

BATTLE, FOWLER, JAFFIN, PIERCE & KHEEL 10268A

RECORDATION NO. 10268C Filed 1425 280 PARK AVENUE NEW YORK, N.Y. 10017

RECORDATION NO. Filed 1425 APR 9 1979 -12 55 PM

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INTERSTATE COMMERCE COMMISSION

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10268A April 9, 1979
RECORDATION NO. Filed 1425

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Date APR 09 1979

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INTERSTATE COMMERCE COMMISSION

10268 RECORDATION NO. Filed 1425

Washington, D.C.

10268B
RECORDATION NO. Filed 1425

Secretary of the Interstate
Commerce Commission
Washington, D.C. 20423
INTERSTATE COMMERCE COMMISSION

APR 9 1979 -12 55 PM
INTERSTATE COMMERCE COMMISSION

Re: Box Cars Nos. 4050-4099

Dear Sir:

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303 please find the original and three counterparts of each of the following documents:

1. Letter (Purchase Order Assignment) dated as of April 6, 1979, from Rex Railways, Inc., a Delaware corporation (Rex) to McDonnell Douglas Finance Corporation (MDFC), pursuant to which Rex assigns to MDFC certain rights under a purchase order with Pullman Standard Division of Pullman, Incorporated relating to the captioned Box Cars.

2. Lease Agreement (Lease Agreement) dated as of October 12, 1978, between Rex, as lessor, and the Lamoille Valley Railroad Company, the railroad which will lease the Box Cars (Lessee).

3. Conditional Sale Agreement (Conditional Sale Agreement) dated as of April 6, 1979, between MDFC, as Vendor, and Rex, as Vendee, pursuant to which Vendee will purchase and pay for the Box Cars and MDFC will retain security title thereto.

4. Assignment of Lease (Lease Assignment) dated as of April 6, 1979, from Rex to MDFC, pursuant to which Rex assigns to MDFC all the lessor's rights under the Lease Agreement as security for the Conditional Sale Agreement indebtedness.

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Countryman
Rodolfo Hernandez

Secretary of the Interstate
Commerce Commission

April 9, 1979

5. Cross-Collateralization Agreement (Cross-Collateralization Agreement) dated as of April 6, 1979 between MDFC and Rex, pursuant to which Rex is granting MDFC a second security interest in 50 box cars, purchased previously under a certain conditional sale agreement between same parties, dated as of March 9, 1979 and recorded with the Interstate Commerce Commission on March 12, 1979 (Recordation No. 10192-C).

Also enclosed is a check for \$210.00 payable to Interstate Commerce Commission in payment of the fee for recording of the Lease Agreement (\$50.00), the Conditional Sale Agreement (\$50.00), Purchase Order Assignment (\$50.00), Assignment of Lease (\$10.00) and Cross-Collateralization Agreement (\$50.00).

The names and addresses of the parties to the enclosed Agreements are as follows:

Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632

McDonnell Douglas Finance Corporation
3855 Lakewood Boulevard
Long Beach, California 90846

Lamoille Valley Railroad Company
RFD #1
Stafford Avenue
Morrisville, New Jersey 05661

Rex-Noreco, Inc., the parent of Rex Railways, Inc., proposed to enter into a guaranty agreement pursuant to which it will guarantee the performance by Rex of its obligations under the Conditional Sale Agreement. The address of Rex-Noreco, Inc. is 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.

The equipment covered by the enclosed Agreements consists of 50 70-ton 50' 6" XM box cars, having A.A.R. mechanical designation "XM" and lessee identifying marks of LVRC 4050 through and including 4099. The cars will be further marked with a legend stating "Title to this Car Subject to Documents Recorded with the Interstate Commerce

Secretary of the Interstate
Commerce Commission

April 9, 1979

Commission."

Please return stamped copies of the enclosed documents to the undersigned.

Very truly yours,



David D. Griffin

DDG/ds
Enclosures
cc: Howard Meyers, Esq.

10268-B
RECORDATION NO. _____ Filed 1425

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

DATED AS OF APRIL 6, 1979

BETWEEN

MCDONNELL DOUGLAS FINANCE CORPORATION,
VENDOR

AND

REX RAILWAYS, INC.,
VENDEE

(COVERING 50 GENERAL PURPOSE BOX CARS)

Filed and recorded with the Interstate Commerce
Commission pursuant to 49 U.S.C. 11303 on _____, 1979
at _____, Recordation No. _____.

CONDITIONAL SALE AGREEMENT dated as of April 6, 1979, between McDonnell Douglas Finance Corporation, a Delaware corporation, as vendor (hereinafter called the "Owner" or "Vendor") and REX RAILWAYS, INC., a New Jersey corporation, as vendee (hereinafter called "Rex" or the "Vendee").

WHEREAS, by letter dated May 11, 1978, from PULLMAN STANDARD DIVISION of PULLMAN INCORPORATED (hereinafter the "Builder") to Rex, which letter has been acknowledged and accepted by Rex and the Guarantor hereinafter named, the Builder offered Five Hundred (500) 70-ton, 50'6" Box Cars in accordance with the Builder's bidding specification No. 3809 dated May 1, 1978.

WHEREAS, by mailgram dated June 6, 1978, Rex ordered an additional hundred 70-ton, 50'6" Box Cars in accordance with the same specification No. 3809 dated May 1, 1978 (such mailgram to be attached to the letter of May 11, 1978 and collectively with all documents referred to therein being hereinafter referred to as the "Purchase Order") which Purchase Order is attached hereto as Exhibit A; and

WHEREAS, by letter dated as of the date hereof from Rex to the Vendor (hereinafter the "Letter of Assignment"), a copy of which is attached hereto as Exhibit B, Rex assigned to Vendor all of Rex's rights under the Purchase Order to the extent of the 51st through and including the 100th Box Cars delivered thereunder (hereinafter collectively the "Equipment" or "Units," and individually a "Unit"), which Units are described in Annex A hereto; and

WHEREAS, the Vendor is willing to acquire, subject to the terms and conditions of the Letter of Assignment, the Units delivered under the Purchase Order and to sell them to the Vendee under this Agreement, all upon and subject to the terms and conditions hereinafter set forth; and

WHEREAS, Rex-Noreco, Inc., a New Jersey corporation (hereinafter "the Guarantor") is willing to execute and deliver a Guaranty (hereinafter the "Guaranty"), substantially in the form of Exhibit C hereto, guaranteeing the obligations of the Vendee under this Agreement and the Note hereinafter described; and

WHEREAS, Rex, as lessor, has entered into a lease agreement (hereinafter the "Lease Agreement") dated as of October 12, 1978 with Lamoille Valley Railroad Company, a Vermont corporation, a copy of which Lease Agreement is attached hereto as Exhibit D; and

WHEREAS, the Vendee is willing to assign to the Vendor for security, pursuant to a Lease Agreement Assignment, dated as of the date hereof (hereinafter the "Lease Agreement Assignment"), substantially in the form of Exhibit E to this Agreement, all the right, title and interest of the Vendee under the Lease Agreement; and

WHEREAS as a condition precedent to the consummation of the transaction contemplated hereby, the Vendee is required to grant the Vendor a second security interest in 50 boxcars purchased previously from Vendor pursuant to a Conditional Sale Agreement dated as of March 9, 1979 (the "B&M Agreement"), and in Vendee's interest as lessor under a lease agreement in respect of such cars between Vendee as lessor and Robert W. Meserve and Benjamin H. Lacy, as Trustees of the Property of the Boston and Maine Corporation, as lessee to secure the Conditional Sale Indebtedness incurred by Vendee hereunder, and is further required to grant the Vendor a second security interest in the Equipment sold to Vendee hereunder and in Vendee's interest as lessor under the Lease Agreement to secure the Conditional Sale Indebtedness incurred pursuant to the B&M Agreement, all pursuant to a Cross Collateralization Agreement, dated as of the date hereof (hereinafter the "Cross Collateralization Agreement") substantially in the form of Exhibit F hereto.

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

ARTICLE 1. Purchase of Equipment; Assignment; Representations of the Vendee. The parties hereto contemplate that the Vendee will furnish to or on behalf of the Vendor that portion of the purchase price payable by the Vendor to the Builder for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof, and that an amount equal to the balance of said purchase price shall be furnished by the Vendor pursuant to this Agreement.

As security for the payment and performance of all the Vendee's obligations hereunder and under the Note hereinafter described and in addition to Vendor's right under the Cross Collateralization Agreement, the Vendor shall retain title to and a security interest in the Equipment, pursuant to this Agreement and the Vendee shall assign to the Vendor

all right, title and interest of the Vendee in and to the Lease Agreement, pursuant to the Lease Agreement Assignment.

The Vendee hereby represents and warrants to the Vendor as follows:

(a) The Vendee is a corporation duly organized, validly existing and in good standing under the laws of New Jersey, has the corporate power and authority to own its properties and to carry on its business as presently conducted and to execute, deliver and perform this Agreement, the Note hereinafter described, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment, and has taken all necessary corporate action to authorize the execution, delivery and performance hereof and thereof. This Agreement, the Cross Collateralization Agreement, the Letter of Assignment and the Lease Agreement have each been duly executed by the Vendee and delivered and constitutes, and the Note hereinafter described and the Lease Agreement Assignment, when executed and delivered by the Vendee pursuant to the provisions of this Agreement, will constitute legal, valid and binding obligations of the Vendee enforceable in accordance with their respective terms.

(b) No consent of any party and no consent, license, approval or authorization of, or registration or declaration with, any governmental body (except for the consent of the court having jurisdiction over the Lessee's reorganization herein referred to and the filings of instruments as described in the opinions referred to in Article 5 hereof) is presently required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, the Note hereinafter referred to, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement or the Lease Agreement Assignment.

(c) The execution, delivery and performance of this Agreement, the Note hereinafter referred to, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment will not violate any provision of any applicable law or regulation or of any order, judgment or decree of any court, tribunal or governmental instrumentality or of the Certificate of Incorporation or By-Laws of the Vendee, or of any indenture, contract, agreement or other undertaking to which the Vendee is a party or which purports to be binding

upon it or upon any of its assets, and will not result in the creation or imposition of any lien on any of the assets of the Vendee except as contemplated by this Agreement.

(d) There is no action, suit, investigation or proceeding pending or, to the knowledge of the Vendee, threatened against or affecting the Vendee or any of its assets which, if adversely determined, would have a material adverse effect upon the Equipment or upon the financial condition, business or operations of the Vendee.

(e) The financial statements of the Guarantor as at July 31, 1978, audited by Coopers & Lybrand, copies of which have been delivered to the Vendor, fairly present the consolidated financial position and results of operations of the Guarantor as at and for the period ended said date, in accordance with generally accepted accounting principles. There has been no material adverse change in the financial condition, business or operations of the Vendee or the Guarantor since the date of such financial statements.

(f) The Vendee is not in default under the Lease Agreement; to the best of the Vendee's knowledge, the Lessee is not in default under the Lease Agreement; and no default or Event of Default exists under this Agreement.

ARTICLE 2. Aquisition and Sale. Subject to the terms and conditions of this Agreement, pursuant to the Purchase Order and this Agreement, the Vendor shall purchase the Equipment set forth in Annex A hereto from the Builder, and simultaneously shall sell and deliver, under and subject to the terms and conditions of this Agreement, such Equipment to the Vendee, and the Vendee shall purchase from the Vendor and accept delivery of and pay for (as hereinafter provided) the Equipment. The Vendee warrants that each Unit delivered hereunder shall have been constructed in accordance with the specifications referred to in the first Recital of this Agreement and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Vendee (which specifications, and modifications, if any, are hereinafter called the "Specifications"). The Vendee further warrants that the design, quality, and component parts of each Unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and Interstate Commerce Commission (hereinafter called the

"ICC") requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called the "AAR") reasonably interpreted as being applicable to railroad equipment of the character of such Unit, and each such Unit will be new railroad equipment. Nothing contained in this Article 2 shall impose upon the Vendor any obligation, duty or liability with respect to the construction of the Equipment or the conformity or non-conformity thereof to the Specifications or to applicable requirements, standards or specifications of the ICC, the AAR or other body or authority.

ARTICLE 3. Inspection and Delivery. The Vendor will instruct the Builder to deliver the Units to the Vendee during the delivery period specified in Annex A hereto at Builder's tracks, Bessemer, Alabama, or such other place as Builder and Vendee agree to; provided, however, that no delivery of any Unit of the Equipment shall be made until this Agreement has been filed and recorded with the ICC in accordance with 49 U.S.C. 11303; provided, further, that the Vendor shall have no obligation to deliver any Unit hereunder subsequent to the occurrence of any Event of Default (as described in Article 17 hereof), or event which, with the lapse of time and/or notice, would constitute such an Event of Default.

The Vendor shall have no liability or obligation to the Vendee by reason of any delays in delivery of any Unit or Units resulting from causes beyond the Vendor's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or limitation of materials or delays of carriers or subcontractors; it being expressly understood and agreed that the Vendor's obligations hereunder shall be performed by the Builder under the Purchase Order and Vendor shall have no obligations or liability for nonperformance or delayed performance hereunder or thereunder.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before June 30, 1979 shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sen-

tence, the parties hereto shall execute an agreement supplemental hereto evidencing the limitation of this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee. Upon completion of the sample Unit and each Unit of the Equipment, such Unit or Units shall be presented to an authorized inspector of the Vendee (who may be an employee or agent of the Vendee) for inspection at the Builder's plant or the place specified for delivery of such Unit or Units. If each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee, on an acceptable date agreed upon by the Builder and the Vendor, shall execute and deliver to the Builder and the Vendor a certificate of inspection and acceptance substantially in the form annexed hereto as Annex B (hereinafter called a "Certificate of Acceptance") stating that such Unit or Units have been delivered, inspected and accepted on behalf of the Vendee on the date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and are marked in accordance with Article 11 hereof.

ARTICLE 4. Purchase Price and Payment. The base price per Unit of the Equipment to Vendee is set forth in Annex A hereto. Such base price may be increased as is agreed to by the Vendee and the Builder, in the independent exercise of their sole and absolute discretion, with the prior consent of the Vendor which consent of Vendor shall not be unreasonably withheld. Unless the context otherwise requires, the term "Purchase Price" as used herein shall mean that base price as set forth in Annex A as so increased multiplied by the number of Units delivered to and accepted by the Vendee on or prior to the Closing Date hereinafter mentioned.

The Equipment shall be settled for on a date (hereinafter the "Closing Date") in one group of Fifty (50) Units delivered to and accepted by the Vendee (or if less than Fifty (50) Units are delivered and accepted by June 30, 1979, then such lesser numbers of Units as are delivered and accepted by such date). The Closing Date hereunder shall take place at 10:00 a.m. local time on April 20, 1979 at the offices of Battle, Fowler, Jaffin, Pierce & Kheel, 280 Park Avenue, New York, New York 10017, or at and on such other place, business day and time not later than June 30,

1979 as Vendee and Vendor shall agree in writing. Vendee shall give Vendor written notice of the Closing Date not less than 3 business days prior to such Closing Date. Such notice of closing shall also specify the number of Units to be purchased by the Vendor and sold to the Vendee on the Closing Date and the Purchase Price thereof. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and any other day on which banking institutions in New York City, New Jersey or California are authorized or obligated to remain closed.

The Vendor hereby acknowledges its obligation, subject to the terms and conditions hereof, to purchase the Equipment from the Builder pursuant to the Purchase Order for sale to the Vendee hereunder. The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor or its designee at such place as the Vendor may designate, the Purchase Price for all Units delivered hereunder as follows:

(a) An amount equal to 15% of the first \$1,981,500 of Purchase Price plus 100% of the Purchase Price in excess of \$1,981,500 shall be payable (on behalf of the Vendor) to the Builder on the Closing Date; and

(b) The portion of the Purchase Price not paid by the Vendee pursuant to clause (a) above (the "Conditional Sale Indebtedness") shall be payable together with interest at the rate of 12.90% per annum from the Closing Date as follows: (i) 11 equal monthly installments of principal and accrued interest thereon, each such installment to be in an amount equal to 1.25867% the original principal amount of the Conditional Sale Indebtedness shall be payable on the eighteenth day of each month (or if such day is not a business day then on the first such day thereafter) commencing with May 20, 1979 and ending with March 20, 1980, and (ii) a final installment of principal and accrued interest thereon, in an amount equal to 98.91954% of the original principal amount of the Conditional Sale Indebtedness, shall be payable on April 20, 1980; the aggregate of such installments to be sufficient fully to amortize the principal amount of the Conditional Sale Indebtedness and to pay interest accrued thereon by and as of April 20, 1980. Each such installment payment on the Conditional Sale Indebtedness shall be deemed to have been applied first to the payment of all interest accrued thereon and there-

after to the outstanding principal thereof. The Conditional Sale Indebtedness shall be evidenced by a promissory note (the "Note") of the Vendee, in substantially the form of Exhibit G attached hereto.

Interest under this Agreement and the Note shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

The Vendee shall have the right to prepay the Conditional Sale Indebtedness at any time without premium or penalty in whole at any time or from time to time in part, provided, however, that each partial prepayment shall be in the principal amount of at least One Hundred Thousand Dollars (\$100,000) or an integral multiple thereof, and further provided, that Vendee shall give Vendor written notice of such prepayment not less than 30 days prior to the date of such prepayment. On the date fixed for prepayment in the aforesaid notice, the Vendee shall pay to the Vendor an amount equal to the Conditional Sale Indebtedness so to be prepaid, together with interest accrued thereon to the date of such prepayment, and thereafter the amount of each installment payment thereon shall be ratably reduced in the same proportion as the amount of the Conditional Sale Indebtedness so prepaid bore to the unpaid amount of the Conditional Sale Indebtedness outstanding immediately prior to such prepayment, provided that the aggregate amount of such reduced installments shall at all times be at least sufficient fully to amortize the outstanding amount of the Conditional Sale Indebtedness together with interest thereon by and as of the maturity date of the Note.

All payments and repayment provided for in this Agreement or the Note shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be payable in immediately available funds.

ARTICLE 5. Conditions of Closing. The obligation of the Vendor to make payment for the Units in accordance with the Purchase Order is subject to the satisfaction on or prior to the Closing Date of the following conditions precedent:

(a) The Letter of Assignment, this Agreement, the Cross Collateralization Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment and the Lessee's Consent shall have been duly executed and delivered by the respective parties thereto, shall be in full force and effect, and the Vendor shall have received an executed counterpart of each thereof, and this Agreement, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment shall have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303.

(b) The Note dated the Closing Date evidencing the Conditional Sale Indebtedness shall have been appropriately completed, and duly executed and delivered by the Vendee to the Vendor pursuant to Article 4 hereof.

(c) The Builder shall have duly executed and delivered to the Vendor a bill of sale and assignment dated the date of delivery of the Units transferring to the Vendor title to the Units, warranting to the Vendor, its successors and assigns that (i) at the time of delivery of such Units Builder had legal title to such Units and good and lawful right to sell such Units and (ii) title to such Units was free of all claims, liens, security interests and other encumbrances of any nature and covenanting to warrant and defend the title to such Units against the demands of all persons whomsoever.

(d) A Certificate or Certificates of Acceptance with respect to the Units as contemplated by Article 3 hereof shall have been duly executed and delivered by or on behalf of the Vendee to the Builder and the Vendor.

(e) The Vendor shall have received a copy of an invoice of the Builder for the Units, addressed to the Vendor and accompanied by or having endorsed thereon a certification by the Vendee as to the correctness of the prices of such Units.

(f) The Vendee shall have made payment in immediately available funds of the amounts of the Purchase Price payable by it on the Closing Date pursuant to Clause (a) of the third paragraph of Article 3 hereof.

(g) The Builder shall have received, in immediately available funds, an amount equal to the Purchase

Price for the Units, and the Vendor shall have received evidence, satisfactory to it and its counsel, of Builder's receipt of such amount.

(h) The Vendor shall have received evidence satisfactory to it and its counsel that the insurance relating to the Units required to be maintained under Article 8 hereof is in effect.

(i) The Vendor shall have received the following opinions of counsel, each dated the Closing Date, and addressed and in form and substance satisfactory to the Vendor:

(1) An opinion of counsel to the Vendee stating (i) that the Vendee is a corporation organized and duly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to own its properties and carry on its business as currently conducted and to execute, deliver and perform this Agreement, the Note hereinafter referred to, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment, (ii) that this Agreement, said Note, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment have each been duly authorized, executed and delivered on behalf of the Vendee, and constitute legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their respective terms, (iii) that no consent or approval from any governmental body of the United States of America or, to the best of such counsel's knowledge, of any state is necessary for the valid execution, delivery and performance by the Vendee of this Agreement, said Note, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement or the Lease Agreement Assignment, (iv) that the execution, delivery and performance of this Agreement, said Note, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment will not violate any provision of any applicable law, rule or regulation of any governmental body of the States of New Jersey or New York or the United States of America or of the Certificate of Incorporation or By-laws of the States of New Jersey or New York or the United States of America or of the Certificate of Incorporation or By-laws of the Vendee, or, to the best of such counsel's knowledge, any applicable order, judgment or decree of any court, tri-

bunal or governmental instrumentality or of any indenture, contract, agreement or other undertaking known to such counsel to which the Vendee is a party or which purports to be binding upon it or upon any of its assets, or result in any lien, encumbrance, security interest or charge upon any asset of the Vendee except as contemplated by this Agreement, the Cross Collateralization Agreement, the Lease Agreement or the Lease Agreement Assignment, (v) that this Agreement and the Lease Agreement Assignment create a perfected first priority security interest in the Units and the lessor's interest under the Lease Agreement free of all claims, liens, security interests and other encumbrances except only the rights of the Vendee under this Agreement and the Lease Agreement Assignment, the rights of the Vendee under the Lease Agreement and the rights of the Vendor under the Cross-Collateralization Agreement.

(2) An opinion of counsel to the Lessee to the effect that (i) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into the Lease Agreement and carry out its obligations thereunder, (ii) the Lease Agreement has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, (iii) the Units which are subject to the Lease Agreement are held by Lessee under and subject to the provisions of the Lease Agreement prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee, and (iv) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with the Lease Agreement or any action contemplated on its part hereunder.

(3) An opinion of counsel for the Guarantor stating (i) that the Guarantor is a corporation organized and duly existing in good standing under the laws of the State of New Jersey and has the corporate power and authority to own its properties and carry on its business as currently conducted, and to enter into and perform its obligations under the Guaranty, (ii) that the Guaranty has been duly authorized, executed, and delivered by the Guarantor, and constitutes a legal and valid instrument binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms (iii) that the execution, delivery and performance by the Guarantor of the Guaranty will not

violate any provision of any applicable law, rule or regulation of any governmental body of the States of New Jersey, New York or the United States of America or of the Certificate of Incorporation or By-laws of the Guarantor, or, to the best of such counsel's knowledge, any applicable order, judgment or decree of any court, tribunal or governmental instrumentality or of any indenture, contract, agreement or other undertaking known to such counsel to which the Guarantor is a party or which purports to be binding upon it or upon any of its assets or result in any lien, encumbrance, security interest or charge upon any assets of the Guarantor.

(4) An opinion of counsel for the Builder stating that the bill of sale and assignment referred to in paragraph (c) of this Article 6 hereof has been duly authorized, executed and delivered by or on behalf of the Builder and is valid and enforceable to transfer all right, title and interest of the Builder in and to the Equipment to the Vendor, free of all claims, liens and encumbrances of any nature arising from, through or under the Builder.

(5) An opinion of counsel from Messrs. Morgan, Lewis and Bockius or other special counsel acceptable to the Vendor stating that (i) this Agreement, the Cross Collateralization Agreement, the Letter of Assignment, the Lease Agreement and the Lease Agreement Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303, and this Agreement and the Lease Agreement Assignment have created a first priority lien on and security interest in the Units free of all claims, liens, security interests and encumbrances except only the rights of the Vendee under this Agreement the rights of the Lessee under the Lease Agreement and the rights of the Vendor under the Cross-Collateralization Agreement, (ii) no other filing or recording or other action is necessary for protection or perfection of the first priority rights of the Vendor in the Units under the laws of the United States or any state, and (iii) no other authorization or approval of or notice to any governmental body or authority of the United States of America is necessary for the valid execution, delivery and performance by the Vendee of this Agreement, the Letter of Assignment, or the Lease Agreement Assignment. In rendering the foregoing opinion, such counsel may rely upon the other opinions of counsel required under this paragraph (i) insofar as the authorization, execution, delivery and binding effect of any instruments are concerned.

In giving any opinion specified in this paragraph (i), counsel may qualify its opinion to the effect that the enforceability of any agreement or instrument is subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' or lessors' rights generally or by the availability of equitable remedies.

(j) No default or event of default or any event or condition which with notice or lapse of time or both would constitute a default or event of default shall have occurred and be continuing under this Agreement, the Cross Collateralization Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment or the Lessee's Consent, and the Vendor shall have received certificates to such effect, dated the Closing Date, from the respective parties to the foregoing instruments.

(k) All of the representations and warranties contained in this Agreement, the Cross Collateralization Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment and the Lessee's Consent shall be true and correct on and as of the Closing Date, and the Vendor shall have received certificates to such effect, dated the Closing Date, from the respective parties to the foregoing instruments.

(l) The Equipment shall have been fully delivered and accepted under this Agreement and the Lease Agreement, and the Closing Date shall have occurred on or prior to June 30, 1979. In no event shall the Vendor be obligated to make any payment in respect of the Purchase Price for more than 50 Units and its total obligation hereunder shall not exceed 85% of \$1,981,500.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee or the Lessee as provided in this Agreement and the Lease. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any Unit shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and the

Cross Collateralization Agreement and shall be included in the term "Equipment" as used in this Agreement. (All such security title to and security interest in the Equipment hereinabove retained by the Vendor and any such accessions are herein called, collectively, the "Security Title.")

Except as otherwise provided in the third paragraph of Article 8 hereof, when and only when the Vendee shall have been paid the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee, and the Vendor at the expense of the Vendee will (a) execute a bill or bills of sale for the Equipment transferring its Security Title thereto and property therein to the Vendee, or upon its order (without warranties except as against Vendor's acts), free of the lien and security interest created or retained hereby or pursuant to the Cross Collateralization Agreement, and deliver such bill or bills of sale to the Vendee at its address referred to in Article 24 hereof, (b) execute and deliver at the same place, for filing, recording, or depositing in all public offices reasonably specified by and at the expense of the Vendee, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 8 or 9 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments within a reasonable time after written demand by the Vendee.

ARTICLE 7. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than income taxes, gross receipts taxes except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes, franchise taxes mea-

sured by net income based upon such receipts, excess profits taxes and similar taxes) license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor by reason of Vendor's ownership of Security Title thereto and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property, or rights of the Vendor in or to the Equipment or otherwise under this Agreement. or involve any danger of the sale, forfeiture or loss of any Equipment. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement, and shall bear interest at the rate of 15% per annum (or such lesser rate as shall be enforceable under applicable law) from the date of payment by Vendor to and including the date of reimbursement by Vendee.

ARTICLE 8. Maintenance, Casualty Occurrences, Insurance. Vendee agrees that it will at all times and at its own expense, maintain and keep the Equipment or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards, and that it will supply all parts, services and other items required in the operation and maintenance of the Equipment, free of all liens, claims, security interests and encumbrances. All parts, replacements, substitutions and additions to or for any Equipment, except to the extent otherwise provided in the Lease, shall immediately become Equipment and shall constitute accessions to the Equipment subject to all the terms and conditions of this Agreement.

If any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned by condemnation or otherwise, or there shall occur any other material interruption or termination of use of any Unit under the Lease Agreement regardless of the cause or there shall occur an event of the type specified in section 16 of the Lease (such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have learned that such Unit has suffered a Casualty Occurrence, cause the Vendor to be fully notified in regard thereto (including without limitation, a full description of the Casualty Occurrence) and within forty-five (45) days thereafter Vendee shall pay to Vendor a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit determined as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Article 8, the Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium that portion of the Conditional Sale Indebtedness attributable to the Purchase Price of such Unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date, in the manner and with the effect provided in Article 4 with respect to optional prepayments of the Conditional Sale Indebtedness by the Vendee. The Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and interest in such Unit shall pass to and vest in the Vendee, and the Vendor, will execute and deliver to the Vendee, at the expense of the Vendee an appropriate instrument (without warranties except against acts of the Vendor), confirming such passage to the Vendee of all the Vendor's right, title and interest in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the Conditional Sale Indebtedness attributable to

the Purchase Price of such Unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this Agreement, each payment of the principal of the Conditional Sale Indebtedness in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment of the principal amount of the Conditional Sale Indebtedness on each Unit of the Equipment in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of the Equipment.

Any condemnation payments or insurance proceeds in respect of Units suffering a Casualty Occurrence shall be paid to the Vendor and shall be deducted from the amounts payable by the Vendee to the Vendor in respect of such Casualty Occurrence pursuant to the second paragraph of this Article. If the Vendor shall receive any condemnation payments or insurance proceeds in respect of such Units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such condemnation payments or insurance proceeds, the Vendor shall pay such condemnation payments or insurance proceeds to the Vendee provided that no Event of Default or event which with notice or lapse of time would constitute an Event of Default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any Unit or Units not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damages to such Unit in respect of which such proceeds were paid have been fully repaired, or shall be disbursed upon written request of Vendee to any third party in payment for such repairs.

The Vendee shall cause to be procured, maintained and paid for, by itself or its designee, with insurers acceptable to Vendor, insurance in an amount at all times at least equal to the Casualty Value of the Units then subject to this Agreement (subject to a deductible of \$500 per Unit), insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee.

The Vendee shall, to the extent not provided by Lessee, further maintain or cause to be maintained with reputable insurers acceptable to the Vendor public liability and property damage insurance with respect to the Equipment in amounts not less than \$10,000,000. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Vendor and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

The Vendee warrants that the foregoing insurance coverage shall be in effect at the execution of this Agreement. Such insurance shall (i) name the Vendor and any successor holder of a security interest in the Units as insureds or additional insureds in addition to the Vendee and the Lessee with losses to be payable to the Vendor or any successor holder of a security interest, (ii) provide that the policies will not be invalidated as against the Vendor or any successor holder of a security interest in the Units because of any violation of a condition or warranty of the policy or application thereof by the Vendee or Lessee and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Vendor or any successor holder of a security interest in the Equipment.

ARTICLE 9. Application of Payments. (a) The Vendor is entitled to receive payments made by the Lessee under the Lease Agreement and the Lease Agreement Assignment or by any other person in respect of the Equipment or by the Owner under this Agreement on account of the principal of or interest on the Conditional Sale Indebtedness and, except as otherwise provided in Article 8 hereof with respect to Casualty Occurrence payments, shall apply such payments in the following order of priority at the times set forth below:

(1) If no Event of Default has occurred and is continuing under this Agreement, then, on the next date for an installment payment of principal of and interest on the Note, the Lender shall apply such moneys as it is then holding hereunder:

(A) First, to the payment of accrued interest then due and payable to the Vendor pursuant to the Note;

(B) Second, to the payment of the principal installment then due and payable to the Vendor pursuant to the Note; and

(C) Provided that no event which with notice or lapse of time would constitute an Event of Default has occurred and is continuing, then the balance, if any, to the Vendee.

(2) If an Event of Default has occurred and is continuing under this Agreement and except to the extent otherwise provided in Article 17 or 18 hereof, all moneys held by or coming into the possession of the Vendor hereunder or under the Lease Agreement Assignment including, without limitation, payments in respect of Casualty Occurrences, and the net proceeds of any repossession and sale or lease of any Unit (after deduction of all expenses, including reasonable counsel fees, incurred by the Vendor in connection with such repossession and sale or lease or otherwise hereunder in connection with this Agreement, the Lease Agreement and the Lease Agreement Assignment which shall not theretofore have been reimbursed to the Vendor) immediately shall be applied by the Vendor (subject to the Cross Collateralization Agreement as the same shall at the time be in effect) to satisfy the outstanding principal balance of the Note and interest accrued thereon. Upon payment in full of all Conditional Sale Indebtedness together with interest accrued thereon and any and all other amounts due the Vendor under this Agreement and the Note (subject to the Cross Collateralization Agreement as the same shall at the time be in effect) the Vendor shall distribute the balance of any moneys then in its possession hereunder or thereafter coming into its possession as set forth in Clause (C) of this paragraph (a) as if no Event of Default were then in existence.

(b) All payments to be made by the Vendor hereunder shall (subject to timely receipt by the Vendor of available funds) be made to an account specified by the Vendee in immediately available funds by wire transfer on the date such payment is due.

(c) any moneys from time to time received by the Vendor and held by the Vendor pursuant to the fifth paragraph of Article 8, Article 8(a)(1)(C) or the last paragraph of Article 15 during the occurrence and continuance of an event which with notice or lapse of time would constitute an Event of Default shall be held by the Vendor as security for the performance and observance of all the Vendor's obligations and indebtedness hereunder.

ARTICLE 10. Reports and Inspections. Upon written request of the Vendor, but not more than once in any twelve month period, Vendee shall cause to be furnished to the Vendor an accurate statement: (a) setting forth, as of the preceding December 31, the amount, description and numbers of all Units then subject to this Agreement; and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 11 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and any assignee of Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

Vendee shall also furnish, or cause to be furnished to Vendor financial statements of the Guarantor, prepared in accordance with generally accepted accounting principles consistently applied by the Guarantor as follows:

(i) within 120 days after the end of each fiscal year, consolidated statements of income and retained earnings and changes in financial position of the Guarantor and its consolidated subsidiaries for such year and consolidated balance sheets of the Guarantor and its consolidated subsidiaries as at the end of such year, setting forth in comparative form the corresponding figures of the previous annual audit, all in reasonable detail and audited by independent public accountants together with the audit report of such accountants for such fiscal year;

(ii) within 45 days after the end of each of the first three quarterly periods in each fiscal year, a consolidated statement of income and retained earnings of the Guarantor and its consolidated subsidiaries for the period from the beginning of the then current fiscal year to the end of such quarterly period and a consolidated balance sheet of

the Guarantor and its consolidated subsidiaries as at the end of such quarterly period, all in reasonable detail and certified by the chief financial officer of the Guarantor, subject, however, to audit and year-end adjustments; and

(iii) such other financial information as the Vendor may from time to time reasonably request.

The Vendee shall prepare and deliver to the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible and with the prior consent of the Vendor file on behalf of the Vendor) all reports (other than income tax returns), if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Vendor with any federal, state or other regulatory agency by reason of the ownership by the Vendor of Security Title to the Equipment or the provisions hereof.

The Vendee shall deliver to the Vendor promptly after the execution and delivery of this Agreement original or duplicate policies, or certificates of insurers satisfactory to the Vendor, evidencing all the insurance which is then required to be maintained pursuant to the terms of the Agreement, and shall, within 30 days prior to the expiration of any such insurance, deliver other original or duplicate policies or satisfactory certificates of the insurers evidencing the renewal of such insurance.

ARTICLE 11. Marking of Equipment. The Vendee will cause each Unit of the Equipment to be kept numbered with the identifying number of the Lessee set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO DOCUMENTS FILED UNDER THE INTERSTATE COMMERCE ACT" or other appropriate words designated by the Vendor, with appropriate changes thereof and conditions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings

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

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership or lien, encumbrance or security interest; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee and/or the Lessee or their respective affiliates.

ARTICLE 12. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will use its best efforts to cause the Lessee and every user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules, regulations and requirements of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws, rules, regulations and requirements affect the title, operation or use of the Equipment, and if such laws, rules, regulations and requirements require alteration, replacement or addition of or to any part on any Unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee shall be under no obligation to take such action in compliance with this Article 12 so long as it is, in good faith, contesting by appropriate legal proceedings the validity or application of any such law, rule, regulation or requirement and such noncompliance does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement, or involve any danger of the sale, forfeiture or loss of any of the Equipment.

ARTICLE 13. Possession and Use. The Vendee, so long as an Event of Default (as hereinafter defined) shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may contract with the Lessee for the maintenance and use of the Equipment as provided in the Lease. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease without the prior written consent of the Vendor, which consent shall not be unreasonably withheld, and hereby further agrees to furnish to the Vendor copies of all summons, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended, modified or terminated by the Vendee without the prior written consent of the Vendor, which consent shall not be unreasonably withheld.

So long as an Event of Default shall not have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this Agreement, be used (i) upon the lines of railroad owned or operated by the Lessee or its affiliates (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to run-through agreements; provided, however, that the Vendee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America; and provided, further, that at no time shall the Vendee knowingly permit more than ten percent (10%) of the Units to be outside the United States of America.

ARTICLE 14. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment, or any Unit thereof, and will promptly discharge any such lien, charge or security interest which arises, provided, however, that the Vendee shall not be required to pay or discharge any such claim, lien, charge, or security interest

so long as the validity thereof is being contested in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title of the Vendor in or to the Equipment or otherwise under this Agreement or involve any danger of the sale, forfeiture or loss of any of the Equipment. Any amounts paid by the Vendor in discharge of claims, liens, charges or security interests upon the Equipment shall be secured by and under this Agreement, and shall bear interest at the rate of 15% per annum (or such lesser rate as shall be legally valid and enforceable) from the date of payment by Vendor to and including the date of reimbursement by Vendee.

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

ARTICLE 15. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, (including strict liability in tort) and expenses in connection therewith, including but not limited to counsel fees and expenses incurred in connection with or as a result of the entering into or the performance of this Agreement, the Lease Agreement Assignment, the Letter of Assignment, the Cross Collateralization Agreement or related documents, the retention by the Vendor of title to or a security interest in the Equipment, the ownership, lease, ordering, acquisition, use, operation, maintenance, condition, purchase, sale, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person, or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims, and demands caused by the willful misconduct or gross negligence of the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of title to, the Equipment, as provided in Article

6 hereof, or the termination of this Agreement in any manner whatsoever.

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

So long as no Event of Default or event which with notice or lapse of time or both has occurred and is continuing Vendor, hereby authorizes the Vendee, to the exclusion of the Vendor, to exercise in Vendor's name, all rights and powers of the Buyer under the Purchase Order and the bills of sale and assignments relating thereto to retain any recovery or benefit resulting from the enforcement of any warranty or indemnity under the Purchase Order in respect of the Equipment, except that the Vendee shall not enter into any change order, amendment, modification or supplement to the Purchase Order without the prior written consent or counter signature of the Vendor. VENDOR IS NOT A MANUFACTURER OF THE EQUIPMENT, AND HAS NOT MADE AND DOES NOT HEREBY MAKE ANY REPRESENTATION, WARRANTY OR COVENANT WITH RESPECT TO MERCHANTABILITY, FITNESS FOR ANY PURPOSE, CONDITION, QUALITY, DURABILITY OR SUITABILITY OF THE EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH, OR FOR THE PURPOSES OR USES OF VENDEE, OR ANY OTHER REPRESENTATION, WARRANTY OR COVENANT OF ANY KIND OR ANY CHARACTER EXPRESSED OR IMPLIED, WITH RESPECT THERETO. However, Vendor does hereby represent and warrant that it has not taken any action resulting in the creation of any claim, lien or other encumbrance on title to the Equipment, and that, effective upon the Closing Date, it will have conveyed to Vendee, subject to the terms and conditions hereof, the retention of security title hereunder and the security interest under the Cross Collateralization Agreement, the title conveyed to it by the Builder.

ARTICLE 16. Assignments. The Vendee will not (a) except as provided in Article 13 hereof, transfer the right to possession of any Unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor. The Vendee shall at all times maintain its corporate existence, and it shall not consolidate with or merge into any other corporation or convey, transfer or lease substantially all of its assets as an entirety or either of them to any other person (which means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization or government or agency thereof)

unless the corporation formed by such consolidation or merger or the person which acquires substantially all the assets of Vendee shall be a corporation organized and existing under the laws of the United States or any state or the District of Columbia, and shall execute and deliver to the Vendor an agreement in form satisfactory to the Vendor containing an assumption of such successor corporation or person of the due and punctual performance of the covenants and conditions of this Agreement and the Financing Agreement; provided, further, immediately after giving effect to such transaction, no Event of Default and no event, which after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

All or any of the rights, benefits, and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that it is the custom of railroad equipment vendors to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, may be made by the Vendor. THE VENDEE EXPRESSLY REPRESENTS, FOR THE PURPOSE OF ASSURANCE TO ANY PERSON, FIRM OR CORPORATION CONSIDERING THE ACQUISITION OF THIS AGREEMENT OR OF ALL OR ANY OF THE RIGHTS OF THE VENDOR HEREUNDER, AND FOR THE PURPOSE OF INDUCING SUCH ACQUISITION, THAT IN THE EVENT OF SUCH ASSIGNMENT BY THE VENDOR AS HEREINBEFORE PROVIDED, THE RIGHTS OF SUCH ASSIGNEE TO THE ENTIRE UNPAID INDEBTEDNESS IN RESPECT OF THE PURCHASE PRICE OF THE EQUIPMENT OR SUCH PART THEREOF AS MAY BE ASSIGNED, TOGETHER WITH IN-

INTEREST THEREON, AS WELL AS ANY OTHER RIGHTS HEREUNDER WHICH MAY BE SO ASSIGNED, SHALL NOT BE SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM, OR RECOUPMENT WHATSOEVER ARISING OUT OF ANY BREACH OF ANY OBLIGATION OF THE VENDOR WITH RESPECT TO THE EQUIPMENT NOR SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM OR RECOUPMENT WHATSOEVER ARISING BY REASON OF ANY OTHER INDEBTEDNESS OR LIABILITY AT ANY TIME OWING TO THE VENDEE BY THE VENDOR. ANY AND ALL SUCH OBLIGATIONS HOWSOEVER ARISING, SHALL BE AND REMAIN ENFORCEABLE BY THE VENDEE AGAINST AND ONLY AGAINST THE VENDOR.

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, upon request by the assignee, change, or cause to be changed, the markings on each side of each Unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of all the Equipment at the time covered by this Agreement shall be borne by the Vendee in the case of the first such assignment requiring a change or addition to the markings on each Unit specified in Article 11 hereof, and, in the case of such subsequent assignments, if any, or in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

ARTICLE 17. Defaults. If any one or more of the following events of default ("Event of Default") shall occur and be continuing:

(a) if the Vendee shall fail to pay in full any indebtedness in respect of the Purchase Price or any other sum payable by the Vendee as provided in this Agreement or the Note within ten (10) days after payment thereof shall be due hereunder; or

(b) if any representation or warranty made by the Vendee herein or by the Vendee or the Guarantor in any instrument or certificate delivered in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made or deemed made; or

(c) if the Vendee shall fail to observe or perform any covenant contained in Article 7, the last three paragraphs of Article 8, Article 12, Article 14, or Article 16; or

(d) if the Vendee or the Guarantor shall, for more than thirty (30) days after the Vendor shall have demanded

in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Lease Agreement, the Lease Agreement Assignment, the Note or the Guaranty, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(e) if by the order of a court of competent jurisdiction, a receiver or liquidator or trustee of the Vendee or the Guarantor shall be appointed and shall not have been discharged within a period of 60 days, or if, by decree of such a court, the Vendee or the Guarantor shall be adjudicated a bankrupt or any substantial part of its property shall be sequestered and such decree shall continue undischarged and unstayed for a period of 60 days after the entry thereof, or a petition to reorganize the Vendee or the Guarantor pursuant to any provision of the Federal Bankruptcy Act, or pursuant to any other similar statute applicable to the Vendee or the Guarantor as now or hereafter in effect, shall be filed against the Vendee and shall not be dismissed within 90 days; or

(f) if the Vendee or the Guarantor shall file a voluntary petition in bankruptcy under the provisions of any bankruptcy law, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if the Vendee or the Guarantor shall consent to the appointment of a receiver or receivers of all or any part of its property, or if the Vendee or the Guarantor shall consent to the filing of any bankruptcy or reorganization petition against it under any provision of any bankruptcy law, or if (without limitation of the generality of the foregoing) the Vendee or the Guarantor shall file a petition to reorganize itself pursuant to any provision of the Federal Bankruptcy Act, or pursuant to any other similar statute applicable to the Vendee or the Guarantor, as now or hereafter in effect, or if the Vendee shall be dissolved or the Vendee or the Guarantor or its directors or stockholders shall take action looking to the dissolution or liquidation thereof; or

(g) if the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment; or

(h) if a default by the Lessee shall have occurred under the Lease and shall be continuing for Thirty (30) days

after delivery of notice thereof by the Vendor to the Vendee without the Vendee, with consent of Vendor, having terminated the Lease pursuant to the terms thereof, and entered into a new lease or otherwise provided for the use of the Equipment by a lessee or other user acceptable to the Vendor, in the Vendor's sole and absolute discretion, upon terms acceptable to Vendor, in its sole and absolute discretion;

(i) if an event of default by Vendee under any other conditional sale agreement to which Vendee is a party shall have occurred and be continuing and a declaration of default shall be in effect thereunder;

then at any time after the occurrence of any Event of Default and so long as such event shall be continuing the Vendor may, upon written notice to the Vendee and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, (i) upon occurrence of an Event of Default under subsection (h) hereof, cause the Lease and any other agreement with respect to the Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate to the extent permitted under the Lease Agreement Assignment and the Lease or exercise any other or further right or remedy available to the lessor under the Lease upon the occurrence of an Event of Default thereunder, and/or (ii) declare (hereinafter called a "Declaration of Default") the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, and together with all other amounts then due and owing hereunder or under the Note immediately due and payable, without further demand, whereupon all such amounts shall become and be forthwith due and payable, anything herein or in the Note to the contrary notwithstanding. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an Event of Default under this Agreement or the Lease.

The Vendor may, at its election, waive any such Event of Default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease or any such other agreement by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease or any such other agreement had been made or given. Notwithstanding

the provisions of this paragraph, it is expressly understood and agreed by the Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. (a) At any time during the continuance of a Declaration of Default, the Vendor may, (1) if the Lease shall still be in effect, exercise all of the lessor's rights thereunder and under the Lease Agreement Assignment; and (2) if the Lease shall no longer be in effect, then, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Vendee any sums theretofor paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

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

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

(b) At any time during the continuance of an Event of Default, the Vendor, with or without retaking possession thereof, at its election and upon such reasonable notice as may be required to be given by the Vendor in accordance with applicable law and subject to any prior rights of lessees under permitted leases of the Equipment, may sell the Equipment, or one or more of the Units thereof, free from any and all claims of the Vendee, or any other party (other than such lessees) claiming from, through or under the Vendee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement or the Note as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees and expenses, then in such event the Vendor shall, against full payments of all sums due and payable by the Vendee as provided herein, subject to the Cross Collateralization Agreement as the same shall then be in effect, execute and deliver to the Vendee a bill of sale or other appropriate instrument or instruments, at the expense of the Vendee and without warranties except against acts of the Vendor, in recordable form, transferring the Vendor's rights, title and interest in and to the Equipment, free of this Agreement.

The Vendor may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

If an Event of Default has occurred and Vendor has accelerated the Conditional Sale Indebtedness under Article 17 hereof, the Vendor shall have the absolute right to sell, lease, transfer or otherwise dispose of all or any part of the Equipment, to any party whomsoever, as Vendor shall in the exercise of its reasonable discretion, deem advisable. In furtherance of Vendor's rights hereunder Vendee hereby agrees to execute any and all documents, agreements, instru-

ments, releases and notices requested by Vendor to sell, lease, transfer or otherwise dispose of the Equipment, or any Unit thereof; and further hereby appoints Vendor as attorney-in-fact to execute any and all documents, instruments, notices or agreements for the sale, lease, transfer or other disposition of the Equipment, or any Unit, in the name and on behalf of Vendee, including without limitation bills of sale and leases. Notwithstanding the provisions of this subparagraph, the sums of money realized by Vendor hereunder shall be applied in accordance with the provisions of this Article 18 and the Cross Collateralization Agreement as the same shall then be in effect.

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

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in the Note as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain

a surplus in the possession of the Vendor subject to the Cross Collateralization Agreement as the same shall then be in effect, such surplus shall be paid to the Vendee.

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

Except as herein agreed to the contrary, the foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 20. Recording. Prior to the delivery and acceptance of any Unit of the Equipment and prior to the settlement for such Unit, the Vendee will cause this Agreement, the Cross Collateralization Agreement, any assignments or supplements hereto and thereto, in each case to be filed, registered, recorded, or deposited and refiled, reregistered, rerecorded, or redeposited, with the ICC in accordance with 49 U.S.C. 11303. The Vendee will, at its

expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States of America, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 21. Payment of Expenses. The Vendee will pay all reasonable costs and expenses, payment of which shall not be illegal under any laws of the United States, any State or any foreign jurisdiction (other than the fees and expenses of the Builder and its respective attorneys) incident to this Agreement, the Purchase Order, the Lease, the Lease Agreement Assignment, the Cross Collateralization Agreement, and any instrument supplemental or related hereto or thereto, including all reasonable fees and disbursements of special counsel for Vendor, and of ICC counsel (provided that the Vendee shall not be required to pay in excess of \$750 of the fees and expenses of such ICC counsel).

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Vendor and the Vendee, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other prior agreements, oral, or written, between them with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 23. Investment Representation. Vendor represents that it is acquiring the Note for its own account, for investment and not with a view to, or in connection with,

the distribution of the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

ARTICLE 24. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered personally or mailed by first class mail, postage pre-paid to it at the following specified address (or at such other address as such party shall hereafter specify by written notice to the other party):

(a) to the Vendee,

Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632
Attention: Robert W. Gruber

(b) to the Vendor,

McDonnell Douglas Finance Corporation
3855 Lakewood Boulevard
Long Beach, California 90846
Attn: Commercial & Industrial
Finance Department

ARTICLE 25. Law Governing Severability. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing hereof, if any, as shall be conferred by the laws of any jurisdiction in which this Agreement shall be filed, recorded, registered or deposited, or in which any Unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment. In the event that any provision of this Agreement is invalid or unenforceable, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute, or rule or law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

ARTICLE 26. Execution. This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recorda-

tion and subsequently redelivered to the Vendor shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

ARTICLE 28. Right to Acquire Vendor's Rights. In addition to its right to prepay the Note without penalty, Vendee or its designee shall have the right at any time to acquire all of Vendor's rights under the Note, this Agreement, Guaranty, Lease and Lease Agreement Assignment. To exercise such right, Vendee or its designee shall notify Vendor in writing of its intention to acquire such rights and of a closing date not less than 30 nor more than 45 days after the date of such notice and, on such closing date, Vendee shall pay to Vendor the unamortized portion of the Conditional Sale Indebtedness, all interest accrued thereon to and unpaid as of the closing date and all other sums owing to the Vendor under the Note, the Conditional Sale Agreement, Guaranty, Lease and Lease Agreement Assignment and the Vendor shall convey to Vendee or its designee all of its rights under such agreements by instruments of assignment reasonably satisfactory to Vendee and its counsel, but without recourse against or representation of warranties of the Vendor except as to its own acts. In such event, the Cross Collateralization Agreement shall be cancelled.

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

REX RAILWAYS, INC., Vendee

Witness:

BY: Robert W. Gruber, Pres.
Title:

McDONNELL DOUGLAS FINANCE CORPORATION, Vendor

Witness:

BY: Jessie Butler
Title: EA

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

On this *6th* day of *April*, 1979, before me personally appeared Robert W. Gruber, to me personally known, who being by me duly sworn, says that he is the President of Rex Railways, Inc., that said instrument was signed 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)

Martha J. Flanders

(Title of Officer)

My commission expires

MARTHA J. FLANDERS
Notary Public, State of New York
No. 31-4678625
Qualified in New York County
Commission Expires March 30, 1980

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

On this *6th* day of *April*, 1979, before me personally appeared Jerome Butkow, to me personally known, who being by me duly sworn, says that he is the duly authorized agent of McDonnell Douglas Finance Corporation, that said instrument was signed 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)

Martha J. Flanders

(Title of Officer)

My commission expires

MARTHA J. FLANDERS
Notary Public, State of New York
No. 31-4678625
Qualified in New York County
Commission Expires March 30, 1980

ANNEX A

Description of Equipment

<u>Specifi- cations</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both In- clusive)</u>
70-Ton, 50' 6" General Purpose Box Cars	50	LVRC 4050 - 4099

Delivery

April 1
through
June 30, at
Bessemer, Alabama

Base Price/Unit

\$39,630

Aggregate Base Price

\$1,981,500

ANNEX B

CERTIFICATE OF INSPECTION AND ACCEPTANCE

THE UNDERSIGNED, BEING THE DULY AUTHORIZED REPRESENTATIVE OF THE REX RAILWAYS, INC. (HEREINAFTER REFERRED TO AS THE "BUYER"), HEREBY CERTIFIES THAT THE FOLLOWING RAILROAD EQUIPMENT BUILT BY PULLMAN INCORPORATED (PULLMAN STANDARD DIVISION), (HEREINAFTER REFERRED TO AS THE "BUILDER"), HAS BEEN INSPECTED AND FOUND TO BE IN GOOD ORDER AND RUNNING CONDITION AND TO BE COMPLETED IN ACCORDANCE WITH THE BUILDER'S SPECIFICATION NO. 3809 DATED MAY 1, 1978, AND HAS BEEN ACCEPTED ON BEHALF OF THE BUYER:

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>CAR NUMBERS</u>	<u>ACCEPTANCE DATE & TIME</u>
70-ton 50'6" Box Cars			

The cars have been stenciled with the following legend:
"Ownership subject to Documents filed under the Interstate Commerce Act."

DATE AT BESSEMER, ALABAMA

THIS _____ DAY OF _____, 1979 AT
_____, E.S.T.

AUTHORIZED REPRESENTATIVE OF
REX RAILWAYS, INC.