

RECORDATION NO. 9453-B Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-D Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-E Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-C Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9453-F Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

March 15, 1979

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

Dear Sir:

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303 under I.C.C. Recordation No. 9453, please find the original and three counterparts of each of the following documents:

- ✓ (1) First Amendment to Equipment Schedule executed by Rex Railways, Inc. and Skiva International, Inc. dated as of February 13, 1979 designating Skiva International, Inc. as the lessor under the Lease Agreement with respect to the Boxcars identified in the Equipment Schedule filed with the Interstate Commerce Commission on Feb. 26, 1979 at 11:20 AM under Recordation No. 9453-A.
- ✓ (2) Lease Agreement Assignment from Skiva International, Inc., as Vendee, to the Provident Bank, as Assignee, dated as of February 13, 1979.
- ✓ (3) Management Agreement between Skiva International, Inc., as Vendee, and Rex Railways, Inc., as Manager, dated as of February 13, 1979.
- ✓ (4) Management Agreement Assignment between Skiva International, Inc., as Vendee, and the Provident Bank, as Assignee, dated as of Feb. 13, 1979.
- ✓ (5) Assignment dated March 15, 1979 between Skiva International, Inc. as Owner, and C & H Railways, Ltd., as Assignee.
- ✓ (6) Second Amendment to Equipment Schedule executed by Rex Railways, Inc., Skiva International, Inc., and C & H Railways, Ltd. dated as of March 14, 1979 designating C & H Railways, Ltd. as the lessor under the Lease Agreement with respect to the Boxcars identified in the Equipment Schedule filed with the Interstate Commerce Commission on Feb. 26, 1979 at 11:20 A.M. under Recordation no. 9453-A.

9-074A041  
MAR 15 1979  
Date  
Fee \$ 60.00  
ICC Washington, D.C.

Counterparts  
Peter Adam

RECORDATION NO. 9453-G Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

Also enclosed is a check for \$60.00 payable to Interstate Commerce Commission in payment of the fee for recording the above documents.

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

1. Rex Railways, Inc.  
616 Palisade Avenue  
Englewood, New Jersey 07632
2. Skiva International, Inc.  
1350 Broadway  
New York, New York 10018
3. The Provident Bank  
One East Fourth Street  
Cincinnati, Ohio 45202
4. C & H Railways, Ltd.  
1350 Broadway  
New York, New York 10018

The equipment covered by the documents consists of 100 70-ton 50'6" XM boxcars, having identifying marks of LCRC 2001 through and including 2100.

The 100 boxcars referred to above are subject to a Conditional Sale Agreement between Twitter, Inc., as Vendor, and Skiva International, Inc., as Vendee, dated as of February 13, 1979 recorded with the Interstate Commerce Commission on February 22, 1979 at 4:40 P.M., Recordation No. 10131.

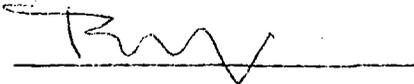
Please return three stamped copies of each of the enclosed documents to:

Battle, Fowler, Jaffin,  
Pierce & Kheel  
280 Park Avenue  
New York, N.Y. 10017

Attention: Thomas E. Kruger

Yours truly,

Twitter, Inc.

By 

**Interstate Commerce Commission**  
Washington, D.C. 20423

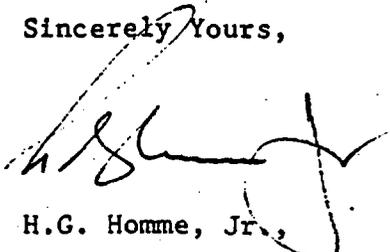
OFFICE OF THE SECRETARY

Thomas E. Kruger  
Battle, Fowler, Jaffin, Pierce & Kheel  
280 Park Avenue  
New York, NY 10017

Dear Mr. Kruger:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on March 15, 1979 at 11:40 am, and assigned recordation number(s) 10131-B, 10131-C, 10131-D, 10131-E and 10131-F

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 9453-D Filed 1425

MAR 15 1979 - 11 40 AM

INTERSTATE COMMERCE COMMISSION

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MANAGEMENT AGREEMENT

DATED AS OF FEBRUARY 13, 1979

BETWEEN

REX RAILWAYS, INC.  
REX

AND

SKIVA INTERNATIONAL, INC.  
OWNER

(COVERING UP TO 100 GENERAL PURPOSE BOXCARS)

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

## MANAGEMENT AGREEMENT

THIS AGREEMENT, dated as of February 13, 1979, by and between REX Railways, Inc., a New Jersey corporation (hereinafter called REX) and Skiva International, Inc., a New York corporation (hereinafter called Owner).

WHEREAS, Owner will, pursuant to a conditional sale agreement (the Conditional Sale Agreement) with REX, agree to purchase the boxcars identified and to be identified in schedule 1 attached thereto and incorporated herein by reference (such boxcar or boxcars purchased by Owner being hereinafter referred to as the Cars);

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

WHEREAS, the Cars, upon their acceptance by the lessee, will be subject to a Lease Agreement dated September 23, 1977 and amended by amendments thereto dated November 21, 1977 and October 9, 1978 (as so amended, the Lease), between REX, as agent for lessor Owner, and Lenawee County Railroad Company, Inc. (the Lessee), as lessee;

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

### 1. Engagement of REX.

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

### 2. Term.

The term of this Agreement and the agency created hereby shall commence as of the date of this Agreement. Each Car

managed by REX on Owner's behalf hereunder shall become subject to this Agreement on the date of delivery of such Car under the Lease as set forth in section 3A thereof and the term of this Agreement with respect to each such Car shall continue for a period of fifteen years thereafter; provided, however, that, except for Sections 8 and 10, which shall, notwithstanding this proviso, remain in effect, this Agreement shall terminate with respect to any Car which is withdrawn pursuant to Section 12 hereof, sold, lost or totally destroyed as of the date that such withdrawal is effective, such sale is consummated, or such Car is lost or destroyed; provided further, however, that notwithstanding any termination of this Agreement with respect to any Car, whether upon the expiration of fifteen years after the date of delivery of such Car under the Lease as set forth in section 3A thereof or upon the withdrawal, sale, loss or total destruction of any Car, REX shall continue to be obligated to collect all rental payments, car hire charges and other sums (including insurance benefits or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars, due for or with respect to periods prior to such termination of this Agreement.

### 3. Duties of REX.

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

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

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

of the Lessee on October 9, 1978 covering 100 XM boxcars, which schedule amends the Lease Agreement dated September 23, 1977 between REX and the Lessee as amended on November 21, 1977.

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

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

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

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

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars, including, without limitation, insurance against (i) personal liability, including property damage and personal injury in the face amount of \$2,500,000 and (ii) loss of or damage to the Cars; provided, however, that if REX effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided, further, however, that, if REX determines that the cost of insurance described above is unreasonably high, REX shall so notify Owner and shall use its best efforts to obtain such insurance as is available and Owner directs; and provided further that, if REX determines that such insurance cannot be obtained, REX shall so notify Owner.

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

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

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

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

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

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

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

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

(p) REX will use its best efforts on behalf of Owner to monitor Owner's compliance with the Conditional Sales Agreement and to notify Owner of any instance of non-compliance or pending non-compliance of which REX is aware and, subject to directions from Owner, to take such steps as are necessary and appropriate to enable Owner to comply with the provisions of any agreements pursuant to which Owner acquired financing for the Cars; provided, however, that REX's obligations hereunder are limited to assisting Owner as Owner's agent and REX shall not be obligated by virtue of this section 3(p) to become a co-obligor with Owner.

#### 4. Authority, and Limitations on Authority, of REX.

(a) It is expressly understood that any actions taken by REX on behalf of Owner will be taken as agent for Owner, either naming such Owner or naming REX as agent for Owner. The parties hereto expressly recognize and acknowledge that this Agreement is not intended to create a partnership, joint venture or other entity among Owner and REX. REX shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any such understanding or agreement between Owner and REX; and REX shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

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

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

(a) As used in this Agreement, the term "Gross Revenues" shall mean all income to Owner (unreduced by any expenses or costs) derived from the ownership, use and/or operation of the Cars, including, but not limited to, rentals under leases and car hire charges payable or creditable to a person which is not a railroad. "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use and/or operation of Cars, including, but not limited to maintenance; repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(f); painting; costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(d); legal fees incurred in connection with enforcing lease rights or repossessing Cars; insurance (and, if such insurance has been effected under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, Owner's pro rata share of such insurance cost, it being understood that REX will use its best efforts to allocate to Owner's Cars only such portion of such insurance cost as is attributable to such Cars); charges, assessments or levies imposed upon or against or in connection with Cars of whatever kind or nature, including transit and storage fees; losses from liabilities which are not the responsibility of Owner under Section 7(g); and ad valorem, gross receipts and other property taxes which are determined by REX to be due on such Cars. Gross Revenues and/or Operating Expenses attributable to a fiscal quarter (based on a February 28 or 29 fiscal year) which are received or paid after the date of payment for such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of that subsequent quarter.

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

## 6. Compensation.

As compensation to REX for the performance of services hereunder, Owner shall pay to REX a management fee equal to (i) \$60 per Car per month commencing with the day on which such Car becomes subject to this Agreement and ending on the day five years after the day on which such Car became subject to this Agreement; (ii) \$40 per Car per month commencing with the day five years after the day on which such Car became subject to this Agreement and ending on the day ten years after the day on which such Car became subject to this Agreement; and (iii) thereafter \$30 per month per car. Such fee shall be payable monthly in arrears and shall be prorated on a daily basis whenever the calculation of such fee is based on a partial month or a rate in effect for only part of a month. The fee provided for in this section 6 with respect to any Car shall be deferred until, and the deferred portion paid at, such time as Net Earnings (calculated without deduction pursuant section 5(b)(ii) hereof), less payments theretofore required to be made by Owner under the Conditional Sale Agreement and less Operating Expenses theretofore paid by or on behalf of Owner otherwise than from Gross Revenues shall first be sufficient to pay such fee. Such fee shall be deferred only until the first point in time at which such fees become payable under the preceding sentence and not thereafter. If the term of this agreement terminates with respect to any Car, the management fee with respect to such Car shall cease to accrue as of the date of such termination.

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

(a) Debt Service. Payments required to be made by Owner under the Conditional Sales Agreement shall be made in accordance with the provisions thereof.

(b) Regular Distributions of Net Earnings. Within thirty (30) days after the end of each fiscal quarter, REX shall distribute to Owner the excess of (i) the Net Earnings attributable to the operation of the Cars during each quarter over (ii) the amount required to be paid by Owner under the Conditional Sale Agreement during that quarter.

(c) Payment of Operating Deficits. Within ten (10) days of receipt of notice and demand from REX, Owner shall pay to REX the amount by which the Net Earnings for a fiscal quarter, reduced by the amount required to be paid by or on account of Owner under the Conditional Sales Agreement during that quarter, shall be less than zero.

(d) Payment for Special Improvements. The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. REX shall have the right to require Owner to pay the approximate cost thereof to REX, upon ten (10) days prior written notice. Upon completion, REX shall notify Owner of the exact amount of such costs and, in the event that Owner has already paid more than such cost, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to REX the amount of such difference. REX will, prior to requiring Owner to pay such costs, use its best efforts to obtain any requisite consents, under the Conditional Sales Agreement to permit such costs to be defrayed out of any funds escrowed for maintenance purposes required to be maintained under the Conditional Sales Agreement.

(e) Payment for Additional Insurance. The cost of insurance is the sole responsibility of Owner. Within ten (10) days of receipt of notice and demand from REX, Owner shall, to the extent cash flow from the operation of the Cars is not timely available therefor, pay to REX the cost of any such insurance placed or purchased by Owner through REX. Owner shall also pay to REX in the same manner the cost of any insurance against loss of revenues with respect to the Cars which Owner has elected to place or purchase through REX.

(f) Payment for Certain Property Damage. The cost of repair of damage to any Car (other than the costs of repairs which REX determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term Gross Revenues). REX shall have the right to require Owner to pay to REX, upon ten (10) days prior written notice and demand therefor, to the extent cash flow from the operation of the Cars is not timely available therefor, the approximate cost of the repairs which are the responsibility of Owner or, at REX's election, such portion of such cost as REX believes will not be covered by any such payments.

which may be received by REX (as co-insured or additional insured) to cover the cost of such damage (it being understood that REX may apply to such cost of such repair any payments so received by REX to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by REX and applied to payment of the cost of such damage, REX shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by REX to such repair, REX shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by REX to such repairs, Owner shall promptly pay to REX the amount of such difference. REX shall promptly remit to Owner any payments to cover such damage to such Car which are received by REX and not applied to payment of the cost of repair of such damage. REX will, prior to requiring Owner to pay such costs, use its best efforts to obtain any required consents under the Conditional Sales Agreement to permit such costs to be defrayed out of any funds escrowed for maintenance purposes required to be maintained under the Conditional Sales Agreement.

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

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

## 8. Indemnification.

Owner shall defend (if such defense is tendered to Owner), indemnify and hold REX harmless from and against any and all claims, actions, damages, expenses (including reasonable at-

torneys' fees), losses or liabilities incurred by or asserted against REX as a result of the use, operation, possession, control, maintenance, repair or storage of the Cars; provided, however, that Owner shall not defend, indemnify or hold REX harmless from and against, and REX shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from the gross negligence, bad faith or willful misconduct of REX.

9. Exclusive Sales Agency.

During the term of this Agreement, REX shall have the exclusive right to sell the Cars. The period of exclusivity with respect to any Car shall be nine (9) months from the date of receipt by REX by certified mail of written notice from Owner advising REX that Owner wishes to sell such Car. If a Car made the subject of such a notice is not sold within such 9-month period, Owner may make other arrangements not inconsistent herewith to sell the Cars through other agents or directly. Except in case of any sale or other disposition of a Car to REX or any of its affiliates (that is, any company, person or firm controlling, controlled by, or under common control with, REX) or upon or in connection with foreclosure, loss or destruction of a Car, Owner shall pay to REX upon the sale of a Car during the exclusive period, and shall pay to REX upon the sale of a Car arranged by REX during the term of this agreement, a sales commission equal to 10% of the sale price.

10. Subordination.

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

11. Dealings With Lessees.

The Cars will initially be leased under the Lease, which may be terminated as to one or more such cars upon the terms

and conditions set forth in the Lease. REX shall notify Owner of the occurrence of an event which permits such termination of the Lease with respect to one or more of the Cars within three days after receipt of notice of such occurrence and shall advise Owner of its recommendations as to the exercise of such right of termination with respect to the Cars. REX shall exercise due diligence in keeping itself apprised of the occurrence of such events. Within 20 days after the giving of such notice by REX, Owner shall notify REX of its determination whether or not to terminate the Lease with respect to one or more Cars, and REX, if Owner has elected to so terminate the Lease, shall effect such termination on behalf of Owner under the Lease. Subject to the terms and conditions of this Agreement, REX, on behalf of Owner, shall exercise all other rights of the lessor of the Cars under the Lease without being required to seek or receive the consent of or instructions from Owner.

#### 12. Withdrawal in Case of Special Improvements.

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

#### 13. Reports; Examination of REX's Books and Records.

(a) Not later than 40 days after the end of each month during the first year of this agreement (other than the month of February) and not later than 40 days after the end of each fiscal quarter thereafter (based on a fiscal year ending February 28 or 29) other than the fourth fiscal quarter, REX will distribute to Owner an unaudited report showing, on a cash basis, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items.

Such reports shall also show the amount of payments (including a breakdown between principal and interest, but only if the interest rate is fixed at 13% per annum and not if the interest rate is floating), if any, for such quarter made for the benefit of Owner pursuant to Section 7(a). No such report need show interest expense for any period in which the interest rate is not fixed at 13% per annum.

(b) Within 60 days after the close of each fiscal year, (based on a fiscal year ending February 28 or 29) REX will distribute to Owner a report showing for the fourth fiscal quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Owner shall have the right to have an agent or employee of its choice examine, at its sole expense and during normal business hours, the books and records of REX relating to the transactions contemplated hereby.

(d) After receipt of instructions from Owner containing all information required to be given by Owner (such as useful life and method in the case of depreciation), REX will, within 60 days after the close of Owner's taxable year (which is the last day of February), deliver to Owner a statement setting forth all information (including computation of depreciation and amortization deductions) necessary in connection with the preparation of Owner's Federal income tax returns.

#### 14. Use of Cars.

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

## 15. Termination.

If this Agreement terminates as an entirety for any reason (including a default by Owner under the Conditional Sale Agreement resulting in a loss by Owner of its rights thereunder) other than a breach of this Agreement by REX or an assignment of this agreement by Owner with the consent of REX as contemplated by section 17(e)(ii) hereof, Owner shall pay to REX a termination fee equal to \$200,000 if termination occurs within the first five years from the date hereof, \$100,000 if termination occurs within the second five years from the date hereof, and \$50,000 if termination occurs thereafter during the term of this Agreement. If this Agreement so terminates with respect to one or more Cars, such termination fee shall be so payable on an appropriately prorated basis; provided, however, that, if this agreement terminates with respect to any Car that is (a) subject to a casualty loss or (b) withdrawn from this agreement pursuant to section 12 in lieu of making alterations, modifications, improvements or additions of the type referred to in Section 7(d) costing in excess of 15% of the then existing AAR depreciated value of the Car, no such termination fee will be payable. Upon payment by Owner of the termination fee, Owner shall be released from any further obligation hereunder or with respect to such Car or Cars, as the case may be, other than its obligations under sections 8 and 9 hereof. Termination hereunder shall not affect Owner's rights and obligations under any other agreement.

## 16. Notices.

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

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

If to Owner: Skiva International, Inc.  
1350 Broadway  
New York, N.Y. 10018  
Attn: Isaac Chehebar

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

17. Miscellaneous.

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

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

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

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

(e) Successors and Assigns. (i) The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that no assignment hereof by Owner or transfer of any of the Owner's rights hereunder, whether by operation of law or otherwise, shall be valid and effective as against REX without the prior written consent of REX and, provided, further, that no delegation by REX of its duties hereunder (otherwise than by assignment of this agreement in connection with a merger of REX or a sale or lease by REX of all or substantially all of its assets), whether by operation of law or otherwise, shall be valid and effective as against Owner without the prior written consent of Owner. Notwithstanding the foregoing sentence, Skiva International, Inc. shall have the right to assign its rights hereunder to a wholly-owned subsidiary which owns the Cars (though subject to the Conditional Sale Agreement), without the consent of, but with notice in writing to, REX and, in the event of such an assignment, Skiva International, Inc. will no longer be bound under the terms of this Agreement.

(ii) Anything herein to the contrary notwithstanding, Owner may assign all of its rights hereunder to any individual or entity to whom it has conveyed its entire interest in all of the Cars then subject to this agreement whereupon Owner shall be relieved of all of its duties and obligations hereunder; provided that REX shall have consented in writing in advance to such assignment, which consent REX may withhold in its absolute discretion and with no requirement of reasonableness.

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

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

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

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

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

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

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

[SEAL]

REX RAILWAYS, INC.

By Robert W. Gruber  
Robert W. Gruber, President

[SEAL]

SKIVA INTERNATIONAL, INC.

By Stuart M. [Signature]

Dated: Feb 13, 1979

STATE OF *New York*,  
COUNTY OF *New York*:SS:

On this 14 day of March, 1979, before me personally appeared Isaac Shehebar, to me personally known, who being by me duly sworn, says that he is the Secretary of Skiva International, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Martin Sussman*  
\_\_\_\_\_  
(Title of officer)

My commission expires \_\_\_\_\_

MARTIN S. SUSSMAN  
Notary Public, State of New York  
No. 30-4500640  
Qualified in Nassau County  
Commission Expires March 30, 1979

STATE OF New York

SS

County of *New York*

On this 14 day of March, 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 the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

*Martin Sussman*  
\_\_\_\_\_  
(Title of officer)

My commission expires \_\_\_\_\_

MARTIN S. SUSSMAN  
Notary Public, State of New York  
No. 30-4500640  
Qualified in Nassau County  
Commission Expires March 30, 1979

SCHEDULE I

(Reference: first whereas clause)

All or such portion described below of 100 XM boxcars  
(i) manufactured by Pullman-Standard division of Pullman  
Incorporated under Lot and Specification No. 1018, (2) leased  
or to be leased to Lenawee County Railroad Company, Inc.  
(Lenawee Railroad) pursuant to a lease dated September 23,  
1977 as amended by Equipment Schedule executed on behalf  
of REX on October 4, 1978 and on behalf of Lenawee Railroad  
on October 9, 1978 and (3) bearing or to bear designations  
running from LCRC 2001 through and including LCRC 2100.

Boxcars subject to this agreement shall include only  
that portion of those boxcars described above acquired by  
Owner on or prior to April 30, 1979.