agree not to enforce any claim to such Revenues, even if arising by operation of law.

7. Procurement and Termination of Leases.

FSR and WSOX, subject to the terms of the Management Contract and FSR's approval, shall have the right to procure assignments, operating leases, and other utilization agreements for any Car. In no event may any such agreement be terminated, modified or amended by WSOX, without the prior written consent of FSR. WSOX acknowledges and agrees that car assignments, operating leases, and utilization agreements relating to the Cars may be entered into in its name by FSR or

FSR's other wholly-owned subsidiaries. WSOX further acknowledges and agrees that it shall not have any rights under any such agreements beyond those afforded to it hereunder.

WSOX hereby authorizes FSR during the term of this Agreement, and FSR hereby agrees, to assert and enforce from time to time, in the name of WSOX and for the account of FSR, whatever claims and rights WSOX may assert pursuant to any railcar usage agreement relating to the Cars.

#### 8. Limitation of WSOX's Duties.

Notwithstanding WSOX's ownership of the WSOX Mark:

A) WSOX shall cooperate with FSR in collecting from any user, assignee and/or lessee all payments, car hire allowances and any other revenue or proceeds allocable or attributable to the Cars, including insurance benefits or railroad indemnity payments in the event of damage to or total destruction of a Car, which are not duly and promptly paid with respect to the Cars. Any such proceeds collected by WSOX shall be remitted in kind to FSR and shall belong to FSR and/or the Car Owner as provided in the Management Contract. FSR shall reimburse WSOX for its reasonable actual costs incurred in the collection of revenues and proceeds.

B) WSOX shall have no obligation for general accounting functions relating to Revenues or Costs allocable or attributable to the Cars. However, WSOX shall forward to FSR in a timely manner all information, including, but not limited to, financing, accounting, maintenance, repair, mileage, and movement data, which WSOX receives with respect to the Cars.

C) WSOX shall have no obligation regarding any Car to: (1) perform inspections of Cars; (2) review, reject, approve and audit each maintenance and repair invoice; (3) make arrangements for the routing of the Cars to repair shops; (4) arrange for alterations, modifications, improvements or additions to the Cars; or (5) register the Cars and file or have filed all required initial and ongoing reports with the AAR, ICC, Department of Transportation, UMLER, or any other regulatory authorities having jurisdiction over the Cars. However, WSOX shall cooperate with FSR, if requested to accomplish the foregoing at FSR's or Car Owner's expense.

D) WSOX shall not be obligated to procure and administer public liability insurance or property damage insurance for the Cars, but shall pay the cost thereof if reimbursed by FSR or the Car Owner. WSOX shall endorse insurance reimbursement or insured value checks relating to the Cars as directed by FSR.

#### 9. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to FSR:           Funding Systems Railcars, Inc.  
                          2215 Sanders Road, Suite 370  
                          Northbrook, Illinois 60062  
                          Attention: President

If to WSOX: Wisconsin & Southern Leasing Co.  
2215 Sanders Road, Suite 370  
Northbrook, Illinois 60062  
Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

10. Miscellaneous.

A) Controlling Agreement. Notwithstanding anything herein to the contrary, the rights, interests and liabilities of FSR and WSOX set forth herein shall remain expressly subject to and governed by the Management Contract.

B) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois and both parties hereby consent to the jurisdiction of the courts of the State of Illinois.

C) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D) Headings. Titles and headings of this Agreement are for convenience of reference only and do not form a part of this agreement and shall not in any way affect the interpretation hereof.

E) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

F) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.

G) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, WSOX shall have no authority to bind FSR or incur any liability for which FSR may be responsible without the prior written consent of FSR.

H) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

I) Severability. Any provision of this Agreement which is or is rendered unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

FUNDING SYSTEMS RAILCARS, INC.

Dated: July 27, 1984

By:

Its President

James B. Klein

Attest:

Earl C. Quinn

WISCONSIN & SOUTHERN LEASING CO.

By:

Its Executive Vice President - Finance

Dennis T. Hurst

Attest:

Gerald L. Kulozma

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 1984, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, says that he/she is President of Funding Systems Railcars, Inc., that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Carmen Montagnano  
Notary Public

(Notarial Seal)

My commission expires:  
My Commission Expires October 20, 1984

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 19<sup>84</sup>, before  
me personally appeared Dennis T. Hurst, to me  
personally known, who, being by me duly sworn, says that he/she  
is Executive Vice President-Finance  
of Wisconsin & Southern Leasing Co.,  
that the foregoing instrument was signed on behalf of said corporation  
by proper authority therefor, and he/she acknowledged that the  
execution of the foregoing instrument was the free act and deed of  
said corporation.

Carmen Montagnano

Notary Public

(Notarial Seal)

My commission expires:

**My Commission Expires October 20, 1984**

## REPORTING MARK AGREEMENT

This Agreement entered into as of the 17th day of May, 1983 by and between Funding Systems Railcars, Inc., a Delaware Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("FSR") and Upper Merion and Plymouth Leasing Company, a Delaware Corporation having its principal place of business at 2215 Sanders Road, Northbrook, Illinois 60062 ("UMPX").

WHEREAS, FSR is principally engaged in the business of managing and leasing railcars for railcar owners; and

WHEREAS, FSR, pursuant to the terms and provisions of a proposed management contract appended as Exhibit B to that certain Stipulation for Amended Agreed Order dated May 17, 1983, all of which is annexed hereto as Exhibit 1, performs certain managerial services for Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America, and Northern Life Insurance Company (collectively the "Northwestern Companies"), with respect to certain railcars owned by the Northwestern Companies; and

WHEREAS, UMPX is a railcar leasing company, wholly owned by FSR, principally engaged in the business of managing and leasing railcars having private reporting markings; and

WHEREAS, UMPX is the owner of a registered private reporting mark; and

WHEREAS, by unwritten agreement and course of dealings the UMPX Mark has been or may be affixed to certain railcars managed by FSR, including certain of the railcars owned by the Northwestern Companies; and

WHEREAS, the parties now desire to memorialize their agreement, and remain bound thereby.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, FSR and UMPX hereby agree as follows:

### 1. Definitions.

1.1 "AAR" means: Association of American Railroads.

1.2 "Car(s)" means: any railcar owned by the Northwestern Companies and managed by FSR pursuant to the Management Contract.

1.3 "Car Owner" means: the Northwestern Companies, the entities having legal title to the Cars, or such entities' duly authorized assignee.

1.4 "Costs" means: all expenses, charges or liabilities which may be assessed against UMPX on account of the lease or use of a Car bearing the UMPX Mark, including, but not limited to, maintenance, repairs, transportation, insurance, taxes and remarking.

1.5 "ICC" means: Interstate Commerce Commission

1.6 "Management Contract" means: the Stipulation for Amended Agreed Order between FSR and the Northwestern Companies dated May 17, 1983, under which FSR performs certain management services relating to the Cars for Car Owner.

1.7 "Revenues" means: all monies due or received on account of the lease or use of a Car including, but not limited to, mileage, rental, lease and guarantee payments, deposits and insurance proceeds.

1.8 UMLER means: Universal Machine Language Equipment Register.

1.9 "UMPX Mark" means: the registered reporting mark of UMPX.

1.10 Other Terms. Unless elsewhere specifically defined herein, other terms shall have the meanings normally ascribed to them in the railroad industry.

## 2. Term.

A) The original term of this Agreement shall be from May 1, 1983 through December 31, 1985, unless terminated in writing by FSR prior thereto upon written notice to UMPX. The parties hereto expressly acknowledge that because this written instrument memorializes the unwritten past agreements and dealings of the parties, the commencement of the term of this Agreement antedates the execution of this document.

B) This Agreement shall automatically renew for one-year periods, unless FSR shall give written notice of non-renewal.

C) This Agreement shall terminate upon written notice from FSR to UMPX with respect to any Car which is lost or totally destroyed or which is withdrawn from terms of this Agreement; provided, however, that FSR or UMPX, as the case may be, shall be obligated to collect all rental payments, mileage allowances and other sums, and to arrange for payment of all expenses, taxes, and other charges in accordance with the provisions of this Agreement attributable to the Cars with respect to periods prior to the termination of this Agreement. Notwithstanding any termination provision herein, if any Cars are placed in service which go beyond the termination of this Agreement, those particular Cars shall remain under the terms of this Agreement until they are returned to FSR or the Car Owner by the user or lessee and all Revenues have been collected.

Notwithstanding the foregoing, in all events, this Agreement shall remain expressly subject to the terms and conditions of the Management Contract.

## 3. Use of the UMPX Mark.

UMPX hereby grants to FSR the limited right to use the UMPX Mark, as follows: FSR shall have the absolute right to affix, or cause to be affixed, to any Car the UMPX Mark or to cause the UMPX Mark to be removed from any Car. FSR shall be entitled to any information with respect to any Car bearing the UMPX Mark which is available from the AAR, ICC or any other source. Use of the UMPX Mark shall in all respects be in accordance with AAR rules and regulations.

FSR agrees that it or the Car Owner, as the case may be, shall be responsible for any Costs which may be levied against UMPX solely resulting from the UMPX Mark being affixed to any Car.

4. Movement of Cars by UMPX.

UMPX shall not direct the movement of any Car, without the prior consent of FSR.

5. Compensation to UMPX.

Except as otherwise expressly provided herein, as sole compensation to UMPX for all services performed by UMPX hereunder and for the use of the UMPX Mark, FSR shall pay to UMPX a fee, calculated on a calendar quarterly basis, as follows:

"50 percent of the aggregate gross Revenues (exclusive of railroad indemnity payments and insurance proceeds) collected on the Cars bearing the UMPX Mark, net of reclaims, in excess of 90% utilization for the aggregate number of Cars bearing the UMPX Mark in that calendar quarter."

As used in the foregoing, "utilization" shall be determined by the following formula:

(hourly per diem charges x 24 hours x 90 days)  
+ (per diem mileage rate x 50 miles x 90 days).

As used in the foregoing formula, "hourly per diem charges" and "per diem mileage rate" mean those charges and rates set forth in the UMLER tables for each Car assuming that it bore a railroad reporting marking. In the event a Car bears the UMPX Mark for less than 90 days in the applicable calendar quarter, the precise number of days which it bore the UMPX Mark shall be inserted in the above formula.

The first calculation of compensation payable to UMPX pursuant to this Agreement shall include the period commencing on the inception date of the Management Contract through June 30, 1984.

6. Disclaimer of Car Ownership and Disclaimer of Interest in Revenues by UMPX.

UMPX hereby acknowledges that it is not the owner of any of the Cars, and that the Revenues are not its property but that of the Car Owner and/or FSR as expressly set forth in the Management Contract. All Revenues received by UMPX are received by it as agent and shall, therefore, be held in trust, and shall be remitted immediately in kind to FSR. UMPX further acknowledges and covenants that it claims no security interest in Revenues and shall not in the future assert any security interest therein, and shall waive, release and agree not to enforce any claim to such Revenues, even if arising by operation of law.

7. Procurement and Termination of Leases.

FSR and UMPX, subject to the terms of the Management Contract and FSR's approval, shall have the right to procure assignments, operating leases, and other utilization agreements for any Car. In no event may any such agreement be terminated, modified or amended by UMPX, without the prior written consent of FSR. UMPX acknowledges and agrees that car assignments, operating leases, and utilization agreements relating to the Cars may be entered into in its name by FSR or

FSR's other wholly-owned subsidiaries. UMPX further acknowledges and agrees that it shall not have any rights under any such agreements beyond those afforded to it hereunder.

UMPX hereby authorizes FSR during the term of this Agreement, and FSR hereby agrees, to assert and enforce from time to time, in the name of UMPX and for the account of FSR, whatever claims and rights UMPX may assert pursuant to any railcar usage agreement relating to the Cars.

#### 8. Limitation of UMPX's Duties.

Notwithstanding UMPX's ownership of the UMPX Mark:

A) UMPX shall cooperate with FSR in collecting from any user, assignee and/or lessee all payments, car hire allowances and any other revenue or proceeds allocable or attributable to the Cars, including insurance benefits or railroad indemnity payments in the event of damage to or total destruction of a Car, which are not duly and promptly paid with respect to the Cars. Any such proceeds collected by UMPX shall be remitted in kind to FSR and shall belong to FSR and/or the Car Owner as provided in the Management Contract. FSR shall reimburse UMPX for its reasonable actual costs incurred in the collection of revenues and proceeds.

B) UMPX shall have no obligation for general accounting functions relating to Revenues or Costs allocable or attributable to the Cars. However, UMPX shall forward to FSR in a timely manner all information, including, but not limited to, financing, accounting, maintenance, repair, mileage, and movement data, which UMPX receives with respect to the Cars.

C) UMPX shall have no obligation regarding any Car to: (1) perform inspections of Cars; (2) review, reject, approve and audit each maintenance and repair invoice; (3) make arrangements for the routing of the Cars to repair shops; (4) arrange for alterations, modifications, improvements or additions to the Cars; or (5) register the Cars and file or have filed all required initial and ongoing reports with the AAR, ICC, Department of Transportation, UMLER, or any other regulatory authorities having jurisdiction over the Cars. However, UMPX shall cooperate with FSR, if requested to accomplish the foregoing at FSR's or Car Owner's expense.

D) UMPX shall not be obligated to procure and administer public liability insurance or property damage insurance for the Cars, but shall pay the cost thereof if reimbursed by FSR or the Car Owner. UMPX shall endorse insurance reimbursement or insured value checks relating to the Cars as directed by FSR.

#### 9. Notices.

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to FSR:           Funding Systems Railcars, Inc.  
                          2215 Sanders Road, Suite 370  
                          Northbrook, Illinois 60062  
                          Attention: President

If to UMPX: Upper Merion and Plymouth Leasing Company  
2215 Sanders Road, Suite 370  
Northbrook, Illinois 60062  
Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

10. Miscellaneous.

A) Controlling Agreement. Notwithstanding anything herein to the contrary, the rights, interests and liabilities of FSR and UMPX set forth herein shall remain expressly subject to and governed by the Management Contract.

B) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois and both parties hereby consent to the jurisdiction of the courts of the State of Illinois.

C) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

D) Headings. Titles and headings of this Agreement are for convenience of reference only and do not form a part of this agreement and shall not in any way affect the interpretation hereof.

E) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

F) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.

G) No Partnership. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, UMPX shall have no authority to bind FSR or incur any liability for which FSR may be responsible without the prior written consent of FSR.

H) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

I) Severability. Any provision of this Agreement which is or is rendered unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year set forth above.

FUNDING SYSTEMS RAILCARS, INC.

Dated: July 27, 1984

By:

Its President

Attest:

Earl C. [Signature]

UPPER MERION AND PLYMOUTH LEASING COMPANY

By:

Its Executive Vice President - Finance

Attest:

Gerald L. [Signature]

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 1984, before me personally appeared James B. Shein, to me personally known, who, being by me duly sworn, says that he/she is President of Funding Systems Railcars, Inc., that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Carmen Montagnano*  
Notary Public

(Notarial Seal)

My commission expires:  
**My Commission Expires October 20, 1984**

---

STATE Illinois )  
 ) ss.  
COUNTY OF Cook )

On this 27th day of July, 19<sup>84</sup>, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he/she is Executive Vice President-Finance of Upper Merion and Plymouth Leasing Company, that the foregoing instrument was signed on behalf of said corporation by proper authority therefor, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Carmen Montano*  
Notary Public

(Notarial Seal)

My commission expires:

My Commission Expires October 20, 1984

EXHIBIT "1"

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

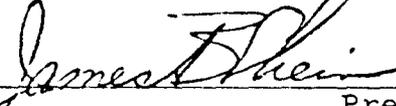
In re )  
 ) Chapter 11  
FUNDING SYSTEMS RAILCARS, INC., )  
 ) No. 81 B 11964  
Debtor )

STIPULATION FOR AMENDED AGREED ORDER

Funding Systems Railcars, Inc., as debtor and as debtor-in-possession herein, and Northwestern National Life Insurance Company, Northern Life Insurance Company, and The North Atlantic Life Insurance Company of America hereby stipulate and agree that the Amended Agreed Order annexed hereto may be entered by the Court and that each of them shall be bound as set forth therein.

Dated: May 17, 1983.

FUNDING SYSTEMS RAILCARS, INC.

By  President

  
Lewis S. Rosenbloom  
Nachman, Munitz & Sweig, Ltd.  
Suite 2580  
115 South LaSalle Street  
Chicago, Illinois 60603  
Tel. (312)263-1480

Attorney for Funding Systems  
Railcars, Inc.

NORTHWESTERN NATIONAL LIFE  
INSURANCE COMPANY

THE NORTH ATLANTIC LIFE INSURANCE  
COMPANY OF AMERICA

NORTHERN LIFE INSURANCE COMPANY

By *David L. Jackson*  
as officer of each of them

*Hendrik De Jong*  
Hendrik De Jong  
Faegre & Benson  
3400 IDS Center  
Minneapolis, MN 55402  
Tel. (612)371-5300

Attorney for said Companies

The undersigned hereby agrees to and joins in all of  
the provisions of said Amended Agreed Order including without  
limitation paragraph 7 thereof.

Dated: May 24, 1983

UPPER MERION AND PLYMOUTH  
RAILROAD COMPANY

By *Dennis T. Hurst*  
Vice President

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re ) Chapter 11  
 )  
FUNDING SYSTEMS RAILCARS, INC., ) No. 81 B 11964  
 )  
Debtor )

AMENDED AGREED ORDER

The above-entitled matter came on before the undersigned Bankruptcy Judge on May 10, 1983, for hearing upon the Application for Authority to Compromise and Settle Claims, to Abandon and Consent to the Foreclosure of Property of the Estate and to Reject Executory Contracts and Unexpired Leases, and for Other Relief (the "Debtor's Application"), filed April 11, 1983 by Funding Systems Railcars, Inc. as debtor and as debtor-in-possession herein (the "Debtor"), and upon the stipulation and agreement between the Debtor and Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America, and Northern Life Insurance Company (the "Northwestern Companies") hereinafter referred to. Appearances were entered as noted in the record.

The Court finds that due and sufficient notice of said stipulation and agreement was given by the Debtor at hearings on the Debtor's Application held before the undersigned Bankruptcy Judge on April 26, 1983 and May 4, 1983 and that, by reason of the notice of said hearing previously given by the Debtor, cause

is shown for approval of said stipulation and agreement without further notice.

The Court further finds that the Debtor and the Northwestern Companies have stipulated and agreed as follows:

1. The Northwestern Companies withdraw their Objection, dated April 19, 1983, to the Debtor's Application, subject to the Court's approval, as to the estate and all interested parties, of (i) an Order to be proposed by the Debtor to approve the Debtor's Application, which Order shall include provisions in form and substance satisfactory to the Northwestern Companies, at their sole and absolute discretion, as to the matters referred to in Exhibit A attached hereto (the "Order Approving the Debtor's Application"), and (ii) this Agreed Order.

2. Subject to entry of the Order Approving the Debtor's Application and entry of this Agreed Order, the Debtor requests the Northwestern Companies to foreclose their liens upon the open-top hopper cars presently marked UMP 6820-6919 and PVS 1000-1099 (the "Northwestern Cars") within 60 days after entry of such orders and an order determining the fair market value of the Northwestern Cars as provided in paragraph 5(vi), and the Northwestern Companies agree to make a reasonable effort to do so.

3. Subject to entry of the Order Approving the Debtor's Application and entry of this Agreed Order, the Northwestern Companies agree that if they become the owners of any of the Northwestern Cars by reason of being the successful bidder at

any sale conducted to foreclose the liens on such cars, the Northwestern Companies will enter into an agreement substantially in the form of Exhibit B attached hereto pursuant to which the Debtor will be granted the right to manage such Northwestern Cars on the terms and conditions therein set forth, which agreement shall be effective as of the date of the foreclosure sale; provided, that (i) at the option of the Northwestern Companies such agreement may be made by any entity affiliated with the Northwestern Companies to which the Northwestern Companies may transfer such Northwestern Cars, and in that event the Debtor may require that it receive from such entity reasonable assurances that such entity will have resources sufficient to pay any amounts likely to become due to the Debtor under such agreement, and the Northwestern Companies shall have no liability for the obligations of such affiliated entity; (ii) at the option of the Northwestern Companies, they or any such affiliated entity may enter into separate management agreements for the cars presently marked UMP 6820-6919 and the cars presently marked PVS 1000-1099; and (iii) the Debtor will furnish to the Northwestern Companies copies of all settlement agreements and management agreements entered into by the Debtor at any time after May 1, 1983 with any person claiming a lien on any rail cars which on May 1, 1983 were managed, leased or controlled by the Debtor or its affiliates, and the Northwestern Companies (or any such affiliated entity) at their option at any time may elect without any liability whatsoever not to enter into, or to terminate, the

Management Contract in the form attached as Exhibit B hereto and instead to enter into a management agreement upon all the terms and conditions set forth in any such management agreement made by the Debtor with any such person.

4. The Debtor agrees (i) to account as required by the Court and under the Debtor's Interim Operating Plan as reinstated pursuant to Order dated on or about June 8, 1982 for all revenues accrued from January 1, 1983 to April 30, 1983 and, when all such revenues have been collected, to pay such revenues over to the Northwestern Companies to the extent of their interest under the Interim Operating Plan and pursuant to the further order of the Court approving such payment; (ii) that all revenues earned by or attributable to the Northwestern Cars from and after May 1, 1983 will be segregated on the Debtor's books and held in trust for the Northwestern Companies on the terms set forth in Exhibit B attached hereto, subject only to offsets and charges for reclaims, operating expenses and the Debtor's Management Fees as set forth therein, and such revenues will not be subject to the provisions of the Interim Operating Plan; (iii) all such revenues of the Northwestern Cars accrued for the period from May 1, 1983 to the date of any foreclosure sale of the Northwestern Cars, except only and net of all reclaims, operating expenses and management fees which the Debtor would be permitted to retain and offset under the provisions of the Management Contract attached as Exhibit B hereto, shall be paid by the Debtor to the Northwestern Companies with such net revenues

received in any one month to be paid to the Northwestern Companies not later than the 10th day of the next following month, accompanied by an appropriate accounting of the type required under the Management Contract attached as Exhibit B hereto; (iv) except if and as permitted under the Management Contract attached as Exhibit B hereto, the Debtor will not impose upon the Northwestern Companies any charges of the type described in paragraph 22F and 22G of the Application; (v) this paragraph 4 supplements as to the revenues of the Northwestern Cars the provisions of paragraph 22H of the Application; and (vi) notwithstanding the provisions of paragraph 22B of the Application and subject to any and all rights and claims of Pecos Valley Southern Railway Company, in the event any Northwestern Company or affiliated entity acquires at a foreclosure sale title to the cars marked PVS 1000-1099, such Northwestern Company or affiliated entity at its option shall be exclusively entitled, from and forever after May 1, 1983, to all of the benefits and revenues, net of costs and obligations, accruing under the Lease Agreement dated as of September 7, 1979 between Upper Merion and Plymouth Railroad Company and Pecos Valley Southern Railway Company, subject to the provisions of Section 3 of the Management Contract attached as Exhibit B hereto; and prior to such sale said Lease Agreement shall not be amended or terminated by the Debtor without prior written consent of Northwestern National Life Insurance Company (which consent may not unreasonably be withheld) and such cars shall, unless Northwestern National Life

Insurance Company otherwise elects, be kept by the Debtor in service under said Lease Agreement.

5. The Debtor hereby acknowledges and agrees that (i) the Debtor was indebted to the Northwestern Companies as of the date of commencement of this case in the following amounts:

UMP 6820-6919

Northwestern National Life Insurance Company	\$ 614,013.31
The North Atlantic Life Insurance Company of America	520,356.78
Northern Life Insurance Company	<u>1,561,068.31</u>
TOTAL	\$2,695,438.40

PVS 1000-1099

Northwestern National Life Insurance Company	\$2,886,104.36
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(ii) since the commencement of this case, the Northwestern Companies have received the following payments from the Debtor on account of their claims:

UMP 6820-6919

Northwestern National Life Insurance Company	\$ 28,992.24
The North Atlantic Life Insurance Company of America	24,475.39
Northern Life Insurance Company	73,719.04

PVS 1000-1099

Northwestern National Life Insurance Company	\$ 134,792.33
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(iii) said post-petition payments were authorized by the Court and are final and irrevocable; (iv) the claims identified above

under the caption "UMP 6820-6919" are secured by duly created and perfected first security interests upon 100 railcars presently under the Debtor's control, marked UMP 6820 through 6919, and the claim identified above under the caption "PVS 1000-1099" is secured by a duly created and perfected first security interest upon 100 railcars presently under the Debtor's control, marked PVS 1000 through 1099; (v) in the event the Northwestern Companies or any affiliated entity become the Owner of any of the Northwestern Cars by successful bid at any foreclosure sale, the Northwestern Companies shall have a general unsecured claim against the estate of the Debtor in an amount determined by (A) subtracting all post-petition payments from the amount of their claims as of the date of commencement of this case; and (B) subtracting from the result the difference of the fair market value of the Cars sold (as determined by the Court) less the actual out-of-pocket expense of sale not including the fees or disbursements of any attorneys or accountants; (vi) the fair market value of the Northwestern Cars as of May, 1983 will be determined by the Court upon the conclusion of an evidentiary hearing to determine such value; (vii) the Debtor will not contest, and hereby requests that the Court allow as a general unsecured claim, the Northwestern Companies' deficiency claims, so determined; and (viii) the Debtor will contest any claim of any Secured Car Lender identified in the Debtor's Application, except a general unsecured claim determined on a basis not more

favorable to such Lender than the method of determination set forth in this paragraph 5.

6. Notwithstanding the provisions of paragraph 5, the Northwestern Companies hereby reserve all other rights and claims (including, for example and not by way of limitation, claims with respect to cash proceeds of the Northwestern Companies' collateral, priority claims under Section 503 or Section 507(b) of the United States Bankruptcy Code, claims for damage to Northwestern Cars or as to insurance proceeds, and claims for breach of obligations with respect to the payment of revenues earned by or attributable to the Northwestern Cars) against the Debtor and against the railroad companies owned by it if and only to the same extent that at any time after May 1, 1983 any such right or claim is admitted by the Debtor and allowed by the Court or agreed by said railroad companies or determined by a court to be available to any other Secured Car Lender identified in the Debtor's Application; and to the extent (but only to the extent) such rights and claims are so reserved by the Northwestern Companies, the Debtor and such railroad companies hereby reserve any and all defenses and offsets thereto, but not any right to an affirmative recovery.

7. Subject to entry of the Order Approving the Debtor's Application and entry of the Agreed Order and except only as to any obligations arising under the Order Approving the Debtor's Application or this Agreed Order or any Management Contract hereafter entered into, the Debtor (acting as for itself

and acting as debtor-in-possession exercising the powers of a trustee serving in this case and intending to bind the estate herein and any successor trustee in this case or any converted or reopened case) and UMP will and do hereby remise, release and forever discharge the Northwestern Companies and each and all of their present and former directors, shareholders, officers, partners, agents, affiliates and subsidiaries of and from any and all actions, causes of actions, suits, debts, dues, duties, sums, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, controversies and demands of every type and nature whatsoever, in law or equity or granted or available under the United States Bankruptcy Code (including but not limited to all rights and powers of a trustee herein to avoid any transfer and all rights of recovery against any person for benefits claimed to be conferred or against property for cost or expense of preserving or disposing of such property) or arising by agreement or otherwise, from the beginning of time until the date of this release, in each case whether suspected or claimed, known or unknown, fixed or contingent, accrued or not, and whether damage has yet resulted or not, based on any act, omission, agreement or event of any type or nature whatsoever; and the Debtor (so acting and so intending) and UMP shall and do hereby (i) covenant and agree not to sue, and not assist in suing and not suffer or permit to be sued, any of the parties hereby released on any matter covered by the foregoing release; and (ii) warrant to each of the parties hereby released that no claim or

other matter hereby released has been assigned or in any manner transferred to any other person or entity.

8. This stipulation and agreement shall be effective only if approved by the Court. If so approved, it shall become immediately effective, without further act or condition. It sets forth the complete agreement of the parties. It shall be binding upon and shall inure to the benefit of the parties (including the estate of the Debtor) and their respective successors and assigns, including in the case of the Debtor any successor trustee in this case or any converted or reopened case.

Accordingly, based upon the foregoing, it is hereby

ORDERED, that:

I. The foregoing stipulation and agreement is approved and each and all of the terms and conditions thereof are declared to be in full force and effect and binding as set forth therein.

II. The automatic stay under Section 362 of the United States Bankruptcy Code is hereby terminated to the extent necessary or appropriate to permit Northwestern National Life Insurance Company, The North Atlantic Life Insurance Company of America and Northern Life Insurance Company (the "Northwestern Companies") to foreclose and enforce their liens and security interests in railcars under the control of the Debtor or its affiliates identified as UMP 6820-6919 and PVS 1000-1099.

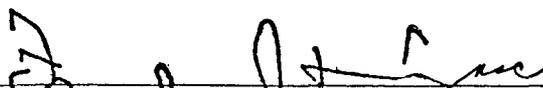
III. General unsecured claims against the estate herein by the Northwestern Companies for any deficiency following

foreclosure of said liens and security interests, in an amount not exceeding the amount determined under paragraph 5 of said stipulation and agreement, are hereby allowed.

IV. The Agreed Order dated May 10, 1983 and based upon the Stipulation for Agreed Order between the Debtor and the Northwestern Companies dated May 10, 1983 is hereby revoked and rescinded.

Dated and entered May 25 1983.

BY THE COURT

  
Frederick J. Hertz  
Bankruptcy Judge

MATTERS TO BE COVERED  
IN  
ORDER APPROVING THE DEBTOR'S APPLICATION

1. Full and general releases by Equipment Owners for benefit of Secured Car Lenders.

2. Court to determine fair market value for all cars, for purposes of determining commercial reasonableness of sale and amount of allowed unsecured deficiency claims.

3. The Debtor will contest any claim by a Secured Car Lender for post-petition interest or legal expenses under Section 506(b).

4. Claims of Secured Car Lenders against Funding Systems Corporation not affected or impaired.

5. Substantial compliance with the foreclosure procedure specified in the Order shall be deemed commercially reasonable.

MANAGEMENT CONTRACT

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 1983 by and between Funding Systems Railcars, Inc. ("Manager"), and \_\_\_\_\_ ("Owner"):

WHEREAS, Manager is engaged in the business of managing and leasing railcars for the Manager and other railcar owners, and Owner desires to retain Manager as agent for the purpose of managing the railroad cars identified within Exhibit A ("Cars") attached hereto, on Owner's behalf on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein, Owner and Manager, intending to be legally bound, hereby agree as follows:

1. Engagement of Manager

Subject to all of the terms and conditions set forth herein, Owner hereby engages Manager to manage the Cars, and Manager accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof. Nothing in this agreement precludes Manager from engaging in additional management contracts for rail equipment other than the Cars.

2. Term

- (a) The term of this Agreement shall commence upon the date hereof and shall continue for a period of two years through the second anniversary date hereof, subject to extension at the option of the Owner as set forth in Section 2(b) and subject to earlier termination as set forth in Section 2(c).
- (b) Owner shall have the right, at its option, to extend the term of this Agreement for up to four additional periods of three years each, which right may be exercised separately as to each three-year period by written notice from Owner to Manager received not later than 90 days prior to the then pending termination date of this Agreement.
- (c) This Agreement shall terminate (i) with respect to any Car which is lost or totally destroyed, as of the date of such loss or destruction; and (ii) with respect to all Cars, as of the effective date of any termination pursuant to Section 2(d) or Section 9 hereof; provided, however, that notwithstanding any termination of this Agreement with respect to any Car, Manager shall be

obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits, and lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of Cars), and to arrange for payment of all expenses, taxes and other charges with respect to any Car, due or with respect to periods prior to such termination of this Agreement. (Such expenses and charges to be reimbursed by Owner.) Termination of this contract shall be subject to the provisions of paragraph 11(a).

- (d) Owner shall have the right, at its option, to terminate this Agreement as to all of the Cars, and only as to all of the Cars, effective upon not less than 30 days' prior written notice to Manager, if any one or more of the following conditions is met:
- (1) An event of default described in paragraph 9 occurs; or
  - (2) A plan of reorganization in the presently pending bankruptcy case in which Manager is the debtor has not been confirmed by the Court by December 31, 1983; or
  - (3) For any calendar quarter commencing on or after the earlier of January 1, 1984 or the calendar quarter following the confirmation of such plan as Manager may file in its bankruptcy case, the Net Revenues which were earned (or which but for Owner's lack of consent might have been earned incrementally, above and beyond actual revenues) by the Cars are less than the total number of Cars then subject to this Agreement times the sum of \$450 (or, as to any Car, any lower Net Revenue expressly approved in writing by Owner); and for this purpose, "Net Revenues" shall mean all per diem, mileage, rent, lease payments and other income earned by or attributable to the Cars ("Gross Revenues") less all per diem reclaims and all operating expenses and other amounts (except Management Fees) payable by Owner pursuant to this Agreement, it being understood that revenues paid by users of Cars to the Manager's railroad subsidiaries in the ordinary course of their business for goods transported or services rendered shall not be included as Gross Revenues; or
  - (4) Manager undertakes management of any open-top hopper cars other than the 1558 presently managed,

owned or controlled by Manager and its affiliates, and the actual utilization of the fleet of open-top hopper cars competitive to the Owner's Cars managed by Manager was less than 66-2/3% of the fleet's total utilization capacity during either of the two calendar quarters immediately preceding the quarter in which Manager undertakes management of such additional cars.

3. Procurement of Assignments and Operating Leases

Manager will use its best efforts to seek to procure short term assignments and operating leases for each Car. No fixed term and fixed payment assignment in excess of the term of this Agreement may be entered into by Manager unless such is preapproved in writing by Owner. (Free running service is not considered fixed term or fixed payment). In the event this Agreement terminates with respect to any Car subject to an assignment or operating lease, Manager shall have the sole right to replace that Car in that same service with any similar railroad car under its management if such replacement is allowed under the terms of the assignment or operating lease. Subject to any and all rights and claims of Pecos Valley Southern Railway Company, the Cars identified as PVS 1000-1099 shall be kept in service under that certain Lease Agreement dated September 7, 1979 between Upper Merion and Plymouth Railroad Company and Pecos Valley Southern Railway Company, unless Manager otherwise recommends to Owner and Owner consents thereto in writing (which consent shall not be unreasonably withheld), and Owner shall be and remain entitled to all of the benefits of said Lease Agreement during the term and all renewal terms of this Agreement and at all times after termination of this Agreement if it is terminated for breach of the Manager's obligations under Sections 4 or 5 hereof.

4. Duties of Manager

In consideration of the compensation to be paid to Manager pursuant to this Agreement, Manager shall provide and perform on behalf of Owner the services set forth below, which services shall be provided and performed during the term of this Agreement at a level or standard of care no less than Manager would use with respect to cars it owns or leases or manages for others. The Manager will:

- (a) Pay or arrange for payment, for account of Owner, for the maintenance, repair and remarking of each Car, as required.

Manager shall review, approve, or, if invoice is not both reasonable and proper, reject, and audit each and every such invoice. All such repair and maintenance shall be accomplished promptly and shall be inspected by Manager in accordance with its regular and customary business practice so as to determine the necessity and quality of such repair and maintenance. Manager shall keep each Car in good order and repair and shall comply with each required safety appliance and construction obligation specified by the Association of American Railroads and the Interstate Commerce Commission. The Manager shall maintain each Car in a condition that is satisfactory for interchange in accordance with the Association of American Railroads rules, all at Owner's cost and expense unless a lessee is held responsible for same. All maintenance and repair shall be accomplished in accordance with the Association of American Railroads, Interstate Commerce Commission and Federal Railway Association rules and regulations.

- (b) Register the Cars and file or have filed all required initial and ongoing reports with the Association of Railroads ("AAR"), Interstate Commerce Commission ("ICC"), Department of Transportation ("DOT"), Universal Machine Language Equipment Register ("UMLER"), and each other regulatory authority having jurisdiction over the Cars in order to insure that the Cars will at all times be entitled to generate the maximum revenues, with all registration and filing fees payable to any such regulatory authority to be advanced by Manager for account of Owner.
- (c) Use its best efforts to collect from any user, assignee and/or lessees all payments, mileage allowances and any other revenue due and which are not duly and promptly paid to the Manager or the Owner with respect to the Cars and any other sums due to Owner with respect to the Cars, identifying itself as agent for that purpose, and account for and remit those sums due to Owner as hereinafter provided.
- (d) Maintain the Cars at Owner's expense in a condition which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, ICC or DOT, or any other regulatory authority having jurisdiction over the Cars, (ii) any standard set by the terms of any operating leases and (iii) any standard set by an insurance policy known to Manager, under which the Cars or any of them shall from time to time be insured. Manager will, at Owner's expense, arrange for all alterations,

modifications, improvements or additions to the Cars to comply with all applicable laws or regulations. For any non free-running repairs under Sections 107 or 108 of the AAR rules, or for any alterations required by the AAR, Owner has right of preapproval if the anticipated cost is greater than \$500 per car for any car. Owner will have five (5) business days after written notification to make this election. If Owner makes no election within this time, Manager will use its best judgment.

- (e) Use its best efforts to cause each car in need of repair to be transported to the repair facility by Manager at minimum cost to Owner. Manager will rely on its review of the overall costs of movement and repair to minimize the total costs.
- (f) Pay on behalf of Owner all taxes, charges, assessments, or levies imposed upon or against the Cars other than taxes, charges, assessments or levies payable by and chargeable to any lessee, or which are measured by Owner's income, of whatever kind or nature.
- (g) Maintain or have maintained separate, complete and accurate books and records of transactions of maintenance, mileage and movement relating to the Cars in the same form and to the same extent as customary in the Manager's railcar leasing and management business, and retain such books and records for a period of no less than three (3) years.
- (h) Upon termination of this Agreement, promptly cause those Cars which are the subject of such termination to be returned, to a location designated by Owner, all at Owner's expense. Manager shall use its best efforts to accomplish any such return to be accomplished on an income generating basis and as promptly as requested by Owner. However, if Manager is not reasonably able to accomplish such a return within the time period specified by Owner on an income generating basis, that return shall be accomplished with Manager using its best efforts to minimize transportation costs for Owner.
- (i) Collect and hold in trust for Owner, or have lessees or users collect, all sums due Owner, including, without limitation, insurance benefits or railroad indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and account for and promptly remit those sums. No legal counsel or other experts shall be retained in

order to collect sums due Owner, except upon prior written consent by Owner, and Owner shall pay all fees and disbursements of any counsel or experts so retained.

- (j) Not place any of the Cars in service outside the United States of America for more than 45% of any one year period.
- (k) Promptly notify Owner in writing of any legal action arising out of or relating to the Cars.
- (l) Request Owner's consent prior to amending or exercising any right to terminate any lease for a term in excess of the term of this Agreement.
- (m) Store at no cost to Owner any Car which is unused and stored on the tracks of a railroad owned by the Manager or any subsidiary or affiliate. Owner shall pay the movement and storage costs payable to anyone other than Manager or its affiliate, if Owner wants the Cars stored other than where Manager has them stored.
- (n) Insure the Cars at Owner's expense for casualty and liability risks at coverage equal to cars of similar type managed or leased by Manager or, in any event, as Owner may reasonably request.

5. Payments

Within 10 business days after the end of each calendar month, Manager shall remit to Owner all Gross Revenues of the Cars it received in the immediately preceding month with only an amount sufficient to pay or reimburse Manager for the costs and expenses which this Agreement expressly provides are for account of Owner or are to be paid by the Owner and the Management Fee prescribed in Section 6 to be subtracted from same. Until so remitted to Owner all such Revenues received by Manager will be held as trustee for Owner, until final payment thereof is made to Owner in accordance with this Management Agreement. If such Revenues are not sufficient to pay such costs, expenses and Management Fees in full, Owner will pay the deficiency within 15 days after receipt of Manager's invoice therefor.

6. Fee to Manager

The Manager shall be entitled to the following fee ("Management Fee") for each month during the term of this Agreement:

- (a) Manager shall receive a Management Fee based on Gross Revenues net of all per diem reclaims and net of all legal and expert fees and expenses incurred to collect Gross Revenue ("Revenue Net of Reclaims and Collection Costs") received for utilization of the Cars during the term of this Agreement.
- (b) On that portion of Revenue Net of Reclaims and Collection Costs for any one month which is less than \$600 multiplied by the total number of Cars subject to this Agreement during that month, the Management Fee will be 20% of Revenue Net of Reclaims and Collection Costs.
- (c) On that portion of the Revenue Net of Reclaims and Collection Costs which exceeds \$600 multiplied by the total number of Cars subject to this Agreement during that month, Manager shall receive 40% of Revenue Net of Reclaims and Collection Costs.
- (d) Manager will subtract the Management Fee from Revenue Net of Reclaims and Collection Costs before remitting any funds to Owner.
- (e) Manager will submit to Owner each month the calculations upon which the Management Fee was determined.

7. Parity and Priority

Manager agrees that:

- (a) For each half-year commencing on January 1, 1984 or any July 1 or January 1 thereafter, the average Gross Revenues which were earned (or which but for Owner's lack of consent might have been earned incrementally, above and beyond actual revenues) by the Cars then subject to this Agreement will be at least equal to 90% of average Gross Revenues earned for that half-year by all open-top hopper cars competitive to the Cars; and
- (b) Manager will lease and load the Cars in priority over any open-top hopper cars, competitive to the Cars, which may be owned by Manager or its subsidiaries and affiliates; and
- (c) Manager will not purchase or lease, or permit any subsidiary or entity controlled by it to purchase or lease from any person, any of the open-top hopper cars presently controlled by Manager, unless Manager extends such offer on the same terms to Owner as to a ratable share of Owner's cars. Owner shall have no obligation to accept any such offer or to sell any Cars.

8. Reports; Audit Rights

Manager shall monitor and record fleet allocation of the Cars under Manager's normal procedures.

Manager shall, within 90 days following the end of each calendar quarter during the term of this Agreement, submit to Owner:

- (a) A written report of the activity of the Cars, which report will summarize for the Cars for such service quarter (i) amounts earned and the amounts paid for the use of the Cars; (ii) the nature of the amounts earned and the amounts paid for the use of the Cars, i.e., whether such amounts represent mileage charges, per diem charges or some other source of revenue; (iii) amounts outstanding from prior months; (iv) operating expenses; (v) management fees; and (vi) amounts remitted to Owner or payable to Manager pursuant to this Agreement;
- (b) A written report setting forth the total number of open-top hopper cars competitive to the Cars managed by Manager for others or owned or leased by Manager or any affiliate and the aggregate capacity, utilization and Gross Revenues for all such cars during such service quarter; and
- (c) A balance sheet and operating statement setting forth in accordance with accepted accounting practice Manager's assets and liabilities as at the end of such service quarter and the results of operations for such service quarter.

Manager shall, within 90 days following the end of each calendar year during the term of this Agreement, submit a statement to Owner signed by an executive officer of Manager (i) setting forth as of that calendar year end the amount, description and numbers of all Cars then subject to this Agreement; the amount, description and numbers of all Cars that have suffered a casualty occurrence during the preceding calendar year and are then undergoing major repairs (other than running repairs); (ii) stating that, in the case of all Cars repaired or repainted during the period covered by such statement, and to the best of Manager's knowledge, the proper number and markings have been preserved or replaced; (iii) certifying that all amounts to be remitted hereunder by Manager to Owner through the preceding December 31 have been remitted, or if any have not been remitted, identifying such unremitted amounts and the reason for their nonremittance; (iv) stating that to the best of

Manager's knowledge after reasonable inquiry, Owner is in compliance with all of the provisions of this Agreement and that all amounts required to be paid by Owner have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment; and (v) stating that to the best of Manager's knowledge the Cars have been operated in compliance with the requirements of all regulatory authorities having jurisdiction over the Cars.

Manager shall notify Owner within 5 business days after becoming aware of the occurrence of any major casualty which would cause any Car to be taken out of service for over 90 days.

Owner shall have the right at any time to inspect, audit and copy Manager's books and records, to verify the revenues and expenses of the Cars, to inspect the Cars, and to consult with Manager's principal officers in regard to the management of the Cars, all upon at least 48 hours' written notice and as reasonable during business hours.

#### 9. Events of Default

- (a) The occurrence of any of the following events shall be an event of default:
  - (i) The non-payment or failure to remit, by Owner or Manager to the other of a total amount in excess of \$1,000 required herein to be paid or remitted, if such non-payment or failure is not waived in writing by the other party or cured within 10 days after written notice to the offending party that any such payment or remittance is due. Notwithstanding the foregoing, the non-payment or non-remittance of such sum shall not relieve either party of the obligation to pay or remit any amounts then accrued hereunder.
  - (ii) The breach or non-fulfillment by Manager or Owner of any other term, covenant or condition of this Agreement, if such breach or non-fulfillment is not waived in writing by the other party or cured within 10 days after written notice to the offending party of such breach or non-fulfillment.
- (b) Upon the occurrence of any event of default by a party hereunder, the other party may, at its option, terminate this Agreement by delivering to the defaulting party written notice of such termination and may, in addition, pursue any other remedy available at law or in equity.

10. Notices

Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office in the United States by registered or certified mail, postage prepaid, addressed to the other party as follows:

If to Manager:                   Funding Systems Railcars, Inc.  
Suite 370  
2215 Sanders Road  
Northbrook, Illinois 60062  
  
Attention: President

If to Owner:

Attention: President

and any party may change such address by notice given to the other party in the manner set forth above.

11. Miscellaneous

- (a) Governing Law. This Agreement is made by Manager as debtor-in-possession under the United States Bankruptcy Code. All obligations of Manager hereunder shall constitute obligations of the debtor-in-possession and the estate and shall survive confirmation and consummation of any plan of reorganization in Manager's bankruptcy case. Any order confirming a plan shall specifically provide that Manager's obligations hereunder shall survive confirmation and consummation of the plan and that the Court retains non-exclusive jurisdiction with respect to such obligations of Manager for the purpose solely of enforcing the provisions of this Agreement (including without limitation Owner's termination rights and Manager's obligation to hold all funds in trust) in accordance with the terms hereof. Subject to the foregoing, this Agreement shall be governed by the laws of the State of Illinois.
- (b) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- (c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.
- (d) Amendment. No modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.
- (e) Force Majeure. Neither party hereto shall be deemed to be in breach or in violation of this Agreement if either is prevented from performing any of its obligations hereunder for any reason beyond its reasonable control including, without limitation, acts of God, riots, strikes, fires, storms or public disturbances.
- (f) No Partnership or Implied Authority. It is not the purpose or intention of this Agreement to create a joint venture or partnership relation between the parties and nothing herein shall create or be construed to create such a joint venture or partnership. Except as set forth herein, Manager shall have no authority to bind Owner or incur any liability for which Owner may be responsible without the prior written consent of Owner. Manager shall be and act solely as an independent contractor, and Owner shall have no liability for any act or omission of Manager, except as provided by law for acts within the scope of Manager's express and actual written authority.
- (g) Waiver. The waiver of any breach of any term of condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.
- (h) Notwithstanding any termination provision herein, if with Owner's written consent any Cars are placed in service for a period to extend beyond the termination of this Agreement, at Manager's option those particular Cars shall remain under the terms of this Agreement until the earliest possible termination of such service period; provided, that the foregoing provision shall not apply (i) if Manager may substitute other cars in such service and has such substitute cars available to it; or (ii) if Manager fails at any time to perform any of its obligations under Sections 4 and 5 of this Agreement. For purposes of the foregoing provision, the earliest possible termination of the service period for any of the Cars which presently are in service under the Lease Agreement dated September 7, 1979

referred to in paragraph 3 shall be the earliest of (i) the date on which the term of said Agreement expires as to such Car; (ii) the date on which Upper Merion and Plymouth Railroad Company, as lessor thereunder, first has power to terminate said Agreement as to such Car upon occurrence of an Event of Default, if Owner has requested that such power be exercised; and (iii) 45 days after Owner requests such lessor to give the notice contemplated by paragraph 8A of said Agreement, unless in the interim the lessee thereunder pays the amount described in said paragraph 8A, but only to the extent that said Agreement may be terminated as to such Cars upon the giving of such notice (it being understood that no such power may be exercised and no such notice may be given, except with Owner's prior written consent).

- (i) Assignment. Owner's rights hereunder may be freely assigned and transferred. Manager may not assign or delegate its duties hereunder, except that Manager may permit its obligations hereunder to be performed for it by any subsidiary but Manager shall remain fully liable and accountable with respect to all such obligations.
- (j) This Agreement shall be effective as of \_\_\_\_\_, 1983, and Manager shall account for all Gross Revenues earned from and after that date in accordance with the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth above.

ATTEST:

\_\_\_\_\_  
"Owner"

Assistant Secretary

By \_\_\_\_\_  
President

(CORPORATE SEAL)

ATTEST:

FUNDING SYSTEMS RAILCARS, INC.  
"Manager"

\_\_\_\_\_  
Assistant Secretary

By \_\_\_\_\_  
President

(CORPORATE SEAL)