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I. C. C.
FEE OPERATION BR.

February 28, 1979

No. **9-CG8A074**
Date **MAR 9 1979**
Fee \$ **100.00** *original 30*
ICC Washington, D. C.

REGISTERED MAIL

Interstate Commerce Commission
12th and Constitution Avenue Northwest
Room 1227
Washington, D.C. 20423

Attention: Ms. Mildred Lee

Dear Ms. Lee:

Enclosed are six (6) original counterparts of a security agreement covering railway equipment which you are hereby requested to record, pursuant to 49 CFR Part 1116, under the name of William Key Wilde and under the name of Carlton Wilde. Also enclosed is a check in the amount of \$100 to pay the recordation fee. The original documents when filed should be returned to:

William J. Hayes
Bracewell & Patterson
2900 Pennzoil Place South Tower
Houston, Texas 77002

(1) The name and address of the Mortgagee (Secured Party) are:

Fannin Bank
1020 Holcombe Boulevard
Houston, Texas 77025

(2) The names and addresses of the Mortgagors (Debtors) are:

William Key Wilde
8 Woodsedge Lane
Houston, Texas 77024

Carlton Wilde
3105 Reba Drive
Houston, Texas 77019

10187
RECORDATION NO. Filed 1425

MAR 12 1979-9 30 AM

INTERSTATE COMMERCE COMMISSION

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(3) The property covered by such security agreement includes railway equipment described as follows:

- (i) Five (5) 4,750-cubic-foot capacity, unlined, 100-ton truck, gravity discharge, covered hopper cars with trough hatches, having A.A.R. Mechanical Designation LO and having road numbers PLMX 10751, PLMX 10752, PLMX 10753, PLMX 10754 and PLMX 10755; and
- (ii) Four (4) 5,347-cubic-foot capacity, 70-ton truck, 50'6" XM general purpose unequipped boxcars, having A.A.R. Mechanical Designation XM and having serial numbers VTR 12097, VTR 12182, VTR 12188 and VTR 12190, each of which boxcars is marked as follows:

"REX RAILWAYS, INC., AGENT FOR OWNER & LESSOR, PURSUANT TO A LEASE RECORDED UNDER SECTION 20c OF INTERSTATE COMMERCE ACT. TITLE TO THIS CAR SUBJECT TO DOCUMENTS RECORDED UNDER SAID SECTION 20c"

If you have any questions regarding this matter, or if you need further information, please call William J. Hayes at (713) 223-2900.

Very truly yours,

FANNIN BANK

By 
SENIOR Vice President

Interstate Commerce Commission
Washington, D.C. 20423

3/12/79

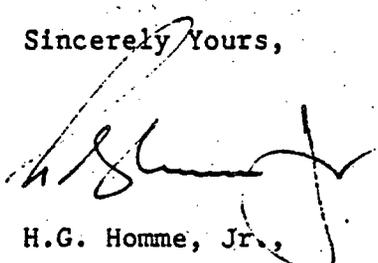
OFFICE OF THE SECRETARY

William J. Hayes
Bracewell & Patterson
2900 Pennzoil Place S.Tower
Houston, Texas 77002

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 3/12/79 at 9:30am, and assigned recordation number(s) 10187

Sincerely Yours,



H.G. Homme, Jr.,

Secretary

Enclosure(s)

SE-30-T
(2/78)

SECURITY AGREEMENT

MAR 12 1979 -9 30 AM

INTERSTATE COMMERCE COMMISSION

Section I. Collateral and Obligations.

To secure the performance and payment of all obligations and indebtedness of the undersigned ("Borrower") or of any of the undersigned, if more than one, to Fannin Bank ("Bank"), 1020 Holcombe Boulevard, Houston, Harris County, Texas, of whatever kind or however created or incurred, whether incurred directly or acquired from third parties, whether acquired as collateral, by participation or otherwise, whether evidenced by promissory notes, guaranty or other agreements or otherwise and whether now or hereafter existing, including the indebtedness evidenced by Borrower's promissory note of even date herewith payable to the order of Bank in the principal amount of \$344,000.00, Borrower hereby grants to Bank a security interest in the property hereinafter described, and all increases, profits, substitutions, replacements, renewals, amendments, additions and accessions thereof, thereto or therefor (including any money, securities, rights to subscribe, liquidating dividends or other dividends, property or rights which Borrower may hereafter become entitled to receive on account of securities pledged hereunder) and the proceeds and products of such property, and all increases, profits, substitutions, replacements, renewals, amendments, additions and accessions of, to and for such proceeds and products (all of which is hereinafter collectively called "Collateral"):

- (1) Five (5) 4,750-cubic-foot capacity, unlined, 100-ton truck, gravity discharge, covered hopper cars with trough hatches, having road numbers PLMX 10751, PLMX 10752, PLMX 10753, PLMX 10754 and PLMX 10755 ("Hopper Cars");
- (2) Four (4) 5,347-cubic-foot capacity, 70-ton truck, 50'6" XM general purpose unequipped boxcars, having serial numbers VTR 12097, VTR 12182, VTR 12188 and VTR 12190 ("Boxcars");
- (3) All right, title and interest now owned or hereafter acquired by Borrower in and to that certain Management Agreement dated November 1, 1978, between PLM Railcar Management, Inc., a California corporation, and Carlton Wilde ("Hopper Car Agreement");
- (4) All right, title and interest now owned or hereafter acquired by Borrower in and to that certain Management Agreement dated December 1, 1978, between REX Railways, Inc., a New Jersey corporation, and William Key Wilde ("Boxcar Agreement"); and
- (5) All right, title and interest now owned or hereafter acquired by Borrower in and to any now or hereafter existing leases of the Hopper Cars or the Boxcars.

Section II. Payment Obligations of Borrower.

Borrower shall pay to Bank when due any amount which may be due from Borrower to Bank. Borrower shall account fully and faithfully to Bank for all proceeds from disposition in the ordinary course of business of Collateral which is inventory and shall upon demand pay or turn over promptly in money, instruments, drafts, assigned accounts or chattel paper all proceeds from each such disposition to be applied to Borrower's indebtedness to Bank, subject, if other than cash, to final payment or collection.

Section III. Borrower's Representations, Warranties and Agreements.

Borrower represents, warrants and agrees that:

1. All information supplied and statements made to Bank in connection with any obligation or indebtedness hereby secured or by Borrower or any other person in any financial, credit, accounting or other statement or certificate or application for credit are and shall be true, correct, complete, valid and genuine. Borrower shall keep accurate and complete records of the Collateral, shall give Bank or its representatives access to such records at all times and shall provide such other information concerning the Borrower and the Collateral as the Bank may require. The address of Borrower's place of business, residence, chief executive office and office where Borrower keeps its records concerning its accounts, contract rights and general intangibles, is as set forth beside Borrower's signature to this Security Agreement. Borrower shall immediately notify Bank of any discontinuance of or change in such address, any change in the location of its place of business, residence, chief executive office or office where it keeps such records, and any change in its name. The Collateral will not be affixed to real estate or other goods so as to become fixtures or accessions. Attached hereto as Exhibits "A" and "B" respectively are true and correct copies of the Hopper Car Agreement and the Boxcar Agreement, both of which are currently in full force and effect in the form set forth in such Exhibits. The Borrower will not permit to occur any amendment, other modification or termination of either the Hopper Car Agreement or the Boxcar Agreement.

2. Except for the rights of present and future lessees of the Hopper Cars and the Boxcars and documents filed in connection with any leases of the Hopper Cars and the Boxcars, (i) no certificate of title, financing statement or other document showing any lien on or security or other interest in the Collateral except that of Bank is or will be outstanding or on file in any public office; and (ii) Borrower has good and marketable title to the Collateral, subject only to the security interest of Bank and subject to no other lien or security or other interest whatsoever. Borrower has full power and lawful authority to grant to Bank a security interest in the Collateral as herein provided, and Borrower will defend the Collateral against the claims and demands of all third persons other than such lessees. Borrower will take all necessary steps to preserve the liability of account debtors, obligors, and secondary parties whose obligations are a part of the Collateral.

3. Bank's duty with reference to the Collateral in Bank's possession shall be solely to use reasonable care in the physical preservation of such Collateral. Bank shall not be responsible in any way for any depreciation in the value of the Collateral, nor shall any duty or responsibility whatsoever rest upon Bank to take necessary steps to preserve rights against prior parties. Protest and all demands and notices of any action taken by Bank under this Security Agreement, or in connection with any Collateral, except as otherwise provided in this Security Agreement, are hereby waived, and any indulgence of Bank, substitution for, exchange or release of any person liable on the Collateral

is hereby assented and consented to. Bank may inspect at any time the Collateral and Borrower's books and records pertaining to the Collateral. Borrower shall assist Bank in making any such inspection. The Collateral shall not be removed from the United States unless all necessary actions have first been taken to perfect and protect the interest of the Bank in the Collateral in the jurisdictions in which the Collateral may become located. The Collateral will not be misused, wasted or allowed to deteriorate, except for the ordinary wear and tear in connection with its intended primary use, and will not be used in violation of any statute or ordinance. Without notice or demand from Bank, Borrower agrees to transfer possession of all money, instruments, documents and chattel paper which are Collateral, other than proceeds from the disposition of Collateral which is inventory, to Bank immediately, or, as to those hereafter acquired, immediately following acquisition.

4. Borrower will maintain insurance on inventory and equipment which is Collateral in an amount at least equal to the value of such inventory and equipment. Borrower agrees that policies evidencing any such property insurance shall, at all times after April 28, 1979, contain a standard mortgagee's endorsement providing for payment of any loss to Bank. Borrower agrees to use their best efforts to obtain a provision in each such policy to the effect that the insurer shall use its best efforts to notify the Bank in writing at least ten days prior to any cancellation of such policy. Borrower shall furnish Bank with certificates or other evidence of compliance with the foregoing insurance provisions. Bank may act as attorney for Borrower in obtaining, adjusting, settling and cancelling such insurance and endorsing any draft drawn by any insurer of the Collateral. Bank may apply any proceeds of such insurance which may be received by it in payment on account of the obligations secured hereby, whether due or not. If any insurance required hereby expires, is cancelled or is otherwise not in full force and effect, at Bank's option, Bank may obtain replacement insurance which may, but need not, be single interest insurance in favor of Bank. Bank may pay the premiums thereunder and add the amount of such premiums to the indebtedness secured hereby. Borrower agrees to reimburse Bank on demand for any amounts so paid, plus interest thereon at the maximum rate permitted by law.

5. Except for leases from time to time of the Hopper Cars and the Boxcars, the Collateral will not be sold, leased or otherwise transferred or disposed of by Borrower or be subjected to any unpaid past due charge, including taxes, or to any subsequent interest of a third person created or suffered by Borrower voluntarily or involuntarily. Borrower will do, make, procure, execute and deliver all acts, things, writings and assurances as Bank may at any time request to protect, assure or enforce its interest, rights and remedies created by or arising in connection with this Security Agreement, including, without limitation, the execution of financing statements, applications for certificates of title or other documents. Without notice or demand from Bank, Borrower agrees to deliver to Bank all certificates of title pertaining to Collateral as to which a certificate of title has been or may be issued. If Bank should at any time be of the opinion that the Collateral is not sufficient or has declined or may decline in value or should Bank for any reason deem itself to be insecure, then Bank may call for additional security satisfactory to Bank, and Borrower promises to furnish such additional security forthwith.

6. The execution, delivery and performance of this Security Agreement and all other instruments and agreements

executed by Borrower are within Borrower's power and authority, are not in contravention of law or any agreement or undertaking to which Borrower is a party or by which Borrower is bound.

7. Borrower agrees that in performing any act under this Security Agreement and any note, guaranty agreement or other obligations secured hereby, time shall be of the essence and Bank's acceptance of partial or delinquent payments, or failure of Bank to exercise any rights or remedy, shall not be a waiver of any obligation of Borrower or right of Bank or constitute a waiver of any other similar default subsequently occurring.

8. If the Collateral includes or constitutes inventory, then until the occurrence of an Event of Default, Borrower may use such inventory in any lawful manner not inconsistent with this Security Agreement and with the terms of insurance thereon and may lease such inventory in the ordinary course of business. Borrower shall not be permitted to use any item of inventory in a manner inconsistent with the holding thereof for lease in the ordinary course of business or in contravention of the terms of any agreement. A lease in the ordinary course of business does not include the exchange of inventory for goods in kind without receipt of additional consideration or transfers made in satisfaction of indebtedness.

Section IV. Rights of Bank.

1. Bank may, in its discretion, before or after default: (i) notify any account debtor or obligors on instruments to make payments directly to Bank; (ii) contact account debtors or obligors on instruments directly to verify information furnished by Borrower; (iii) transfer or register any of the Collateral in the name of Bank or its nominee and, whether or not so transferred or registered, exercise any or all voting rights appertaining to any of the Collateral, and receive any income, property, rights or dividends on account thereof, including cash and stock dividends, liquidating dividends and rights to subscribe; (iv) take control of proceeds and use cash proceeds to reduce any part of the obligations secured hereby, in such order as it elects, whether or not due and payable; (v) bring any action at law or in equity to protect its interest in the Collateral or to obtain damages for or to prevent deterioration or destruction of the Collateral other than ordinary wear and tear in connection with its intended primary use; and (vi) make demand for payment of, file suit on, make any compromise or settlement with respect to, collect, compromise, endorse or otherwise deal with the Collateral in its own name or the name of the Borrower.

2. At its option, Bank may make payments to discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral and take any other action necessary to obtain, preserve, and enforce the security interest and the rights and remedies granted in this Security Agreement and maintain and preserve the Collateral. Such payments and any other expenses incurred by Bank in taking such action shall become part of the indebtedness secured by this Security Agreement. Borrower agrees to reimburse Bank on demand for any such payments made or expenses incurred by Bank, plus interest thereon at the maximum rate permitted by law.

3. Upon the occurrence of an Event of Default, and at any time thereafter, Bank may declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a secured party under the Uniform Commercial Code of Texas including the right to sell, lease or otherwise dispose of any or all of the Collateral in any manner allowed by such Uniform Commercial Code. Subject to the rights of any lessees of any Collateral, Bank may require Borrower to assemble the Collateral and make it available to Bank at a place to be designated which is reasonably convenient for both parties and shall have the right to take possession, with or without prior notice to Borrower, of all or any part of the Collateral or any security therefor and of all books, records, papers and documents of Borrower or in Borrower's possession or control relating to the Collateral, and Bank may enter upon any premises upon which any of the Collateral or any security therefor or any of such books, records, papers or documents are situated and remove the same therefrom without any liability for trespass or damages thereby occasioned. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Bank will send Borrower reasonable notice of the time and place of any public sale or other disposition thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is deposited in the U.S. Mail, postage prepaid, addressed to Borrower at the address listed at the end of this Security Agreement at least five (5) days before the time of the sale or disposition. Borrower shall be liable for all expenses, including without limitation, reasonable attorneys' fees and court costs, actually incurred by Bank in repossessing, storing, preparing for sale, lease or other disposition, or selling, leasing or otherwise disposing of the Collateral. The Collateral may be sold, leased or otherwise disposed of as an entirety or in such parcels as Bank may elect, and it shall not be necessary for Bank to have actual possession of the Collateral or to have it present when the sale, lease or other disposition is made. Bank may deliver to the purchasers or transferees of the Collateral a Bill of Sale or Transfer, binding Borrower forever to warrant and defend title to such Collateral. Borrower shall remain liable for any deficiency.

4. Bank may remedy any default and may waive any default without waiving the requirement that the default be remedied and without waiving any other default. The remedies of Bank are cumulative, and the exercise or partial exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other remedies of Bank. No delay of Bank in exercising any power or right shall operate as a waiver thereof.

5. This Security Agreement, Bank's rights hereunder or the indebtedness hereby secured may be assigned from time to time, and in any such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to Bank.

6. Bank may execute, sign, endorse, transfer or deliver in its own name or in the name of Borrower, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title or any other documents necessary to evidence, perfect or realize upon the security interest and obligations created by this Security Agreement.

Section V. Events of Default.

Borrower shall be in default under this Security Agreement upon the happening of any of the following events or conditions (herein called an "Event of Default"):

1. Failure of Borrower or any endorser, guarantor, surety, accommodation party or other person liable upon or for payment of any indebtedness or obligation secured by this Security Agreement (each hereinafter called an "Other Liable Party") to pay punctually when due any indebtedness due to Bank or to perform punctually any other obligation, covenant, term or provision contained in or referred to in this Security Agreement, any notes or other agreement secured hereby or any other agreement executed in connection with this Security Agreement or any note secured thereby;

2. Any warranty, representation or statement contained in this Security Agreement or made or furnished to Bank by or on behalf of Borrower or any Other Liable Party proves to have been false in any respect when made or furnished;

3. Except as specifically authorized herein, any loss, theft, substantial damage, destruction or sale or other disposition of or to any of the Collateral occurs or the Collateral is subjected to any lien or encumbrance including, without limitation, any storage, artisan's, mechanic's or landlord's lien or any levy, seizure or attachment;

4. Death, dissolution, termination of existence, insolvency or business failure of Borrower or any Other Liable Party occurs, or a receiver of all or any part of the property of Borrower or any Other Liable Party is appointed or an assignment is made for the benefit of the creditors of Borrower or any Other Liable Party or a meeting of creditors for Borrower or any Other Liable Party is called or any proceeding under any bankruptcy or insolvency laws by or against Borrower or any Other Liable Party is commenced;

5. Any event occurs which results in the acceleration of the maturity of the indebtedness of Borrower or any Other Liable Party to others under any indenture, agreement or undertaking;

6. The Collateral becomes, in the sole judgment of Bank, unsatisfactory or insufficient in character or value; or

7. Any event occurs which causes Bank to believe that the prospect of payment of any indebtedness or obligation secured hereby or the performance of this Security Agreement is impaired.

Section VI. Additional Agreements.

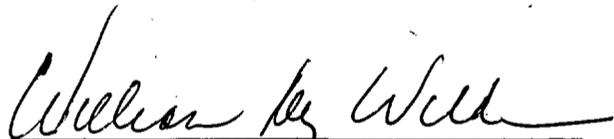
1. The term "Borrower" as used in this Security Agreement shall be construed as the singular or plural to correspond with the number of persons executing this instrument as Borrower. "Bank" and "Borrower" as used in this Security Agreement include the heirs, executors or administrators, successors, representatives, receivers, trustees and assigns of those parties. If more than one person executes this Security Agreement as Borrower, their obligations under this Security Agreement shall be joint and

several. Unless the context otherwise requires, terms used in this Security Agreement which are defined in the Uniform Commercial Code of Texas are used with the meanings as therein defined. The division of this Security Agreement into sections and subsections has been made for convenience only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this Security Agreement. The law governing this secured transaction shall be that of the State of Texas.

2. If any provision of this Security Agreement is rendered or declared invalid, illegal or ineffective by reason of any existing or subsequently enacted legislation or by decree of a court of competent jurisdiction, such legislation or decree shall not impair, invalidate or nullify the remainder of the Security Agreement which shall remain in full force and effect.

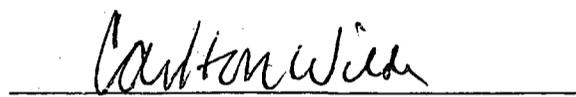
3. Any notice or demand to Borrower hereunder or in connection herewith may be given and shall conclusively be deemed and considered to have been given and received upon the deposit thereof, in writing, duly stamped and addressed to Borrower at the address set forth on the reverse hereof, in the U.S. Mail; but actual notice, however given or received, shall always be effective. Notwithstanding anything contained in this Security Agreement to the contrary, nothing contained in this Security Agreement or any other document executed in connection herewith shall be construed as impairing or limiting the right of Bank to demand at any time payment in full of any indebtedness secured hereby which is due and payable on demand.

EXECUTED this 28th day of February, 1979.


WILLIAM KEY WILDE

ADDRESS:

8 Woodsedge Lane
Houston, Texas 77024


CARLTON WILDE

ADDRESS:

3105 Reba Drive
Houston, Texas 77019

589-45770

9/E 1914
wilde

EXHIBIT "A"

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE ADMINISTRATOR OF THE SECURITIES LAWS OF THE STATE HAVING JURISDICTION OVER SUCH SALE OR TRANSFER, EXCEPT AS PERMITTED IN THE APPLICABLE RULES OF SUCH ADMINISTRATOR.

NEITHER THE MANAGEMENT AGREEMENT NOR INTERESTS IN CARS UNDER THE MANAGEMENT PROGRAM HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, IF SECURITIES, MAY NOT BE RESOLD UNLESS REGISTERED UNDER SAID ACT OR EXEMPT FROM SUCH REGISTRATION.

MANAGEMENT AGREEMENT
PLM RAILCAR MANAGEMENT, INC.

THIS AGREEMENT made by and between PLM Railcar Management, Inc., a California corporation (hereinafter called "RMI"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Car Purchase Contract (the "Purchase Contract") with PLM, Inc., purchased the covered hopper railroad cars identified in Schedule 1 attached hereto and incorporated herein by reference (such car or cars purchased by Owner being hereinafter referred to as the "Cars");

WHEREAS, Owner may have financed a portion of the purchase price for the Cars from the proceeds of the borrowing identified in Schedule 2 attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified in said Schedule 2, and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Schedule 2 (hereinafter referred to as "Debt Service");

WHEREAS, RMI is engaged in the business of managing railcars for railcar owners, and Owner desires to retain RMI as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, RMI intends to manage 50 to 500 railcars identical in all material respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which RMI will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by RMI under the Covered Hopper Car Management Program, 1978-2 (the "Management Program"), all on the terms and conditions set forth herein;

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

1. Engagement of RMI.

Owner hereby engages RMI as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and RMI accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term.

The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue for a period of five years and six months thereafter; provided, however, that, except for Sections 10 and 11, which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the expiration of five years and six months after the date of this Agreement or upon the withdrawal, sale, loss or total destruction of any Car, RMI shall continue to be obligated to collect all rental payments, mileage allowances and other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

3. Duties of RMI.

In consideration of the compensation to be paid to RMI by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse RMI pursuant to Section 7 hereof, RMI shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

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

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to shippers, railroads, or other financially responsible parties for that purpose on terms and conditions which are customary in the industry and taking such steps as may be required to insure that all obligations and duties arising under such leases, whether of lessor or lessees, are performed or complied with in an orderly and timely fashion.

(c) Use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Collect all rental payments and mileage allowances due with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the lease or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of RMI exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Use its best efforts to arrange to have the Cars maintained in good 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, (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and RMI, as agent for Owner, or (iii) any standard set by any insurance policy under which the Cars or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with RMI, in its capacity as agent for Owner, being named in

each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury, (ii) loss of or damage to the Cars, and (iii) loss of revenues with respect to the Cars; provided, however, that if RMI effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that if RMI determines that the cost of insurance described above is unreasonably high, or cannot be obtained, RMI need not place or acquire such insurance and shall so notify Owner.

(h) Pay in Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in RMI's discretion, defend against any such charges and to seek revision or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record movement of the Cars.

(j) Maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives during reasonable business hours.

(k) Paint the Cars such colors and with such designs as RMI may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the AAR.

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

(m) Use its best efforts to 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 to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian and Provincial tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the Cars from the Loan and any "balloon payment" identified as such in Schedule 2 hereto will be due within one year prior to the expiration of the term of this Agreement and Owner shall have requested that RMI assist in arranging refinancing for such payment, use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. RMI shall commence its efforts to arrange refinancing for such balloon payment on the Loan at least six months prior to the due date for such payment. Neither RMI nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of RMI.

(a) It is recognized that RMI will manage under the Management Program the railcars, including the Cars, purchased by investors who enter into a management agreement substantially identical to this Agreement. It is recognized that RMI will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that RMI's services for and obligations to and rights with respect to Owner and the owners of other cars in the Management Program are several. RMI will not act or purport to act for or in the name of the Pool, the Management Program or the owners of cars in the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars in the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming RMI as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement, the Management Program and the Pool are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars in the

Management Program, RMI and/or any affiliate of RMI. RMI shall not take any action or engage in any course of dealing, or permit any affiliate of RMI to so act, which would suggest or create an inference that there is any understanding or agreement between owners of cars in the Management Program or that such owners are acting collectively or as an entity and RMI shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) RMI shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct; or (ii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent (either express or inferred, as provided in Section 3(f)) of Owner.

5. Owner's Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of the Cars and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) (i) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars including, but not limited to, minimum rentals and mileage charges collected under leases, mileage allowances, if any, not credited to a lessee, and payments received by Owner under Section 9(c).

(ii) As used in this Agreement, the term "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of Cars, including, but not limited to, maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); accounting fees incurred pursuant to Section 13(d); legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering the Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that RMI will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments, or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities which are not the responsibility of Owner under Section 7(g); and Owner's pro rata share of that portion of ad valorem, gross receipts and other property taxes which are levied against all railcars bearing "PLMX" reporting marks and determined by RMI to be attributable to the cars in the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that RMI will use its best efforts to allocate to the cars in the Management Program only such portion of the aggregate of such taxes as are attributable to such cars).

(iii) Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid before or after such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of the quarter in which such revenues were received or expenses paid; provided, however, that if such revenue is received or such expenses paid within one year of the quarter to which they relate and the amount involved exceeds \$500 per Car, the items shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate; provided further that, notwithstanding the foregoing, any such item or items received or paid prior to the close of the quarter following the quarter during which the last Car to be included within the Pool is delivered to a lessee shall be accounted for with the Gross Revenues and Operating Expenses for the quarter to which such items relate.

(c) Owner's Gross Revenue and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Management Program or Operating Expenses incurred by or with respect to all cars managed under the Management Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Cars are managed under the Management Program and the denominator of which is the product of the total number of cars managed under the Management Program

multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with RMI, the cars owned by such owner (which may be Owner) shall not be considered to be managed under the Management Program until such cars shall first have been delivered to a lessee thereof and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "Net Earnings" shall mean the Gross Revenues attributable to the Cars less the sum of (i) the amount of the Operating Expenses attributable to the Cars; (ii) all compensation due and payable to RMI under Section 6 not theretofore paid; (iii) such reserves as RMI shall, in its sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Cars, or for expenses relating to the Cars arising or payable after the termination or expiration of this Agreement; and (iv) any storage and transit costs payable by Owner under paragraph 6 of the Purchase Contract.

6. Compensation.

As compensation to RMI for the performance of services hereunder, Owner shall pay to RMI the following amounts, which amounts shall be payable, in the case of Section 6(a), on the first day of each month for which they are due, in the case of Sections 6(b) and 6(c), on the last day of each month for which they are due and, in the case of Section 6(d), on the last day of each calendar quarter for which they are due:

(a) *Base Compensation to RMI.* Owner shall pay to RMI a management fee equal to \$38 per Car per month. For any partial calendar month during the term of the Agreement, the fee shall be pro-rated on a daily basis.

(b) *Additional Compensation to RMI.* If the mileage allowances attributable to the Cars exceed the fixed minimum rental per Car per month for any month under a lease covering the Cars, Owner shall pay to RMI for each month during the term of this Agreement, an additional management fee equal to fifteen and one-half percent (15-1/2%) of the mileage allowance per Car in excess of the fixed minimum rental per month.

(c) *Servicing Fee to RMI.* If Owner shall have requested RMI to make the special distributions of Net Earnings provided for by Section 7(a), Owner shall pay to RMI an additional management fee equal to \$7.00 per Car per month, commencing with the month for which Net Earnings are first so distributed and ending with the month for which the last such distribution is made.

(d) *Refinancing Fee to RMI.* If, as provided in Section 3(o), RMI shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to RMI a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable on the closing of such refinancing, one-quarter on the last day of the calendar quarter following the quarter in which such closing occurred and one-quarter on the last day of each of the next two calendar quarters.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) *Special Distributions of Net Earnings.* If (i) Owner has financed a portion of the purchase price for the Cars from the Loan and Debt Service is due on either the first or the last day of each month and (ii) Owner has requested that RMI assist Owner in providing for timely payment of Debt Service, RMI shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner, as hereinafter provided, the lesser of (A) RMI's then best estimate of the

Net Earnings attributable to the Cars for the preceding month, in the case of Debt Service due on the last day of each month, or the second preceding month, in the case of Debt Service due on the first day of each month, and (B) the Debt Service then to be due and payable. Such distribution shall be made by transfer to the Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, RMI shall, not later than three full business days prior to the time that Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for the month during which Owner shall request that such distributions be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to RMI) and shall terminate after the distribution for the month during which, by written notice to RMI, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within ninety (90) days after the end of each calendar quarter, RMI shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount by which Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by RMI pursuant to Section 7(a), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, Department of Transportation or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. RMI shall have the right to require Owner to pay the approximate cost thereof to RMI, upon ten (10) days prior written notice. Upon completion, RMI shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to RMI the amount of such difference.

(e) *Payment for Additional Insurance.* If RMI determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the cost of any such insurance placed or purchased by Owner through RMI.

(f) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the cost of repairs which RMI determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). RMI shall have the right to require Owner to pay to RMI, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at RMI's election, such portion of such cost as RMI believes will not be covered by any such payments which may be received by RMI (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that RMI may apply to such cost of such repair any payments so received by RMI to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by RMI and applied to payment of the cost of such damage, RMI shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by RMI to such repair, RMI shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by RMI to such repairs, the Owner shall promptly pay to RMI the amount of such difference. RMI shall promptly remit to Owner

any payments to cover such damage to such Car which are received by RMI and not applied to payment of the cost of repair of such damage.

(g) *Payment of Uninsured Losses.* Losses from third party liability for bodily injury or property damage caused by any Car (including attorneys' fees) which are (i) not covered by insurance and (ii) are in excess of the lesser of (x) \$25,000 per occurrence per Car for liability for bodily injury and \$25,000 per occurrence per Car for liability for property damage and (y) the amount of the deductible(s) under any liability insurance for bodily injury and property damage on the Car are the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from RMI, Owner shall pay to RMI the amount of such liability.

(h) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses RMI is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses or Debt Service.

8. Indemnification.

(a) *By RMI.* The parties hereto acknowledge that RMI has entered into lease agreements (the "Leases") with four lessees (the "Lessees") for the 500 cars which may be included in the Management Program. If RMI is unable to deliver the 500 cars to the Lessees as a result of the failure of PLM, Inc. to sell 500 cars which become subject to management agreements substantially identical to this Agreement (the "Indemnifiable Event"), then

(i) RMI shall defend, indemnify and hold Owner harmless from and against any and all claims, actions, damages, expenses (including attorneys' fees), losses or liabilities asserted against Owner and arising out of any claim made by the Lessees on account of the Indemnifiable Event, and

(ii) Any expenses incurred by RMI in obtaining substitute cars to meet the requirements under the Leases on account of the Indemnifiable Event shall be borne by RMI; such cars shall not be included in the Management Program; and the Gross Revenues and Operating Expenses of such substitute cars shall not be pooled hereunder with Gross Revenues and Operating Expenses of Owner's Cars.

(b) *By Owner.* Except as provided in Section 8(a), Owner shall defend (if such defense is tendered to Owner), indemnify and hold RMI harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against RMI as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars, including, without limitation, all those arising out of the sole active negligence of RMI, claims for injury to or death of persons, loss of or damage to property (including the Cars) and economic loss due to the unavailability for use of the Cars; provided, however, that Owner shall not defend, indemnify or hold RMI harmless from and against, and RMI shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from bad faith, recklessness, or willful misconduct of RMI.

9. Right of First Refusal; Exclusive Sales Agency; Sublease of Cars.

(a) *Right of First Refusal.* During the term of this Agreement and for a period of five months thereafter, if Owner shall have received from a third party ("Offeror") a bona fide offer (the "Offer") for the purchase of any or all of the Cars, and if (i) either (x) Offeror is a competitor of RMI or any of its affiliates in the business of originating, arranging, brokering, syndicating or dealing in leased equipment or the business of managing railcars or other railroad equipment or (y) Owner actively initiated the transaction or actively solicited the Offer and (ii) Owner desires to accept the Offer, Owner shall first obtain a copy of the Offer in writing signed by the Offeror and forward a true copy thereof to RMI. RMI shall, in such cases (but no others), thereupon have the first option for a period not to exceed ninety (90) days after receipt of a copy of the Offer from Owner, to purchase all or any of the Cars upon the same terms and conditions as set forth in the Offer.

(b) *Exclusive Sales Agency.* During the term of this Agreement and for a period of four months thereafter, RMI shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to RMI (whether pursuant to Section 9(a) or otherwise) or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, RMI) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to RMI upon the sale of a Car a sales commission equal to the sum of (i) four percent (4%) of the sale price and (ii) 25% of the sale price in excess of the total purchase price of the Car provided under paragraph 6 of the Purchase Contract (including the \$100 per Car provision for storage and transit costs contemplated by said paragraph 6).

(c) *Sublease of Cars.* Owner recognizes and acknowledges that an affiliate of RMI may assist a lessee of Owner's Cars in subleasing the Cars or that such affiliate itself may sublease the Cars from such lessee and further sublease to an independent third party, and, in so doing, will be acting for and on behalf of itself, and not on behalf of Owner. Owner further recognizes and acknowledges, and consents to, such affiliate dividing the gross revenue (as defined in this Section 9(c)) from such assistance or sublease and re-sublease equally between such affiliate and the Owner. The term "gross revenue" as used in this Section 9(c) shall mean, as the case may be, (i) any commission paid to such affiliate for assistance in subleasing the Cars or (ii) in the case of a sublease and re-sublease, the sum of (A) the difference between the rental rate received from such third party sublessee and the rental rate paid to the lessee of Owner's Cars and (B) any commission payable to such affiliate in connection therewith.

10. Subordination.

This Agreement and RMI's authority and rights hereunder are subject to the lien upon, and security interest in, the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars; provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the lessees thereunder referred to in Section 11) and to RMI's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due RMI hereunder as of the later of the date of default under the terms of any security agreement or repossession of the Cars pursuant to such security agreement are paid.

11. Dealings With Lessees.

(a) It is intended that leases of cars managed under the Management Program will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge RMI as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals RMI shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and RMI shall select a person or entity, which may be RMI, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) In the event that RMI determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then RMI may require the transfer to RMI of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and substitute thereunder cars identical to the cars so withdrawn.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that

Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation, or maintenance of railway cars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) Not later than 90 days after the end of each calendar quarter other than the fourth calendar quarter, RMI will distribute to Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner pursuant to Section 7(a).

(b) Within 60 days after the close of each calendar year, RMI will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify RMI in writing) RMI will deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions computed on the same or similar bases as those set forth in the analytic models contained in the Private Placement Memorandum dated October 11, 1978 relating to, among other things, the Management Program) reasonably necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year RMI will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to RMI and its affiliates, as to such accountants' review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by RMI in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by RMI to the obligations and duties of RMI under this Agreement.

14. Use of Cars.

RMI shall enforce the obligations of the lessees under the leases presently covering the Cars (the "Leases") so that the Cars will not be used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. RMI shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made, subsequent to the termination of any of the Leases to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

15. 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 of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to RMI: PLM Railcar Management, Inc.
50 California Street
San Francisco, California 94111
Attn: Mr. Charles J. Scarcello

If to Owner: To the address set forth on the signature page to this Agreement;

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

16. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of California.

(b) *Counterparts.* This Agreement may be executed in two 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 the 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 explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors And Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against RMI without the prior written consent of RMI.

(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 and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Customers of RMI.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit RMI from providing the same or similar services to any person or organization not a party to this Agreement. In particular, RMI shall be entitled to manage identical cars not managed under the Management Program under a similar management agreement with another owner; provided, however, that if RMI owns, or manages for any other party, railroad cars which are similar to the Cars, and the total of such cars (including the Cars) available for lease exceeds the demand for such cars, the Cars shall be treated no less favorably than any other cars RMI owns or manages. Owner recognizes and acknowledges that it is RMI's intention to give priority to those cars which have been off-lease and available for the longest period of time.

(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.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

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

PLM RAILCAR MANAGEMENT, INC.

By Charles J. Stewart

OWNER:

Carlton Wilder

By _____

Address 2900 SOUTH TOWER

PENNZOIL PLACE

HOUSTON, TEXAS 77002

Dated: NOVEMBER 1, 1978

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests RMI to make the special distributions provided for in Section 7(a) of this Agreement.

By _____

(If Owner has executed the above request form pursuant to Section 7(a), complete Schedule 2 hereto; if all of the information required by Schedule 2 is not available at the time of delivery of this Agreement, please complete and transmit such Schedule as soon as such information is available.)

PLEASE BE SURE TO FILL IN ALL BLANKS.

For Owner who is an individual:

STATE OF *Texas* }
COUNTY OF *Tarrant* } ss.:

On this *1st* day of *November*, 19 *78* before me personally appeared *Carlton Miller* (name of signer of foregoing instrument), to me known to be the person described in and who executed the foregoing instrument and he or she acknowledged that he or she executed the same as his or her from act and deed.

[SEAL]

Hevia Guilfoyle

My commission expires *9-30-89*

For Owner which is a corporation:

STATE OF }
COUNTY OF } ss.:

On this _____ day of _____, 19 _____, before me personally appeared _____ (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the _____ (title of office) of _____ (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

My commission expires

STATE OF CALIFORNIA }
COUNTY OF SAN FRANCISCO } ss.:

On this _____ day of _____, 19 _____, before me personally appeared _____ (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the _____ (title of office) of PLM RAILCAR MANAGEMENT, INC. (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed.

[SEAL]

.....
Title of Officer

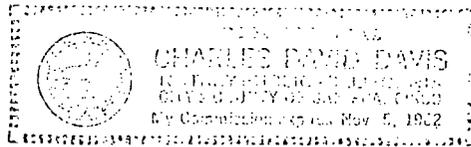
My commission expires.....

State of California)
County of San Francisco) SS:

On this 15th day of December 1978, before me personally appeared Charles J. Scarcello, to me personally known, who being by me duly sworn, says that he is the Vice President - Operations of PLM Railcar Management, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Seal:

Charles David Davis
Charles David Davis, Notary Public



SCHEDULE 1

<u>Number of Cars</u>	<u>Delivery Date</u>	<u>Type of Car</u>	<u>Reporting Marks</u>
5	12/15/78	4,750-cubic-foot capacity, unlined, 100-ton truck gravity discharge covered hopper cars with trough hatches	PLMX 10751 PLMX 10752 PLMX 10753 PLMX 10754 PLMX 10755

SCHEDULE 2

Owner has financed a portion of the purchase price for the Cars and, pursuant to Section 7(a) of the Management Agreement, hereby requests that RMI assist in providing for payment of Debt Service. RMI is hereby authorized to rely on the following information.

Name of Lender: _____

Address: _____

Phone: _____

Officer in charge of account: _____

Account or Loan Number: _____

Date Installments commence: _____

Amount of each installment: _____

Day of month installments due: _____

Number of installments: _____

Due date of final installment: _____

Amount of "Balloon Payment": _____

Due date of any "Balloon Payment": _____

Owner hereby requests that payment be made:

(Please check *one*.)

First day of Month: _____

Last day of Month: _____

Name: _____
(Please print)

Signature: _____

EXHIBIT "B"

MANAGEMENT AGREEMENT

THIS AGREEMENT made by and between REX Railways, Inc., a New Jersey corporation (hereinafter called "REX"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Boxcar Purchase Contract (the "Purchase Contract") with Rex, purchased the boxcars identified in Exhibit A attached hereto and incorporated herein by reference (such boxcar or boxcars purchased by Owner being hereinafter referred to as the "Cars");

WHEREAS, Owner may elect to finance a portion of the purchase price for the Cars from the proceeds of the borrowing identified in Exhibit B attached hereto and incorporated herein by reference (hereinafter referred to as the "Loan") from the institution (hereinafter referred to as the "Lender") identified in said Exhibit B and repayable in the periodic payments of principal and interest identified in, and payable at the times and in the amounts referred to in, said Exhibit B (hereinafter referred to as "Debt Service");

WHEREAS, REX engages in the business of managing railcars for railcar owners, and Owner desires to retain Rex as agent for the purpose of managing the Cars on Owner's behalf, collecting amounts due to or on behalf of Owner with respect to the Cars and disbursing funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein;

WHEREAS, REX intends to manage 36 to 200 boxcars identical in all material respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which REX will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses (the "Pool") of all cars managed by REX under the Boxcar Management Program, 1978-B (the "Management Program"), all on the terms and conditions set forth herein; and

WHEREAS, the Cars, upon their acceptance by the lessee, will be subject to a Lease Agreement dated May 24, 1978 and amended by amendments thereto dated June 5, 1978, July 6, 1978, July 7, 1978, September 21, 1978 and October 10, 1978 (as so amended, the "Lease"), between REX, as agent for lessor principal Owner, and Vermont Railway, Inc. (the "Lessee"), as lessee;

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

1. Engagement of REX.

Owner hereby engages REX as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and Rex accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof.

2. Term.

The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement, and shall continue for a period of ten years and three months thereafter; provided, however, that, except for Sections 10 and 11(a) and (c), which shall, notwithstanding this proviso, remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement, whether upon the

expiration of ten years and three months after the date of this Agreement or upon the withdrawal, sale, loss or total destruction of any Car, REX shall continue to be obligated to collect all rental payments, car hire charges and other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

3. Duties of REX.

In consideration of the compensation to be paid to REX by Owner pursuant to Section 6 hereof, and subject to the agreement of Owner to reimburse REX pursuant to Section 7 hereof, REX shall provide and perform the services on behalf of Owner set forth below during the term of this Agreement:

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

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry (including, without limitation, exercising its right to cause Lenawee County Railroad to put the Cars on such railroad's line bearing such railroad's reporting marks, if such arrangement appears, in REX's judgment, to be either the most effective method of re-marketing the Cars or the most effective short-term use of the Cars pending long-term re-marketing) and taking such steps as may be required to insure that all obligations and duties arising under such leases, whether of lessor or lessees, are performed or complied with in an orderly and timely fashion.

(c) In the event that the Cars are not leased to a railroad, use its best efforts to insure that all steps are taken which may be necessary to have the Cars registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any lease or otherwise.

(d) Collect or cause to be collected all rental payments and car hire charges due with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided.

(e) Terminate leases and recover possession of Cars and enforce all rights of Owner with respect thereto, including the payment of all amounts owed under the leases or otherwise with respect to the Cars as shall be appropriate or necessary in the judgment of REX exercised in good faith; and institute and prosecute legal proceedings in the name of Owner as is permitted by applicable laws in order to terminate such leases and/or recover possession of the Cars; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such leases.

(f) Review all maintenance and repair costs incurred or to be incurred by the Cars so that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Cars to be maintained in good 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, Interstate Commerce Commission ("ICC") or U.S. Department of Transportation ("DOT"), (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and REX, as agent for Owner, and (iii) any standard set by any insurance policy under which the Cars or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be made without the consent of Owner, which consent will be deemed to have been granted if Owner shall not have objected thereto in writing within 30 days after notice to Owner thereof and of the estimated cost thereof.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with REX, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation,

insurance against (i) personal liability, including property damage and personal injury and (ii) loss of or damage to the Cars; provided, however, that if REX effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that if REX determines that the cost of insurance described above is unreasonably high, or cannot be obtained, REX need not place or acquire such insurance and shall so notify Owner.

(h) Pay in Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in REX's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, all such actions to be in the name of Owner.

(i) Monitor and record, and, in the case of Cars used on or off the line of a railroad lessee of the Cars, cause such lessee to monitor and record, movement of the Cars.

(j) Maintain, and, with respect to use of the Cars on or off the line of a railroad lessee of the Cars, cause such lessee to maintain, complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including REX, in the case of records maintained by a railroad lessee of the Cars) during reasonable business hours.

(k) Paint the Cars such colors and with such designs as REX may from time to time approve and place reporting marks or such other marks, legends, or placards on the Cars as shall be appropriate or necessary to comply with any regulation imposed by the ICC or the AAR.

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

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits or railroad or lessee indemnity payments, in the event of damage to, or loss or total destruction of, a Car during the term of this Agreement and to remit all sums due Owner as hereinafter provided.

(n) Furnish factual information reasonably requested by Owner in connection with Federal, State, Canadian, Provincial and Mexican tax returns.

(o) If Owner has elected to finance a portion of the purchase price for the cars from the Loan and any "balloon payment" identified as such in Exhibit B hereto will be due prior to the expiration of the term of this Agreement and Owner shall have requested that REX assist in arranging refinancing for such payment, use its best efforts to arrange refinancing for such balloon payment on the Loan at or prior to the due date for such payment. REX shall commence its efforts to arrange refinancing for such balloon payment on the Loan at least six months prior to the due date for such payment. Neither REX nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to the refinancing of such balloon payment.

(p) Perform for Owner such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of Rex.

(a) It is recognized that REX will manage under the Management Program all the boxcars, including the Cars, purchased by investors thereunder pursuant to a management agreement substantially identical to this Agreement. It is recognized that REX will receive from owners of other cars in the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that Rex's services for and obligations to and rights with respect to Owner and the owners of other cars in the Management Program are several. REX will not act or purport to act for or in the name of the Pool, the Management Program or the owners of cars in the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars in the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming REX as agent for undisclosed several and individual principals. The parties hereto expressly

recognize and acknowledge that this Agreement, the Management Program and the Pool are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars in the Management Program and/or REX. REX shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars in the Management Program or that such owners are acting collectively or as an entity and REX shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) REX shall not have any authority to (i) offer for sale, contract or agree to sell or sell any Cars except as Owner may from time to time hereafter expressly request or direct; (ii) extend, or permit the automatic extension of, the term of the Lease without the prior written consent of Owner; (iii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(d) without the consent (either express or inferred, as provided in Section 3(f)) of Owner or (iv) cause the Cars to be reclassified as XF boxcars without the consent of Owner (which consent may be express or will be deemed to have been granted if Owner shall not have objected in writing to such reclassification within 30 days after notice thereof to Owner).

5. Owner's Revenues, Expenses and Net Earnings:

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of the Cars and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars, including, but not limited to, rentals under leases and car hire charges payable or creditable to a person which is not a railroad. "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of Cars, including, but not limited to maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); accounting fees incurred pursuant to Section 13(d); legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that REX will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments, or levies imposed upon or against Cars of whatever kind or nature; losses from liabilities which are not the responsibility of Owner under Section 7(g); and Owner's pro rata share of that portion of ad valorem, gross receipts and other property taxes which are determined by REX, or, in the event that cars in the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees to be attributable to the cars in the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that REX will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars in the Management Program only such taxes as are attributable to such cars). Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid after the close of such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of that subsequent quarter.

(c) Owner's Gross Revenues and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all cars managed under the Management Program or Operating Expenses incurred by or with respect to all cars managed under the Management Program, as the case may be, multiplied by (ii) a fraction the numerator of which is the product of the number of Cars multiplied by the number of days in such fiscal period that the Cars are managed under the Management Program and the denominator of which is the product of the total number of cars managed under the Management Program multiplied by the number of days in such fiscal period that such cars are managed under the Management Program. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during

such fiscal period and if any cars are destroyed, lost, sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with REX, the cars owned by such owner (which may be Owner) shall not be considered to be managed under the Management Program until such cars shall first have been delivered to and accepted by the Lessee under the Lease and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction.

(d) As used in this Agreement, the term "Net Earnings" shall mean the Gross Revenues attributable to the Cars less the sum of (i) the amount of the Operating Expenses attributable to the Cars; (ii) all compensation due and payable to REX under Section 6 not theretofore paid; (iii) such reserves as REX shall, in its sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Cars, or for expenses relating to the Cars arising or payable after the termination or expiration of this Agreement; (iv) any amount due and payable from Owner pursuant to Section 7(c) and not theretofore paid; and (v) any storage and transit costs payable by Owner under paragraph 6 of the Purchase Contract and not theretofore reimbursed to REX pursuant to Section 7(i).

6. Compensation.

As compensation to REX for the performance of services hereunder, Owner shall pay to REX the following amounts:

(a) *Management Fee to Rex.* Owner shall pay to REX a management fee equal to (i) \$65 per Car per month commencing with the day on which such Car becomes subject to this Agreement and ending one year after the day on which such Car became subject to this Agreement and (ii) thereafter \$60 per month per Car. Such fee shall be payable monthly and shall be pro-rated on a daily basis whenever the calculation of such fee is based on a partial month or a rate in effect for only part of a month.

(b) *Refinancing Fee to Rex.* If, as provided in Section 3(o), REX shall have arranged refinancing of a balloon payment on the Loan and Owner shall have elected to accept such refinancing, Owner shall pay to REX a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable on the closing of such refinancing, one-quarter on the same day of the third month following the quarter in which such closing, one-quarter on the same day of the sixth month following such closing and the final quarter on the same day of the ninth month following such closing.

7. Distribution to Owner of Net Earnings; Payment of Costs and Expenses.

(a) *Special Distributions of Net Earnings.* If Owner has financed a portion of the purchase price for the Cars from the Loan and Owner has requested that REX assist Owner in providing for timely payment of Debt Service, REX shall, not later than three full business days prior to the time that Debt Service for any month is due and payable, distribute to Owner, as hereinafter provided, the lesser of (i) REX's then best estimate of the Net Earnings attributable to the Cars for the next preceding month ending not less than 15 days prior to the time REX shall be required to make such distribution hereunder and (ii) the Debt Service then to be due and payable. Such distribution shall be made by transfer to Lender (which transfer may be made by sending by regular first-class mail a check for the amount transferred), in the name of Owner, of the amount so distributed. If the amount distributed for the benefit of Owner pursuant to the first sentence of this Section 7(a) is less than the full amount of the Debt Service then to be due and payable, REX shall, not later than three full business days prior to the time that Debt Service for such month is due and payable, advise Owner in writing (which advice may be sent by first-class mail) of the existence and amount of such deficiency. Distributions pursuant to this Section 7(a) shall commence for the month during which Owner shall request that such distributions be made (which request may be made by execution of the request form on the signature page of this Agreement or by written notice to REX) and shall terminate after the distribution for the month during which, by written notice to REX, Owner shall request that no further such distributions be made.

(b) *Regular Distributions of Net Earnings.* Within thirty (30) days after the end of each calendar quarter, REX shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner by REX pursuant to Section 7(a).

(c) *Payment of Operating Deficits.* Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the amount by which the sum of (i) Net Earnings for a calendar quarter, reduced by the Net Earnings, if any, for such quarter distributed for the benefit of Owner by REX pursuant to Section 7(a) and (ii) the remaining balance, if any, of the reserve referred to in Section 7(i), shall be less than zero.

(d) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. REX shall have the right to require Owner to pay the approximate cost thereof to REX, upon ten (10) days prior written notice. Upon completion, REX shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to REX the amount of such difference.

(e) *Payment for Additional Insurance.* If REX determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the cost of any such insurance placed or purchased by Owner through REX. Owner shall also pay to REX in the same manner the cost of any insurance against loss of revenues with respect to the Cars which Owner has elected to place or purchase through REX.

(f) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the costs of repairs which REX determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). REX shall have the right to require Owner to pay to REX, upon ten (10) days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at REX's election, such portion of such cost as REX believes will not be covered by any such payments which may be received by REX (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that REX may apply to such cost of such repair any payments so received by REX to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by REX and applied to payment of the cost of such damage, REX shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by REX to such repair, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by REX to such repairs, Owner shall promptly pay to REX the amount of such difference. REX shall promptly remit to Owner any payments to cover such damage to such Car which are received by REX and not applied to payment of the cost of repair of such damage.

(g) *Payment of Uninsured Losses.* Losses from third party liability for bodily injury or property damage caused by any Car which are (i) not covered by insurance and (ii) are in excess of the amount of the deductible(s) under any liability insurance for bodily injury and property damage on the Car are the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the amount of such liability.

(h) *Receipts and Payments as Acts of Owner; Obligations of Owner.* In collecting or receiving any Gross Revenues and in paying or disbursing any Operating Expenses REX is acting solely as agent for Owner. The provisions of Sections 3, 5 and 7 of this Agreement shall not be understood to diminish or

modify the rights of Owner to receive Gross Revenues or the obligation of Owner to pay Operating Expenses or Debt Service.

(i) *Reserve for Initial Operating Deficit.* In addition to the reserves retained pursuant to Section 5(d)(iii), REX shall retain out of the purchase price of the Cars, in accordance with paragraph 6 of the Purchase Contract, \$375 per Car (the "Initial Reserve") as a reserve for the payment of Operating Expenses expected to be incurred during the first four months of the term of this Agreement and prior to receipt of the related Gross Revenues. On or prior to January 31, 1979 REX shall determine the amount (the "Excess Reserve") of any balance remaining in the Initial Reserve. REX shall then reimburse itself out of any Excess Reserve for any storage and transit costs for the Cars to be borne by Owner pursuant to paragraph 6 of the Purchase Contract and remit the balance, if any, of any Excess Reserve to Owner. In the event that there is no Excess Reserve or such Excess Reserve is insufficient, the storage and transit costs for the Cars shall be reimbursed to REX pursuant to Section 5(d)(v) (and any operating deficits shall be paid to the extent, at the time, and in the manner provided in Sections 7(c) and 5(d)(iv)).

8. Indemnification.

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

9. Exclusive Sales Agency.

During the term of this Agreement and for a period of three months thereafter, REX shall have the exclusive right to sell the Cars. Except in case of any sale or other disposition of a Car to REX or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, REX) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to Rex upon the sale of a Car a sales commission equal to the sum of (i) 4% of the sale price and (ii) 20% of any sale proceeds in excess of the sum of (x) 50% of the total purchase price of the Car provided for in the first sentence of paragraph 6 of the Purchase Contract (but excluding therefrom the \$100 per Car provision for storage or transit costs contemplated by said paragraph 6 and the \$375 per Car reserve for operating deficits created pursuant to said paragraph 6 of the Purchase Contract) and (y) the amount determined in (i).

10. Subordination.

This Agreement and REX's authority and rights hereunder are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any Lender to whom Owner has granted a security interest in the Cars; provided, however, that all such liens and security interests are subject to any lease entered into during the term of this Agreement (including any rights of the Lessee under the Lease) and to REX's right to collect Gross Revenues accruing during the term of this Agreement until such time as sums due REX hereunder as of the later of the date of default under the terms of any security agreement or repossession of the Cars pursuant to such security agreement are paid.

11. Dealings With Lessees.

(a) It is intended that leases of cars managed under the Management Program (including the Lease) will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge REX as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving

rentals under such lease (which rentals REX shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and REX shall select a person or entity, which may be REX, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) The cars in the Management Program will initially be leased to the Lessee under the Lease, which may be terminated as to one or more such cars upon the terms and conditions set forth in Sections 6C and 6D thereof. REX shall notify Owner of the occurrence of an event which permits such termination of the Lease with respect to one or more of the Cars within three days after such occurrence and shall advise Owner of its recommendations as to the exercise of such right of termination with respect to the Cars. Within 20 days after the giving of such notice by REX, Owner shall notify REX of its determination whether or not to terminate the Lease with respect to one or more Cars, and REX, if Owner has elected to so terminate the Lease, shall effect such termination on behalf of Owner under the Lease; provided, however, that if other owners of cars in the Management Program and Owner elect to terminate the Lease pursuant to Section 6C thereof with respect to an aggregate number of such cars that is in excess of the number of such cars which may be withdrawn from the Lease pursuant to such Section, then REX, in its sole discretion, shall allocate such right of termination among such electing car owners (including Owner). Subject to the terms and conditions of this Agreement, REX, on behalf of Owner, shall exercise all other rights of the lessor of the Cars under the Lease without being required to seek or receive the consent of or instructions from Owner.

(c) In the event that REX determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any car which is subject to the leases referred to in Section 11(a) and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then REX may require the transfer to REX of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the cars of such person from such leases and substitute thereunder cars identical to the cars so withdrawn.

12. Withdrawal in Case of Special Improvements.

In the event that any alterations, modifications, improvements or additions of the type referred to in Section 7(d) shall be required and Owner shall not have consented to the making thereof, Owner may terminate this Agreement and withdraw from participation in the Management Program. In the event that Owner shall not have consented to the making of any such alteration, modification, improvement or addition and shall not have terminated this Agreement, from and after the effective date of any law, regulation or requirement prohibiting, limiting or otherwise affecting the leasing, use, ownership, operation, or maintenance of railway boxcars, such as the Cars, which have not been so altered, modified, improved or added to, the Cars will be deemed to have been withdrawn from the Management Program and all costs associated therewith (including maintenance and storage costs) will be the sole responsibility of Owner and Owner shall receive only Gross Revenues and Net Earnings directly and actually derived from or attributed to the Cars.

13. Reports.

(a) Not later than 30 days after the end of each calendar quarter other than the fourth calendar quarter, REX will distribute to Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of Owner pursuant to Section 7(a).

(b) Within 60 days after the close of each calendar year, REX will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify REX in writing) REX will deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions

computed on the same or similar bases as those set forth in the analytic models contained in the Private Placement Memorandum of REX dated October 16, 1978 relating to the Management Program) necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year REX will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to REX and its affiliates, as to review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by REX in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by REX to the obligations and duties of REX under this Agreement.

14. Use of Cars.

REX shall use its best efforts to cause any railroad lessee of the Cars under a lease (including the Lease) pursuant to which the Cars are expected to be used off the line of such lessee to prevent the Cars from being used predominantly outside the United States within the meaning of Section 48(a)(2)(A) of the Internal Revenue Code, as amended, or any successor provision thereof, and the regulations thereunder. REX shall cause each lease for the Cars entered into, or arrangements for the use of the Cars made by, a railroad which expects to use the Cars on its own line or a person which is not a railroad to contain provisions regarding the identity of the lessees or sublessees of the Cars and the locations of use of the Cars so as to avoid recapture of any allowable investment tax credit claimed with respect to the Cars.

15. 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 of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to REX: Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attn: Robert W. Gruber

If to Owner: To the address set forth on the signature page to this Agreement;

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

16. Miscellaneous.

(a) *Governing Law.* This Agreement shall be governed by and construed under the laws of the State of New Jersey.

(b) *Counterparts.* This Agreement may be executed in two 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 the 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 explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against REX without the prior written consent of REX.

(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 and without limitation acts of God, riots, strikes, fires, storms, public disturbances, or any regulation of any federal, state or local government or any agency thereof.

(g) *Other Cars Owned or Managed by REX.* It is expressly understood and agreed that nothing herein contained shall be construed to prevent or prohibit REX from providing the same or similar services to any person or organization not a party to this Agreement. In particular, REX shall be entitled to own and operate for its own account identical cars not managed under the Management Program and/or to manage such cars under a similar management agreement with another owner, subject to the following conditions:

(i) in the event that railroad cars similar to or competitive with the Cars, but owned by REX, its affiliates or any officers or directors of REX or its affiliates, are available for leasing at the same time the Cars are so available, REX shall, subject to the needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, re-market the Cars before it re-markets any such similar or competitive railroad cars; and

(ii) in the event REX manages for persons who are not participating in the Management Program railroad cars similar to or competitive with the Cars and not owned by REX, its affiliates or any officers or directors of REX or its affiliates and the number of such railroad cars exceed the demand therefor, REX shall, subject to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, generally re-market first those railroad cars (including the Cars) which have been off lease and available for the longest period of time.

(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.* If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

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

REX RAILWAYS, INC.

By Robert W. Gruber, President
Robert W. Gruber, President

OWNER:

By William Key Wilde
William Key Wilde

Address 2900 South Tower, Pennzoil Plaza
HOUSTON, TEXAS 77002

Dated: December 1, 1978

REQUEST FORM PURSUANT TO SECTION 7(a):

Owner hereby requests REX to make the special distributions provided for in Section 7(a) of this Agreement.

By

For Owner who is an individual:

STATE OF *Texas* }
COUNTY OF *Tarrant* } ss.:

On this *1st* day of *December*, 1978, before me personally appeared *William Roy Hilde* (name of signer of foregoing instrument), to me known to be the person described in and who executed the foregoing instrument and he or she acknowledged that he or she executed the same as his or her free act and deed.

[SEAL]

Gloria H. Boyle
.....
Notary Public in and for
Tarrant County, Texas

My commission expires *9-30-80*

For Owner which is a corporation:

STATE OF }
COUNTY OF } ss.:

On this day of, 1978, before me personally appeared (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the (title of office) of (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

.....
Title of Officer

My commission expires

STATE OF }
COUNTY OF } ss.:

On this day of, 1978, before me personally appeared (name of signer of foregoing instrument), to me personally known, who being by me duly sworn, says that he is the (title of office) of REX RAILWAYS, INC. (name of corporation), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed.

[SEAL]

.....
Title of Officer

My commission expires

Exhibit A to the Management Agreement

Cars subject to the Management Agreement:

<u>Number of Cars</u>	<u>Description of Cars</u>	<u>Reporting Marks and Serial Numbers</u>
	5,347 cubic foot capacity, 70-ton truck, 50'6" XM general purpose unequipped boxcars	VTR 12097 12182 12188 12190