



# Rex Railways, Inc.

RECORDATION NO. **9451** Filed & Recorded

JUN 22 1978 -9 22 AM

INTERSTATE COMMERCE COMMISSION

### EXECUTIVE OFFICES

616 PALISADE AVENUE  
ENGLEWOOD CLIFFS, NEW JERSEY 07632  
TELEPHONE: (201) 567-8300

RECORDATION NO. **9452** Filed & Recorded

JUN 22 1978 -9 22 AM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. **9453** Filed & Recorded

JUN 22 1978 -9 22 AM

INTERSTATE COMMERCE COMMISSION

June 20, 1978

**9454**

RECORDATION NO. Filed & Recorded

JUN 22 1978 -9 22 AM

INTERSTATE COMMERCE COMMISSION

Mrs. Mildred Lee  
Interstate Commerce Commission  
Recordation Department  
Room 1227  
12th & Constitution Avenue, N.W.  
Washington, D. C. 20423

Dear Mrs. Lee:

We enclose our check for \$200.00 payable to the Interstate Commerce Commission for the official recording of the following:

1. Security Agreement, Chattel Mortgage and Lease Assignments between Rex Railways, Inc. and B.T. Equipment Leasing, Inc. respecting 150 boxcars along with the underlying lease agreements also enclosed for recording;
2. Lease Agreement dated March 30, 1978 between Rex Railways, Inc. and Minneapolis, Northfield and Southern Railway regarding 95 cars numbered MN&S 49700 to 49774 inclusive and MN&S 49400 to 49419 inclusive;
3. Lease Agreement dated September 23, 1977 between Rex Railways, Inc. and Lenawee County Railroad Company, Inc. respecting 30 cars numbered LCRC 1001 to 1030 inclusive;
4. Lease Agreement dated September 22, 1977 between Rex Railways, Inc. and Hillsdale County Railway Inc. respecting 25 cars numbered HCRC 801 to 825 inclusive.

8-173A040

Date **JUN 22 1978**

Fee \$ 200

COC, Washington, D. C.

and Security Agreement

Please record the leases (we have enclosed an original and two copies thereof) and send the official recording receipt to the undersigned.

Most cordially yours,

Mark A. Salitan  
Chairman

MAS:d1m

Encl.

RECEIVED  
JUN 22 9 15 AM '78  
I.C.C. OPERATION  
R.R. DIV.

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

6/23/78

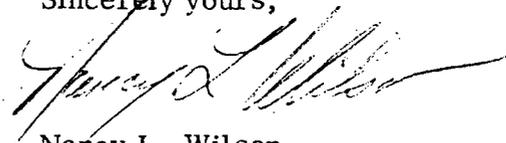
OFFICE OF THE SECRETARY

**Mark A. Salitan, Chairman**  
**Rex Railways, Inc.**  
**616 Palisade Avenue**  
**Englewood Cliffs, New Jersey 07632**

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **6/22/78** at **9:20am**, and assigned recordation number(s) **9451, 9452, 9453 & 9454**

Sincerely yours,



Nancy L. Wilson  
Acting Secretary

Enclosure(s)

9454  
RECORDATION NO. .... Filed & Recorded

SECURITY AGREEMENT, CHATTEL MORTGAGE AND  
LEASE ASSIGNMENTS

JUN 22 1978 10 20 AM

INTERSTATE COMMERCE COMMISSION

This SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS dated as of December 1, 1977 (the "Agreement"), by and between REX RAILWAYS INC. a New Jersey corporation (the "Lessor"), having its chief place of business at 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632 and BT EQUIPMENT LEASING, INC., a New York corporation ("BTEL") having its principal office at 280 Park Avenue, New York, New York 10017:

W I T N E S S E T H :

WHEREAS, Lessor has agreed to purchase 150 railroad box cars (as further described in Exhibit A annexed hereto and hereinafter referred to as the "Equipment" which will be built by Pullman Industries, Inc./and, in turn, each of the following railroads (herein individually and collectively called the "Lessees") have agreed to lease from Lessor that portion of the Equipment as is herein indicated:

<u>Name of Lessee</u>	<u>Address</u>	<u>Portion Of Equipment</u>	<u>Date Of Lease</u>
Lenawee County Railway Company, Inc. (LCRC 1001-1030 inclusive)	Adrian, Mich.	30 cars	9/23/77
Hillsdale County Railway Company, Inc. (HCRC 801-825 inclusive)	Hillsdale, Mich.	25 cars	9/22/77
Minneapolis, Northfield & Southern Railway, Inc. (MN&S 49700-49774 inclusive and MNS 49400-49419 inclusive)	Minneapolis, Minn.	95 cars	3/30/78



WHEREAS, Lessor and the Lessees have entered into Lease Agreements (said Lease Agreements together with all Exhibits thereto hereinafter referred to as the "Leases" and annexed hereto as Exhibit B) dated respectively as shown above, pursuant to which the Lessor will lease the Equipment to the Lessees and

WHEREAS, Lessor requests BTEL to finance 85% of the acquisition cost of the Equipment, and BTEL agrees, subject to the terms and conditions of this Agreement, to make a loan or loans (individually a "Loan", collectively the "Loans") for this purpose to the Lessor, from time to time, to and including March 31, 1978. The aggregate principal amount of all Loans shall not exceed \$3,954,412.50, said amount representing 85% of such acquisition cost. Each Loan shall be in an amount equal to 85% of the purchase price of the Equipment periodically delivered to Lessor and which Lessor has agreed to lease to the Lessees; and

WHEREAS, in connection therewith, the Lessor proposes to assign to BTEL all of its right, title and interest in and to the Leases and the Equipment thereto as collateral security for each Loan; and

WHEREAS, in reference to the purchase by Lessor of the Equipment to be built by Pullman Industries, Inc., Lessor shall, on the date of each Loan, deliver to BTEL a duly executed promissory note (individually an "Interim Note", collectively the "Interim Notes") in the principal amount of such Loan dated the date of such Loan, due on March 31, 1978, substantially in the form of Exhibit C, with appropriate insertions. On March 31, 1978 all Interim Notes shall be exchanged for a single duly executed promissory note (individually and collectively, with Interim Note or Interim Notes, the "Note") dated March 31, 1978

in the aggregate principal amount of \$3,954,412.50, payable in 144 consecutive monthly installments of principal and interest at 10.5% per annum based on a 360 day year substantially in the form of Exhibit D, with appropriate insertions. On March 31, 1978 Lessor shall pay to BTEL the interest accrued and unpaid on the Interim Notes to the date of such exchange; and

WHEREAS, it is a condition to the making by BTEL of the Loan or Loans to the Lessor that this Agreement be executed and delivered;

NOW, THEREFORE, to secure the due and punctual payment and performance of all of the obligations, liabilities, indebtedness and covenants of the Lessor under the Notes and this Agreement (all such obligations, liabilities, indebtedness and covenants hereinafter referred to as the "Obligations"), the Lessor hereby sells, conveys, mortgages, assigns, transfers to BTEL and grants to BTEL a security interest in:

(a) The Equipment described in Exhibit A to the Leases and all other Equipment now or hereafter described in all Equipment Schedules at any time annexed to or made part of the Lease, all additions, substitutions, replacements therefor and replacement parts and all other property owned by the Lessor which shall hereafter become physically incorporated or installed in or attached to such Equipment, whether the same is now owned by the Lessor or hereafter acquired by it;

(b) Any other Equipment or other property necessary to operate the Equipment now or hereafter owned by the Lessor;

(c) All proceeds of any and all of the properties described in clauses (a) and (b) above, including, without limitation, insurance proceeds from any loss or damage to the Equipment or any part thereof, proceeds from any sale, sublease or other disposition of, or transfer of any interest in, the Equipment pursuant to any of the provisions of the Leases and other proceeds with respect to the Equipment or any of the property hereinabove described;

(d) The Leases and all of the Lessor's estate, right, title, interest, claim and demand in, to and under the Leases, including all renewals or extensions of the term of the Leases, together with all rights, privileges, options and other benefits of the Lessor under the Leases, including, without limitation, the immediate and continuing right to receive and collect all rents, income, revenues, issues, profits, insurance proceeds, condemnation awards, and other payments, tenders and security for or with respect to the Equipment now or hereafter payable to or receivable by the Lessor under the Leases, and whether payable prior or subsequent to the maturity of the Note, and the right to make all advances, waivers and agreements, to require the Lessee to pay all amounts due under the Leases, as provided in the Leases and to perform, in the name and on behalf of the Lessor, as agent and attorney-in-fact of the Lessor, with an interest, all necessary or appropriate acts with respect to any such payment, to give and receive duplicate copies of all notices and other instruments or communications, to take such action upon the occurrence of a default under the Leases, including the commencement, conduct and consummation of legal, administrative or other proceedings, as shall be permitted by the Lease or by law, and to do any and

all other things whatsoever which the Lessor is or may be entitled to do under the Leases, (all of the foregoing property hereinabove described in clauses (a), (b), (c) and (d) hereinafter the "Collateral"); provided, however, that it is expressly agreed that anything herein to the contrary notwithstanding, the Lessor shall remain liable under the Leases to perform or cause to be performed all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms thereof, and BTEL or any of its successors or assigns shall have no obligations or liability under the Leases by reason of or arising out of this Agreement nor shall BTEL, its successors or assigns be required or obligated in any manner to perform or fulfill any obligations of the Lessor under or pursuant thereto or to make any payment or to make any inquiry as to the nature or sufficiency of any payment received by it or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times;

IT IS HEREBY AGREED by the parties hereto that the Collateral is to be held, used and operated to the further terms herein set forth.

SECTION 1. Conditions Precedent to the Loan. The obligation of BTEL to make the Loans is subject to the conditions precedent that BTEL shall have received, each date of the making of the Loan, each of the following, in form and substance satisfactory to BTEL:

(a) This Agreement, duly executed by an authorized officer of the Lessor;

(b) The Note, duly executed by an authorized officer of the Lessor;

(c) An insurance policy in form and substance satisfactory to BTEL, such policy validly designating BTEL as additional insured and exclusive loss payee;

(d) Each of the original executed copies of the Leases together with all amendments, modifications and supplements thereto as in effect on the date of the Loan, each bearing the following legend stickered on the first page thereof and executed as indicated below:

"THE RIGHTS OF THE LESSOR IN AND TO THIS LEASES HAVE BEEN ASSIGNED, MORTGAGED AND PLEDGED TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, BT EQUIPMENT LEASING, INC., A NEW YORK CORPORATION, PURSUANT TO A SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS DATED AS OF DECEMBER 1, 1977 FROM LESSOR TO BT EQUIPMENT LEASING, INC. AS SAID SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME."

AGREED AND ACKNOWLEDGED  
REX RAILWAYS, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

The original executed copy shall be held by BTEL.

(e) The Consent and Agreement of the Lessee in substantially the form annexed as Exhibit E hereto, duly executed by an authorized officer of the Lessee (the "Consent and Agreement");

(f) A certified copy of the resolutions of the Board of Directors of the Lessor evidencing approval of the Leases, Note and this Agreement and other matters contemplated hereby and a certified copy of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect thereto;

(g) A favorable opinion of counsel for the Lessor in form and substance satisfactory to counsel for BTEL, as to matters referred to in Section 3 hereof as to the due execution and delivery by the Lessor of the Leases, Note and this Agreement, as to the fact that (i) no approval of the Interstate Commerce Commission or any other governmental authority in the United States or Canada is necessary for the valid execution and delivery of the Leases, the Note or this Agreement; (ii) the Leases have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20C of the Interstate Commerce Act and said recording and/or filing perfects a first security lien on the Equipment and Leases thereto and appending official evidence of each such filing;

(h) A signed copy of a certificate of the Secretary or an Assistant Secretary of the Lessor which shall certify the names of the officers of the Lessor authorized to sign the Note and this Agreement and the other documents or certificates to be delivered pursuant to this Agreement by the Lessor any of its officers, together with the true

signatures of such officers. BTEL may conclusively rely on such certificate until it shall receive a further certificate of the Secretary or an Assistant Secretary of the Lessor cancelling or amending the prior certificate and submitting the signatures of the officers named in such further certificate;

(i) copies of the original invoices for the Equipment;

(j) Guaranty of Rex Noreco, Inc. in form of Exhibit ~~B-F~~  attached hereto, together with all accompanying documents evidencing the necessary authority for such, including but not limited to a favorable opinion of counsel for said guarantor as to the due execution on delivery of the Guaranty and that it is binding and enforceable against said guarantor;

(k) A Certificate or Certificates of Inspection and Acceptance with respect to the Equipment as contemplated by Exhibit B to the Leases.

SECTION 2. Certain Provisions Relating to the Lease Assignments.

(a) The Lessor has, pursuant to the Leases, notified the Lessees of the assignment of the Leases (receipt of notice of which has been acknowledged by the Lessees, in writing, copy of which is attached hereto as Exhibit "E").

(b) Lessor hereby agrees that the assignments made hereby and thereby and all such designations and directions to the Lessees are irrevocable, and that, so long as this Agreement shall be in effect, the Lessor will not, without the prior written consent of BTEL and subject

to such terms and conditions as BTEL may reasonably require, (i) settle or compromise or release any claim against the Lessees arising under the Leases, or submit or consent to the submission to arbitration of any dispute, difference or other matter arising under or in respect of the Leases or the assignments thereof to BTEL or to take any action as lessor under the Leases, or otherwise which is inconsistent with said assignments, (ii) directly or indirectly transfer any interest in, or directly or indirectly create, incur, assume, or suffer to exist any mortgage, deed of trust, pledge, lien or security interest or other charge, of trust, pledge, lien or security interest or other charge, encumbrance or interest (including the lien or retained security title of a conditional vendor) of any nature on or with respect to, any of the Collateral or (iii) take or omit to take any action, the taking or omission of which might result in an alteration or impairment of BTEL's right, title and interest under this Agreement. The Lessor will from time to time, upon request of BTEL, execute or cause to be executed all instruments of further assurance and all such supplemental instruments as BTEL may reasonably request;

(c) The Lessor agrees that it will not enter into or consent to any agreement subordinating, amending, supplementing or terminating the Leases (or purporting so to do) without BTEL's prior written consent thereto, and that any attempted subordination, amendment, supplement or termination without such consent shall be void unless so permitted. In the event that the Leases shall be amended or supplemented as herein permitted, the Leases, as so amended or supplemented shall continue to be subject to the provisions of this Agreement without the necessity of any further act by any of the parties hereto;

(d) The Lessor shall from time to time, at its own expense, take all action reasonably requested by BTEL to establish, preserve, protect, and perfect the rights of the Lessor to BTEL created by the Leases and this Agreement;

(e) This Agreement and the security interests and liens granted by this Agreement shall terminate when all of the Obligations of the Lessor shall be fully paid and performed. Upon termination of this Agreement, as aforesaid, BTEL shall execute and deliver to the Lessor, at the Lessor's expense, such instruments of release and termination as shall be appropriate in the premises.

SECTION 3. Certain Representations, Warranties and Covenants.

The Lessor hereby represents and warrants, and hereby covenants, as follows:

(a) The Lessor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey and has all requisite power and authority, corporate or otherwise, to conduct its business, to own its properties and to execute and deliver, and to perform all of its obligations under the Leases, the Notes and this Agreement;

(b) The execution, delivery and performance by the Lessor of the Leases, the Note and this Agreement have been duly authorized by all necessary corporate action, and do not and will not (i) require any consent or approval of the stockholders of the Lessor, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Lessor or of the charter or by-laws of the Lessor,

(iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Lessor is a party or by which it or its properties may be bound or affected, or (iv) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature (other than under and pursuant to this Agreement) upon or with respect to any of the properties which are to be the subject of this Agreement; and the Lessor is ~~NOT~~ <sup>MA</sup> in default under any such law, rule, regulation order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument;

(c) No authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary to the valid execution, delivery or performance by the Lessor of the Leases, the Note or this Agreement;

(d) The Leases, the Notes and this Agreement constitute the legal, valid and binding obligations of the Lessor enforceable against the Lessor in accordance with their respective terms;

(e) The Lessor is the record and beneficial owner of all the Collateral, free and clear of all mortgages, deeds of trust, pledges, liens, security interests and other charges or encumbrances, other than the rights of BTEL and the Lessees under this Agreement, and Leases respectively;

(f) This Agreement constitutes a valid and perfected first priority security interest and lien in and to the Collateral covered hereby enforceable against all third parties in all jurisdictions securing the payment of all obligations purported to be secured hereby and all action required to perfect fully the security interest and lien so constituted has been taken and completed;

(g) There are no actions, suits or proceedings pending or, to the knowledge of the Lessor, threatened against or affecting the Lessor or the properties of the Lessor before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Lessor, would have a material adverse effect on the security interests and liens of BTEL in and to the Collateral under the Leases, the Notes or this Agreement;

(h) The Lessor is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of the Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock;

(i) The Lessor is not a party to any indenture, loan or credit agreement or any lease or other agreement or instrument or subject to any charter or corporate restrictions which would have a material adverse effect on the business, properties, assets, operations or condition, financial or otherwise, of the Lessor or on the ability of the Lessor to carry out its obligations under the Notes or this Agreement;

(j) The Lessor has filed all tax returns (Federal, state and local) required to be filed and paid all taxes shown thereon to be due, including interest and penalties, or provided adequate reserves for payment thereof;

(k) No information, exhibit or report furnished by the Lessor to BTEL in connection with the negotiation of the Notes or this Agreement contains any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading;

(l) The Equipment has been leased to the Lessees pursuant to the Leases and the Leases are valid, true leases and are in full force and effect on the date hereof, and no event has occurred and is continuing, which constitutes an event of default under the Leases or would constitute an event of default thereunder but for the requirement that notice be given or time elapse or both;

(m) The proceeds of the Loan are being applied herewith to enable the Lessor to complete the payment in full of the purchase price of the Equipment from Pullman Industries, Inc., and for no other purpose;

(n) The Lessor hereby agrees to send to BTEL by prepaid United States registered or certified mail, return receipt requested, copies of all notices and other instruments or communications required or permitted to be given by the Lessor or its assigns under the Leases;

(o) The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred by Section 20C of the Interstate Commerce Act, the applicable recording laws of Canada and of the Provinces and Territories thereof and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by laws of the several jurisdictions in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited.

SECTION 4. Inspection. Subject to the terms of the Leases, the Lessor will permit any authorized representatives of BTEL to inspect the Collateral, or any part thereof, and to examine, copy or make extracts from, any and all books, records and documents in the possession of the Lessor relating to the Collateral or any part thereof and performance of this Agreement, all at such reasonable times and as often as may reasonably be requested. BTEL shall have no duty to make any such inspection or examination and shall not incur any liability or obligation by reason of not making any such inspection or examination.

SECTION 5. Liens on the Equipment. So long as this Agreement shall be in effect, and subject to the rights of the Lessees under the Leases, the Lessor will not, without the prior written consent of BTEL and subject to such terms and conditions as the Agreement may reasonably require, directly or indirectly transfer any interest in, or directly or indirectly create, incur, assume or suffer to exist any mortgage, deed of trust, pledge, lien,

security interest or other charge, encumbrance or interest of any nature on or with respect to, any of the Collateral. The Lessor will from time to time, upon request of BTEL, execute or cause to be executed all instruments of further assurance and all such supplemental instruments as BTEL may reasonably request.

SECTION 6. Other Covenants. So long as any Obligation of the Lessor shall be outstanding, the Lessor covenants and agrees that:

(a) It shall preserve and maintain its existence, rights and franchises and comply with all laws applicable thereto;

(b) It shall from time to time, at its own expense, take all action reasonably requested by BTEL to establish, preserve, protect and perfect the rights created by the Leases, the Note and this Agreement including, without limitation, the due filing and recording with the Interstate Commerce Commission in accordance with Section 20C of the Interstate Commerce Act of any document with respect to the Equipment hereto;

(c) Without the prior written permission of BTEL in each case, it shall not give waivers or consents under, or enter into any amendments or supplements to the Leases or consent to any sublease of the Leases by the Lessees;

(d) It shall not sell, lease, transfer or otherwise dispose of the Collateral except as herein contemplated.

SECTION 7. Maintenance and Repair Replacement.

(a) Except to the extent that the Lessees are obligated thereto under the terms of the Leases, and as long as Lessees are not in default thereunder, the Lessor, at its own expense, will keep and maintain, or cause to be kept and maintained, the Equipment in good working order and repair and fit to be used for its intended use, ordinary wear and tear excepted, and in conformity with all insurance requirements, and will provide, or cause to be provided, all maintenance and service and make all repairs necessary for such purpose. BTEL shall not be obliged in any way to maintain alter, repair, rebuild, or replace any of the Equipment;

(b) If any part of the Equipment (herein collectively the "Parts" and individually a "Part") which was originally incorporated or installed in, attached to or part of the Equipment at the time of delivery thereof (herein collectively the "Original Parts" and individually each an "Original Part"), or any Part in replacement or of substitution for any Original Part, shall become worn out, lost, stolen, destroyed, or damaged or otherwise rendered unfit for use, the Lessor, at its own expense, shall promptly cause to be replaced or repaired such Original Part or Part by a replacement Part which is either new or has a useful life at least equal to the remaining estimated useful life of the Equipment, which Part shall be free of all liens and encumbrances and in as good an operating condition as, and have a value or utility at least equal to, the Part replaced assuming such replaced Part was in the condition and repair required to be

maintained by the terms hereof. All such replacement Parts shall immediately, without further act, become the property of the Lessor and part of the Equipment for all purposes hereof.

(c) In the event that the Lessee makes any alteration, modification or addition to the Equipment permitted by the terms of the Leases, title to all Parts representing any such alteration, modifications or addition shall, so long as such Parts remain property of the Lessor under the Leases, without further act vest in the Lessor and become part of the Equipment for all purposes hereof.

SECTION 8. Insurance. (a) At all times until payment and performance in full of all of the Obligations the Lessor shall carry and maintain, or shall cause the Lessees to carry and maintain, on the Equipment, at its own cost and expense, all-risk property damage insurance and liability insurance in such amounts, against such risks, in such form and with such insurance companies, underwriters or funds as shall be satisfactory to BTEL from time to time; provided, however, that the amount of property damage insurance maintained by (1) the Lessees covering the Equipment from time to time shall in no event be less than the unpaid Obligations of the Lessor. All insurance policies (including liability policies) shall name BTEL as additional insured/loss payee as their interest may appear. Unless BTEL shall otherwise agree in writing, each liability policy shall provide for all losses to be paid on behalf of the Lessees, the Lessor and BTEL as their respective interests may appear and each direct damage policy shall provide for all losses to be paid directly to BTEL. With respect to proceeds received under direct damage policies, it is agreed as between the Lessor and BTEL that in the

event that any loss of all or any Equipment shall have occurred and the Lessees shall have, at their own cost and expense pursuant to the terms of the Leases, replaced or repaired that portion of the Equipment which has been affected by such loss in accordance with the terms of Section 7 (b) hereof, then BTEL shall pay over to the Lessees the insurance proceeds received by it as a result of such loss, provided that such Equipment is going back on Leases;

(b) So long as any Obligation of the Lessor shall remain unpaid or unperformed, the Lessor will cause each insurer under a policy required by the terms of this Section to agree (either by endorsement upon such policy or by letter addressed to BTEL) to give BTEL at least 30 days' (or such notice as set forth in the policy of insurance) prior written notice of any alteration in the terms of such policy or of the cancellation thereof in whole or in part. The Lessor agrees to provide BTEL with copies of all policies or certificates with respect to such policies or with other evidence satisfactory to BTEL of compliance by the Lessor with the terms of this Section. In the event that the Lessor shall fail to cause insurance to be maintained as herein provided, BTEL may at its option provide such insurance and, in such event, the Lessor shall, upon demand, reimburse BTEL for the cost thereof.

SECTION 9. Indemnity. (a) The Lessor hereby assumes liability for, and hereby agrees to indemnify, protect, defend, save and keep harmless BTEL from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements, including, without limitation, reasonable legal and investigative fees and expenses, of whatsoever kind and nature (herein called "Liabilities")

which may be incurred by or imposed at any time (whether during the term of the Leases, the Note, this Agreement or thereafter) on BTEL or the Equipment (whether or not also indemnified against by the Manufacturer or any other person) and in any way relating to or arising out of, or alleged (by a person other than BTEL) to in any way relate to or arise out of:

(i) the Collateral, the Leases, the Note, this Agreement, the Consent and Agreement, the documents delivered pursuant to Section 1 hereof (all of the foregoing hereinafter in this Section 9 collectively the "Loan Documents") or any transfer of any interest in any of the Loan Documents; or

(ii) any transaction to which any transferee, assignee, purchaser, lessee, sublessee, pledgee, mortgagee, beneficiary, shareholder or other person or entity receiving directly or indirectly any interest in, or benefit or value from, the Equipment or any of the Loan Documents (each such transferee, assignee, purchaser, lessee, sublessee, pledgee, mortgagee, shareholder or other person or entity hereinafter in this Section 9 individually a "Party") is a party or by which such Party is otherwise affected; or

(iii) any claim of any Party; or

(iv) any claim, right or cause of action involving any creditor, trustee, receiver, successor of any Party or any legal or equitable representative (whether representing the Lessor, a Party or otherwise); or

(v) the manufacture, financing, purchase, acquisition, ownership, acceptance, rejection, delivery, non-delivery, possession, use, operation, leasing, subleasing, condition, maintenance, repair, sale, return or other application or disposition of the Equipment or any part thereof, or otherwise, including, without limitation, claims or penalties arising from any violation of any legal requirements or insurance requirements as well as any claim as the results of latent, patent and other defects, whether or not discoverable, any claim the the insurance as to which is inadequate, any claim for patent, trademark or copyright infringement, any tort claim or claim for damages, any claim or liability in respect of any adverse environmental impact or effect.

The Lessor shall assume full responsibility for the defense against or settlement of any such Liability, and BTEL shall cooperate with the Lessor by providing, at the expense of the Lessor, such witnesses, documents and other assistance as the Lessor may reasonably request; provided, however, that (x) BTEL shall be consulted as to the legal counsel to be employed in respect thereof and may veto the employment of any legal counsel unacceptable to it and (y) if BTEL shall give to the Lessor notice that in its good faith judgment an important general interest of BTEL is involved in such Liability or potential Liability, BTEL shall have the right to control, in consultation with the Lessor, the defense against or settlement of such Liability.

(b) The obligations of the Lessor under this Section 9 shall survive the expiration or earlier termination of the Leases, the Notes and this Agreement.

SECTION 10. Default. (a) Any of the following events shall constitute an event of default hereunder: (i) payment of any part of the principal of or interest on the Notes shall not be made when and as the same shall become due and payable and such default shall continue unremedied for 10 days after written notice thereof to Lessor; (ii) the Lessor shall default in the due observance or performance of any other covenants, conditions or provisions hereof or of the Leases and such default shall continue for more than 10 days after written notice from BTEL specifying the default and demanding the same to be remedied; (iii) the Lessor shall cease doing business as a going concern, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudicated a bankrupt or an insolvent, file a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or file an answer admitting the material allegations of a petition filed against it in any such proceeding, or consent to or acquiesce in the appointment of a trustee, receiver, or liquidator of it or all or any substantial part of its assets or properties, or if within 30 days after the appointment without the Lessor's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets or properties such appointment shall not be vacated; and

(iv) a default (as the term is defined in the Leases) shall have occurred and be continuing under the Leases.

SECTION 11. Remedies. If an event of default shall occur and be continuing, then, in any such event BTEL may (i) declare all Obligations of the Lessor to be immediately due and payable forthwith to the extent permitted by law or contract, and/or (ii) apply to a court of competent jurisdiction to obtain specific performance or observance by the Lessor of any covenants, agreement, or undertaking on the part of the Lessor hereunder or under the Note which the Lessor shall have failed to observe or perform or to obtain aid in the execution of any power granted herein or therein, and/or (iii) proceed to foreclose upon and against the liens and security interests created by this Agreement according to the laws of the applicable jurisdiction by doing any one or more or all of the acts described in subsection (b) below and/or of the following acts, as BTEL in its sole and complete discretion may then elect:

(1) exercise all the rights and remedies upon default, in foreclosure and otherwise, available to secured parties under the provisions of applicable law;

(2) institute legal proceedings to foreclose upon and against the liens and security interests granted by this Agreement, to recover judgment for all amounts then due and owing as indebtedness secured hereby, and to collect the same out of any or all of the Collateral or the proceeds of any sale thereof;

(3) institute legal proceedings for the sale, under the judgment or decree of any court of competent jurisdiction, of any or all of the Collateral;

(4) without regard to the adequacy of the security for the Note by virtue of this Agreement or any other collateral or to the solvency of the Lessor, institute legal proceedings for the appointment of a receiver or receivers with respect to any or all of the Collateral pending foreclosure hereunder or for the sale of any or all of the Collateral under the order of a court of competent jurisdiction or under other legal process;

(5) personally or by agents or attorneys, enter upon any premises where the Collateral or any part thereof may then be located, and take possession of all or any part thereof; and without being responsible for loss or damage to such Collateral, hold, store, and keep idle, or lease, operate, or otherwise use or permit the use of, the Collateral or any part thereof, for such time and upon such terms as BTEL may in its sole and complete discretion, deem to be in its own best interest, and demand, collect, and retain all hire, earnings, and other sums due and to become due in respect of the same from any party whomsoever, accounting only for the net earnings, if any, arising from such use and charging against all receipts from the use of the same or from the sale thereof, by court proceedings or pursuant to subsection (b) below, all other costs, expenses, charges, damages, and other losses resulting from such use; or

(6) take such other action which the Lessor could or might have taken pursuant to the Leases;

provided, however, that so long as no default by the Lessees under the Leases shall be continuing, the Lessees under such Leases shall not be disturbed in their possession, use, operation and enjoyment of the Equipment under the Leases or the exercise of any of their rights thereunder by virtue of any action taken with respect to any security interests created in favor of BTEL.

At any sale pursuant to this Section 11, whether under the power of sale or by virtue of judicial proceedings, it shall not be necessary for BTEL or a public officer under order of a court to have present physical or constructive possession of the Collateral to be sold. Upon any sale hereunder of any or all of the Collateral or any interest therein, the receipt of the officer making such sale under judicial proceedings or of BTEL shall be sufficient discharge to the purchaser for the purchase money, and such purchaser shall not be obligated to see to the application thereof. Any sale hereunder of any or all of the Collateral or any interest therein shall forever be a perpetual bar against the Lessor with respect to such Collateral or interest therein, as the case may be, and in the event of any transfer of any interest in and to the Collateral permitted in accordance with the provisions herein, the Lessor shall require the express agreement and consent of such transferee to the provisions of this Section 10 and shall further require its transferee to require any further transferees of any such interest to agree and consent expressly to the provisions of this Section.

(b) If BTEL should elect to foreclose upon and against the lien and security interest created in and by this Agreement, the Lessor shall, upon demand of BTEL, deliver to BTEL all or any part of the Collateral at such time or times and place or places as BTEL may specify; and BTEL is hereby authorized and empowered to the extent permitted by law, with or without the aid of process of law and without being responsible for loss or damage to such Collateral, to enter upon any premises where the Collateral or any part thereof may be located and take possession of and remove the same. BTEL may thereafter sell, lease and dispose of, or cause to be sold, leased and disposed of, all or any part of the Collateral at one or more public or private sales, leasings or other dispositions, and advertisement, and other notice or demand, and any obligation of a prospective purchaser or Lessee to inquire as to the power and authority of BTEL to sell, lease or otherwise dispose of the Collateral or as to the application by the proceeds of sale, lease or otherwise, which would otherwise be required by, or available to the Lessor under, applicable law are hereby expressly waived by the Lessor to the fullest extent permitted by such law. In the event that any mandatory requirement of applicable law shall obligate BTEL to give prior notice to the Lessor of any of the foregoing acts, the Lessor hereby agrees that a written notice sent to it so as reasonably to be expected to be delivered to the Lessor at least 10 business days before the date of any such act at its address specified for the Lessor at the beginning of this Agreement, shall be deemed to be reasonable notice of such act and, specifically, reasonable notification of the time after which any private sale, loans or other disposition intended to be made hereunder is to be made.

SECTION 12. Application of Proceeds. If an Event of Default shall occur and be continuing, the proceeds of any sale, lease or other disposition of all or any of the Collateral under this Agreement and all other sums realized by BTEL pursuant to this Agreement or any proceedings hereunder or thereunder shall be applied in the following order of priority:

FIRST: To the payment of the costs and expenses of such sale, lease, disposition or other realization, including reasonable compensation to BTEL's agents and counsel, and all expenses, liabilities and advances made or incurred by BTEL in connection therewith, including, without limitation, taxes upon or with respect to the sale, lease, disposition or realization and the payment of taxes and liens, if any, prior to the lien and security interest of this Agreement (except any taxes or liens to which the respective sale, lease, disposition or realization shall have been subject) and to the payment of expenses and the reimbursement of payments incurred or made by BTEL pursuant to Section 14 hereof;

SECOND: To the payment of all Obligations of the Lessor then unpaid and unperformed.

THIRD: To the Lessor, its successor or to such other person(s) or entities as may lawfully be entitled to the remainder or as any court of competent jurisdiction may direct.

SECTION 13. BTEL as Attorney. The Lessor hereby irrevocably appoints BTEL the true and lawful attorney of the Lessor (with full power of substitution) in the name, place and stead of, and at the expense of, the Lessor in connection with the <sup>ENFORCEMENT</sup> ~~performance~~ of the rights and remedies provided for in this Agreement (i) to give any necessary receipts or acquittances for amounts collected or received hereunder or thereunder, (ii) to make all necessary transfers of all or any part of the Collateral in connection with any sale, lease or other disposition made pursuant hereto or thereto and (iii) to execute and deliver for value all necessary or appropriate bills of sale, assignments, and other instruments in connection with any such sale, lease or other instruments in connection with any such sale, lease or other disposition, the Lessor hereby ratifying and confirming all that its said attorney (or any substitute) shall lawfully do hereunder and pursuant hereto. Nevertheless, if so requested by BTEL or a purchaser or lessor, the Lessor shall, and shall provide for the agreement of its transferee to, and require its transferee similarly to provide for the agreement of any subsequent transferee to, ratify and confirm any sale, lease or other disposition by executing and delivering to BTEL or such purchaser or lessor all proper bills of sale, assignments, releases, leases and other instruments as may be designated in any such request.

SECTION 14. Remedies Cumulative; Fees and Expenses.

(a) No failure or delay on the part of BTEL in exercising, and no course of dealing with respect to, any right, power of remedy under this Agreement, and no notice or demand which may be given to or made upon the Lessor with respect to any such right, power or remedy, shall constitute a waiver thereof (except for any waiver contained in such

notice) or limit or impair the right of BTEL to take any other or similar action or to exercise any other right, power or remedy granted in this Agreement or otherwise available to BTEL nor shall any single or partial exercise by BTEL of any right, power or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or remedy granted in this Agreement or otherwise available to BTEL or prejudice its rights against the Lessor in any respect. Each and every remedy of BTEL shall be cumulative and shall not be exclusive of any other remedies provided now or hereafter at law, in equity or otherwise.

(b) The Lessor shall reimburse BTEL for all counsel fees and other costs and expenses paid or incurred by BTEL in connection with the enforcement of this Agreement, the Note and the other documents contemplated hereby and thereby.

SECTION 15. Termination. Unless otherwise provided herein, this Agreement and the liens and security interests granted hereby shall terminate when the indebtedness secured hereby and all other Obligations of the Lessor shall be fully paid and performed. Upon termination of this Agreement as aforesaid, BTEL shall execute and deliver to the Lessor, at the Lessor's expense, such instruments of release and termination as shall be appropriate in the premises.

SECTION 16. Miscellaneous. Any provisions of this Agreement or the Notes which are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions

hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any jurisdiction. To the extent permitted by applicable law, the Lessor hereby waives any provision of law which renders any provision hereof or of the Note prohibited or unenforceable in any respect. No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Lessor and BTEL. All the terms, provisions, conditions and covenants herein contained and in the Note shall be binding and shall inure to the benefit of the Lessor, BTEL, and their respective successors and assigns. The captions in this Agreement are for convenience or reference only and shall not define or limit any of the terms or provisions hereof. All notices, demands and other communications concerning this Agreement or the Note shall be sent to either party hereto at its address set forth in the heading to this Agreement, postage prepaid, or at such other address as shall be stipulated by the parties from time to time.

SECTION 17. Prepayment of Notes. Lessor may, from time to time, but only after March 31, 1979, voluntarily prepay the principal of the Note in whole or in part. ~~Any such prepayment shall be without penalty.~~ However, in the event of any such prepayment Lessor shall and agrees to pay a prepayment fee in accordance with the following schedule which is based upon the time of any such prepayment:

<u>Date of Prepayment</u>	<u>Prepayment Fee</u>
4/1/79 to 3/31/80	2.0%
4/1/80 to 3/31/81	1.5%
4/1/81 to 3/31/82	1.0%
4/1/82 to 3/31/83	.5%

No prepayment fee shall apply to any prepayment made on or after April 1, 1983.

SECTION 18. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of New York.

IN WITNESS WHEREOF, the Lessor and BTEL have caused this Agreement to be duly executed on the day and year first above written and be delivered in the City of New York, State of New York.

REX RAILWAYS INC.

By *Marcelo Salazar* Title *Chairman*

BT EQUIPMENT LEASING, INC.

By *John Korman* Title *Vice Pres.*

EXHIBIT A

Equipment herein subject to the certain Leases dated  
by and between REX RAILWAYS, INC.  
("Rex") and

("Lessees")

TYPE AND DESCRIPTION OF CAR:	New 50'6" inside length, 70-ton Single Sheathed Boxcars, equipped with 10' sliding doors.
NUMBER OF CARS:	One Hundred Fifty (150)
INTERIOR EQUIPMENT:	Lading strap anchors throughout car.
SPECIAL LININGS:	None
PERMITTED LADING USE:	Non-corrosive commodities. LCRC 1001 to 1030 inclusive HCRC 801 to 825 inclusive MNS 49700 to 49774 inclusive MNS 49400 to 49419 inclusive.
REPORTING NUMBERS AND MARKS:	
SEPCIFICATIONS DESIGNATED BY LESSOR:	Boxcars to be built to specifi- cations as approved and designated in Purchase Orders.



## LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this ..... day of ....., 197..., between REX RAILWAYS, INC., a N. J. corporation, 616 Palisade Ave., Englewood Cliffs, N.J. ("REX") as Lessor and ..... corporation (the "Lessee"), as Lessee.

### 1. Scope of Agreement

A. REX agrees to lease to Lessee, and Lessee agrees to lease from REX, a minimum of ( ) boxcars of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto whether for Boxcars or other railroad equipment, each of which when signed by both parties shall be a part of this Agreement.

B. It is the intent of the parties of this Agreement that REX shall at all times be and remain the lessor of all scheduled Boxcars. Lessee agrees that it will at no time take any action or file any document which is inconsistent with the foregoing intent and that it will take such action and execute such documents as may be necessary to accomplish this intent.

### 2. Term

A. This Agreement shall remain in full force until it shall have been terminated as to all of the Boxcars. The term of a lease with respect to each Boxcar shall be for fifteen (15) years commencing upon the date of delivery of such Boxcar as set forth in Section 3A hereof.

B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to each Boxcar shall be automatically extended for not more than five consecutive periods of twelve months; provided, however, that REX or Lessee may by written notice delivered to the other not less than twelve months prior to the end of the initial lease term or any extended lease term for any scheduled Boxcar terminate this Agreement.

### 3. Supply Provisions

A. REX will inspect each Boxcar tendered by the manufacturer for delivery to Lessee. If the Boxcar conforms to the specifications of the equipment ordered by REX, and to all applicable governmental regulatory specifications, and this Agreement has not been terminated, REX will accept delivery thereof at the manufacturer's facility and shall notify Lessee in writing of such acceptance. The Boxcars shall be deemed delivered to Lessee upon acceptance by REX. The Boxcars shall be moved to Lessee's railroad line at no cost to Lessee as soon after acceptance by REX as is consistent with mutual convenience and economy. Due to the nature of railroad operations in the United States, REX can neither control nor determine when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay to REX the rental charges set forth in this Agreement. To move the Boxcars to Lessee's railroad line and insure optimal use of the Boxcars after the first loading of freight for each Boxcar on the railroad line of Lessee (the "initial loading"), REX agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee

and REX, to issue movement orders with respect to such Boxcars to other railroad lines in accordance with ICC and AAR interchange agreements and rules.

B. Lessee agrees that so long as it shall have on lease one or more type of Boxcar, it shall not lease boxcars from any other party unless it shall have leased the minimum Boxcars required by this Agreement. Once the minimum Boxcars shall have been leased by Lessee, it shall then not lease boxcars from any other party unless it shall have given REX at least three (3) months' prior written notice of its desire to lease boxcars similar to the type on lease and REX shall then have the opportunity to lease such boxcars to Lessee subject to the terms and conditions of this Agreement and manufacturer's delivery schedules and at terms not less favorable to Lessee than that offered by such other parties. The foregoing, however, shall not be deemed to prohibit Lessee from leasing from other parties if REX cannot equal the lease terms offered by such other parties. Notwithstanding the purchase of boxcars or the leasing or direct interchange of boxcars from other parties, Lessee shall give preference to REX and shall load the Boxcars leased from REX prior to loading boxcars purchased by Lessee subsequent to the date of this Agreement or leased from such other parties or interchanged with railroads; provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its railroad tracks.

C. Additional Boxcars may be leased from REX by Lessee only upon the mutual agreement of the parties hereto. Upon such agreement, such additional Boxcars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by REX and Lessee.

#### 4. Railroad Markings and Record Keeping

A. REX agrees that on or before delivery of the Boxcars to Lessee, the Boxcars may be lettered, with the railroad markings of Lessee, with the name and/or other insignia used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars in the space directly above Lessee's reporting marks, with a width not greater than seven feet.

B. REX shall during the term of this Agreement prepare all documents for Lessee's signature and filing relating to the registration, maintenance and record keeping functions normally performed by Lessee with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents: (i) appropriate AAR interchange agreements with respect to the Boxcars including an application for relief from AAR Car Service Rules 1 and 2; (ii) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (iii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars.

C. Each and every Boxcar leased hereunder shall be registered at no cost to Lessee in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. REX shall, on behalf of Lessee, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation. Correspondence from railroads using such Boxcars shall be addressed to Lessee at such address as REX shall select.

D. All record keeping performed by REX hereunder and all record of payments, charges and correspondence related to Scheduled Boxcars shall be separately recorded and maintained by REX in a form suitable for reasonable inspection by Lessee from time to time during regular REX business hours. Lessee shall supply REX with such reports regarding the use of Boxcars by Lessee on its railroad line as REX may reasonably request.

#### 5. Maintenance, Taxes and Insurance

A. REX will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each Boxcar during its lease term and any extension thereof, including but not limited

to repairs, maintenance and servicing unless the same was occasioned by the fault of Lessee while a Boxcar was in the physical possession of Lessee. Lessee shall be responsible to inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and shall be liable to REX for any repairs required for damage not noted at the time of interchange. Lessee hereby transfers and assigns to REX for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by REX at its sole expense and Lessee shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to REX. All proceeds from such recovery shall be used to repair or replace the Boxcars.

B. Lessee may make running repairs to facilitate continued immediate use of a Boxcar, but shall not otherwise make any repairs, alterations, improvements or additions to the Boxcars without REX's prior written consent. If Lessee makes an alteration to any Boxcar without REX's prior written consent, Lessee shall be liable to REX for any revenues lost due to such alteration. Title to any such alteration, improvement or addition occurring in the course of or as a result of normal and customary maintenance shall be and remain with REX.

C. REX shall make or cause to be made such inspections of, and maintenance and repairs to, the Boxcars as may be required. Upon request of REX, Lessee shall perform any necessary maintenance and repairs to Boxcars on Lessee's railroad tracks as may be reasonably requested by REX. REX shall also make, at its expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Boxcars in good operating condition throughout the term of the lease of such Boxcars.

D. Lessee will at all times while this Agreement is in effect be responsible for the Boxcars while they are on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules—Freight for cars not owned by Lessee which are operating on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Boxcars by either obtaining insurance or maintaining a self insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish REX concurrently with the execution hereof and thereafter at intervals of not more than 12 calendar months, with a certificate of insurance signed by an independent insurance broker with respect to the insurance carried on the Boxcars. All insurance shall be taken out in the name of Lessee and REX (or its assignee) as their interests may appear.

E. REX agrees to reimburse Lessee for all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Boxcar and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on Lessee and sales or use taxes imposed on the mileage charges and/or car hire revenues. REX shall forward to Lessee all sales and use taxes received by it on behalf of Lessee. REX and Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Boxcars. REX shall review all tax returns prior to filing.

## 6. Rental Charges

A. Lessee agrees to pay the following rental charges to REX for the use of REX's Boxcars:

(i) REX shall receive all of the mileage charges and car hire revenues (including both straight and incentive per diem) payable to Lessee by other railroad companies if the utilization of all of the Boxcars on an aggregate basis for each calendar year shall be equal to or less than per cent. For the purpose of this Agreement, utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that per diem is earned on the Boxcars, commencing from the initial loading, and the denominator of which is the aggregate number of days in each year that the Boxcars are on lease to Lessee, commencing from the initial loading. In addition, REX will receive, as additional rental, all revenues earned by the Boxcars prior to their initial loading.

(ii) In the event the utilization exceeds \_\_\_\_\_ per cent in any calendar year, REX shall receive an amount equal to the REX Base Rental plus an amount equal to one-half of the revenues earned in excess of the REX Base Rental. For the purpose of this Agreement, REX Base Rental shall be an amount equal to the total mileage charges and car hire revenues for the calendar year multiplied by a fraction, the numerator of which is \_\_\_\_\_ per cent and the denominator of which is the utilization for such calendar year. (The above determination of REX Base Rental insures that Lessee will, if the utilization is greater than \_\_\_\_\_ per cent in any calendar year, receive one-half of all the mileage and car hire revenues earned by Lessee in excess of the REX Base Rental.)

(iii) The rental charges payable to REX by Lessee shall be paid from the monies received by Lessee in the following order until REX receives the amounts due it pursuant to this Section 6: (1) incentive car hire payments; (2) straight car hire payments and (3) mileage charges.

(iv) In the event damage or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules—Freight and the appropriate amount due as a result thereof is received by REX, said damaged or destroyed Boxcar will be removed from this Agreement as of the date that payment of car hire revenues ceased.

B. The calculations required above shall be made within three months after the end of each calendar year. However, to enable REX to meet its financial commitments, REX may, prior to such calculations retain \_\_\_\_\_ per cent of the revenues received by it on behalf of Lessee. However, since the parties desire to determine on a quarterly basis the approximate amount of the rental payment due REX, REX shall within three months after the end of each calendar quarter, calculate on a quarterly basis rather than a yearly basis, the amount due it pursuant to this section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculation, provided, however, that following the yearly calculation, any amount paid to either party in excess of the amounts required by the yearly calculation shall be promptly refunded to the appropriate party.

C. In the event the utilization in any calendar quarter is less than \_\_\_\_\_ per cent, REX may, at its option and upon not less than 30 days prior written notice to Lessee, terminate this Agreement as to such number of Boxcars as REX shall determine.

D. REX may, at its option, terminate this Agreement if the ICC shall, at any time, (1) issue an order reducing incentive per diem for Boxcars on an annual basis to three months or less without a corresponding increase in straight per diem or other revenues available to both REX and Lessee at least equal in amount to such reduction or (2) determine that Lessee may not apply its net credit balance from incentive per diem settlements in payment of the rental charges set forth in this section.

E. If any Boxcar remains on Lessee's railroad tracks for more than seven days, REX may, at its option and upon not less than 24 hours prior written notice, terminate this Agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks, except when such Boxcar is awaiting its initial loading. If any such Boxcar remains on Lessee's railroad tracks more than seven days because Lessee has not given preference to REX Boxcars as specified in Section 3B, Lessee shall be liable to REX for an amount equal to the car hire revenues Lessee would have earned if such Boxcars were in the physical possession and use of another railroad for the entire period after the expiration of seven days.

## 7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agree-

ment and in the manner and to the extent Boxcars are customarily used in the railroad freight business. Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either REX or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

#### 8. Default Remedies Upon Default

A. The occurrence of any of the following events shall be events of default:

(i) The nonpayment by Lessee of any sum required hereunder to be paid by Lessee within ten days after notice thereof;

(ii) The default by Lessee under any other term, covenant, or condition of this Agreement which is not cured within ten days after notice thereof from REX;

(iii) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(iv) The filing of any involuntary petition under any bankruptcy reorganization, insolvency or moratorium law against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.

(v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency.

B. Upon the occurrence of any event of default, REX may, at its option, terminate this Agreement and may

(i) Proceed by appropriate court action to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear REX costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or -

(ii) By notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcars shall terminate; and thereupon REX may by its agents enter upon any premises where the Boxcars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. REX shall nevertheless have a right to recover from Lessee any and all rental amounts which under the terms of this Agreement may then be due or which may have accrued to that date.

#### 9. Termination

At the expiration or termination of this Agreement as to any Boxcars set forth on a Schedule attached hereto, Lessee will surrender possession of such Boxcars to REX by delivering the same to REX. The assembling, delivery, storage and transporting of the Boxcars shall be at the expense and risk of REX. A Boxcar shall be deemed terminated and no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Boxcar and the placing thereon of such markings

as may be designated by REX, either, at the option of REX, (1) upon delivery of such Boxcars to Lessee's railroad line subsequent to termination of such Boxcar's lease term or (2) removal and replacement of the markings by another railroad line which has physical possession of the Boxcar at the time of or subsequent to termination of the lease term as to such Boxcar.

(i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by REX. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ten days free storage on its railroad tracks for REX or the subsequent lessee of any terminated Boxcar.

(ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivering, storing, and transporting such Boxcars, except as provided above, to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by REX.

#### 10. Indemnities

REX will defend, indemnify and hold harmless Lessee from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, unless occurring through the fault of Lessee while Lessee has physical possession of Boxcars and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar (unless occurring through the fault of Lessee) relating to the Boxcars or any part thereof, including without limitation the construction, purchase, delivery of the Boxcars to Lessee's railroad line, ownership, leasing or return of the Boxcars, or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects, if any, are latent or are discoverable by REX or Lessee).

#### 11. Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(iv) There is no fact which Lessee has not disclosed to REX in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

(v) Lessee has during the years 1964-1968 neither leased nor purchased any boxcars.

**12. Inspection**

REX shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify REX of any accident connected with the malfunctioning or operation of the Boxcars including in such report the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify REX in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. Lessee shall furnish to REX promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC.

**13. Miscellaneous**

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of REX assign this Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.

D. No failure or delay by REX shall constitute a waiver or otherwise affect or impair any right, power or remedy available to REX nor shall any waiver or indulgence by REX or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

E. This Agreement shall be governed by and construed according to the laws of the State of New Jersey.

F. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to the president of the other party at the address set forth above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first above written.

REX RAILWAYS, INC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(TITLE)

DATE

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(TITLE)

DATE

\_\_\_\_\_



## EQUIPMENT SCHEDULE

REX RAILWAYS, INC. hereby leases the following Boxcars to ..... pursuant to that certain Lease Agreement dated as of ..... 197..

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		

REX RAILWAYS, INC.

\_\_\_\_\_ (TITLE)

DATE: \_\_\_\_\_

\_\_\_\_\_ (TITLE)

DATE: \_\_\_\_\_



EXHIBIT C

INTERIM NOTE

\$ \_\_\_\_\_

Date: \_\_\_\_\_

Due: March 31, 1978

On or before March 31, 1978, the undersigned, for value received, promises to pay to the order of BT Equipment Leasing, Inc. at its offices at 280 Park Avenue, New York, New York 10022, in lawful money of the United States, the sum of \_\_\_\_\_ Dollars, with interest thereon from date until paid at 10.5% per annum based on a 360-day year.

This Note evidences indebtedness incurred under SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS, dated as of December 1, 1977 (herein, together with any amendments which have been or may be made thereto, called the "Agreement"), between the undersigned and BT Equipment Leasing, Inc. This Note may be prepaid and may be declared due and payable, as provided in the Agreement, and is subject to all the terms and conditions of the Agreement.

This Note is payable in the State of New York, and shall be construed in accordance with the laws thereof.

REX RAILWAYS INC.

By \_\_\_\_\_

EXHIBIT D

PROMISSORY NOTE

\$

New York, New York  
March 31, 1978

The undersigned, FOR VALUE RECEIVED, promises to pay to the order of BT EQUIPMENT LEASING, INC. at its offices at 280 Park Avenue, New York, New York 10017, in lawful money of the United States, the sum of Seven Million One Hundred Sixty Seven Thousand Seven Hundred Thirty Six Dollars and Seventy-seven cents (\$7,167,736.77) in 143 equal consecutive monthly installments of \$47,029.83 each and one final monthly installments of \$442,471.08 with the first such monthly installment payable on April 30, 1978 and succeeding monthly installments on the same day of each successive month immediately thereafter and the said final payment on March 30, 1990. All payments shall be credited first to accrued and unpaid interest determined in accordance with generally accepted financial practices, and the balance to principal.

This Note shall, at the option of the holder, become immediately due and payable, without notice of demand, upon the happening of any one of the following events, with respect to the undersigned, or with respect to any endorser or guarantor of the obligations hereby evidenced: (a) failure to pay any amount as herein agreed subject to the SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS or (b) default in the performance of any other obligation to the holder including without limitation, any obligation arising under the SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS and any documents related thereto executed and delivered in connection herewith.

The undersigned hereby waives presentment, demand for payment, notice of dishonor and any or all other notices or demands in connection with the delivery, acceptance, performance, default or enforcement of this Note and hereby consents to any extensions of time, renewals, releases of any party to this Note waivers or modifications that may be granted or consented to by the holder of this Note in respect of the time of payment or any other provisions of this Note subject to SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS.

This Note is given in accordance with and is secured by a SECURITY AGREEMENT, CHATTEL MORTGAGE AND LEASE ASSIGNMENTS dated the 1st day of December, 1977, and holder is entitled to rights and benefits thereunder.

In the event that the holder hereof shall enforce the collection of this Note, there shall be due from the undersigned, in addition to the unpaid balance, all costs and expenses of such action, including reasonable attorneys fees.

The undersigned agrees that its liability is absolute and unconditional without regard to the liability of any other party and that no delay on the part of the holder hereof in exercising any power or right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any power or right hereunder preclude other or further exercise thereof or the exercise of any other power or right.

This Note is payable in the State of New York, and shall be construed in accordance with the laws thereof.

Maker: REX RAILWAYS, INC.

By \_\_\_\_\_

Title \_\_\_\_\_

EXHIBIT E

Consent of Lessee to Assignment of Lease  
("Consent and Agreement")

The undersigned parties hereby amend a certain Lease dated 1977 by and between Rex Railways, Inc., Englewood Cliffs, New Jersey (Lessor) and

(Lessee) in that the Lessee hereby acknowledges that the rights of the Lessor in and to this Lease has been assigned, mortgaged and pledged to, and are subject to a security interest in favor of BT Equipment Leasing, Inc., New York, New York, pursuant to a security agreement, chattel mortgage and lease agreement dated as of December 1, 1977 from Lessor to BT Equipment Leasing, Inc. as said security agreement, chattel mortgage and lease assignment may be amended or supplemented from time to time.

Agreed and acknowledged by:

REX RAILWAYS, INC. (LESSOR)

by: \_\_\_\_\_

(LESSEE)

by: \_\_\_\_\_

GUARANTY  
(For Execution by Corporation)

BT EQUIPMENT LEASING, INC.  
EXHIBIT F

For good and valuable consideration, the receipt of which is acknowledged, the undersigned (herein "Guarantor"), unconditionally guarantees to BT Equipment Leasing, Inc., 280 Park Avenue, New York, New York 10017 (herein "BTEL"), the full and prompt performance by REX RAILWAYS, INC., a New Jersey corporation, (herein "Obligor") of all obligations which Obligor presently or hereafter may have to BTEL and payment when due of all sums presently or hereafter owing by Obligor to BTEL, whether arising by lease, note or otherwise, and whether secured or unsecured. Guarantor further agrees to indemnify BTEL against any losses it may sustain and expenses it may incur as a result of any wrongful act of Obligor with respect to the performance of Obligor's obligations to BTEL.

The Guarantor agrees that it shall not be necessary, as a condition to enforce this guaranty, that suit be first instituted against Obligor or that any rights or remedies against Obligor be first exhausted. It being understood and agreed that the liability of the Guarantor hereunder shall be primary, direct, and in all respects unconditional.

For the purposes of this Guaranty and indemnity, all sums owing to BTEL by Obligor shall be deemed to have become immediately due and payable if (a) Obligor defaults in any of its obligations to BTEL; (b) a petition under any Chapter of the Bankruptcy Act, as amended, or for the appointment of a receiver of any part of the property of Obligor be filed by or against the Obligor and be not dismissed within thirty days; (c) Obligor makes a general assignment for the benefit of creditors, suspends business or commits any act amounting to a business failure, or; (d) an attachment be levied or tax lien be filed against any of Obligor's property.

This shall be a continuing guaranty and indemnity and irrespective of the lack of any notice to or consent of Guarantor, its obligations hereunder shall not be impaired in any manner whatsoever by any

(a) new agreements or obligations of Obligor with or to BTEL; amendments, extensions, modification, renewals or waivers of default as to any existing or future agreements or obligations of Obligor or third parties with or to BTEL or extensions of credit by BTEL to Obligor;

(b) adjustments, compromises or releases of any obligations of Obligor, Guarantor or other parties, or exchanges, releases or sales of any security of Obligor, Guarantor or other parties;

(c) fictitiousness, incorrectness, invalidity or unenforceability, for any reason, of any instrument or writing, or acts of commission or omission by BTEL or Obligor;

(d) compositions, extensions, moratoria or other relief granted to Obligor pursuant to any statute presently in force or hereafter enacted, or;

(e) interruptions in the business relations between BTEL and Obligor.

Notice of BTEL's acceptance hereof, of default or nonpayment by Obligor or any other parties, of presentment, protest and demand, and of all other matters of which Guarantor otherwise might be entitled, is waived.

The obligations hereunder of Guarantor shall be binding upon its respective successors, assigns and legal representatives. The failure of any person to sign this or a similar guaranty and indemnity shall not affect the liability hereunder of Guarantor. The dissolution or release from liability of any other guarantor shall not relieve Guarantor from liability hereunder. Guarantor may terminate its obligation hereunder as to then future transactions between BTEL and Obligor by registered mail notice to BTEL at its above-stated address, provided, however, that such termination shall not affect its liability hereunder with respect to any obligations of Obligor to BTEL incurred prior to receipt of such notice by BTEL.

Guarantor shall reimburse BTEL on demand, for all expenses incurred by it in the enforcement or attempted enforcement of any of its rights hereunder against Obligor or Guarantor, including costs and attorney's fees.

This guaranty and indemnity is assignable without notice to Guarantor, shall be construed liberally in favor of BTEL and shall inure to the benefit of its successors and assigns. If Obligor should default in the performance of any of Obligor's obligations to BTEL and if any third party makes any payment to BTEL with respect thereto, such third party shall, to the extent thereof, be subrogated to all of its rights against Guarantor hereunder. Legal rights and obligations hereunder shall be determined in accordance with the laws of the State of New York.

The undersigned corporation warrants for itself that it is authorized by law and by its articles of incorporation to execute this Guaranty, and the officers signing the same warrant that they are specifically authorized thereunto by a duly adopted resolution of the board of directors or the by-laws of the corporation.

IN WITNESS WHEREOF, Guarantor has caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ATTEST:

REX NORECO, INC.

By \_\_\_\_\_  
 \_\_\_\_\_  
 (Title of Signatory)