



CLEVELAND TRUST

9-292A065

October 19, 1979

Date **OCT 19 1979**

Fee \$ 50.00

10907

RECORDATION NO. Filed 1425

CC Washington, D.C.

Secretary of the Interstate Commerce Commission
Washington, D.C. 20423
OCT 19 1979 4 00 PM
INTERSTATE COMMERCE COMMISSION

To Whom It May Concern:

As consideration for a loan, Donald Dean Saxton who resides at 346 Saddler Road, Bay Village, Ohio ("Saxton") has conveyed to The Cleveland Trust Company, an Ohio corporation, with its principal office at 900 Euclid Avenue, Cleveland, Ohio 44101 ("Bank") a security interest in (1) the railroad boxcars described in the Schedule of Equipment attached hereto and made a part hereof; (2) a Lease Agreement covering such boxcars between Rex Railways, Inc., a New Jersey corporation whose principal office is at 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632 ("Rex") as agent for Saxton, and Lamoyille Valley Railroad Company, a Vermont corporation, such lease having been recorded with the commissioner on _____, at _____, and bearing the recordation number _____; (3) a Management Agreement between Rex and Saxton relating to such boxcars and (4) all proceeds of such Lease Agreement and Management Agreement. Three copies of the Security Agreement between Saxton and Bank are enclosed for recordation along with a check in the amount of \$50.00 in payment of the recordation fee.

The undersigned personally has knowledge of the facts set forth herein.

Please return the original document to the undersigned at the address shown below.

Sincerely,

Dennis Synecky
Dennis Synecky
Vice President
The Cleveland Trust Company

FILED
OCT 19 1979
WASHINGTON, D.C.

Carly Mitchell

SCHEDULE OF EQUIPMENT

<u>Quantity</u>	<u>Type</u>	<u>Identifying Marks and Numbers</u>
Four (4)	50-foot, 70-ton truck XM boxcars with a 5,344 cubic foot capacity	LVRC 5396 LVRC 5397 LVRC 5398 LVRC 5399

Interstate Commerce Commission
Washington, D.C. 20423

10/19/79

OFFICE OF THE SECRETARY

Dennis Synecky
Vice President
Cleveland Trust Company
900 Euclid Ave.
Cleveland, Ohio 44101

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/19/79 at 4:00pm, and assigned re-
recording number(s). 10007

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

10907

RECORDATION NO. Filed 1425

OCT 19 1979 - 4 00 PM

SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

DONALD DEAN SAXTON (herein called "Owner") desires to obtain from THE CLEVELAND TRUST COMPANY (herein called "Bank") a loan as hereinafter provided. To induce Bank to grant to Owner such loan and in consideration thereof and for other valuable considerations, Owner hereby represents and warrants to and agrees with Bank as follows:

1. (DEFINITIONS) As used herein,

1.1. "Cars" means the four railroad boxcars described in the Schedule of Collateral attached hereto;

1.2. "Rex" means REX RAILWAYS, INC., a New Jersey corporation;

1.3. "Management Agreement" means the Agreement between Rex and Owner dated Oct 1, 1979 relating to the Cars;

1.4. "Lessee" means LAMOILLE VALLEY RAILROAD COMPANY, a Vermont corporation and any subsequent lessee of the Cars;

1.5. "Original Lease" means that certain agreement dated July 24, 1979 and entered into between Owner as lessor and Lessee as lessee, a copy of which is attached hereto as Exhibit A and which has been recorded with the Interstate Commerce Commission;

1.6. "Lease" means the Original Lease together with each supplement, amendment, extension or other modification, if any, thereto or thereof and any other lease pursuant to which the Cars shall at any time be leased together with each supplement, amendment, extension or other modification, if any, thereto or thereof;

1.7. "Leased Chattels" means, collectively, the Cars and every item of personal property used in connection therewith;

1.8. "Lease Moneys" means, collectively, (a) all rents, issues, profits and proceeds reserved in or arising from the Lease and Management Agreement (including but not limited to any proceeds of sale of the Leased Chattels, casualty value payments, and insurance proceeds) and (b) all damages, moneys and considerations of any and every kind to which Owner would but for this Security Agreement be entitled and which arise out of or result from any appropriation or condemnation proceeding, any assignment by Lessee or Rex for the benefit of creditors or any voluntary proceeding instituted by or involuntary proceeding instituted against Lessee in any federal or state court under any bankruptcy, reorganization, arrangement, or insolvency law or under any other law relating to relief of debtors;

1.9. "Collateral" means, collectively, the Lease, the Management Agreement, the Leased Chattels and the Lease Moneys;

1.10. "Note" means the note executed and delivered by Owner to Bank on October 19, 1979, in the principal sum of One Hundred Twenty-Five Thousand and 00/100 Dollars (\$125,000.00) with interest payable at the rate of thirteen and one-half per cent (13-1/2%) per annum and payable in sixty-one (61) consecutive monthly installments

all but the last of which shall be in the sum of One Thousand Nine Hundred Three and 43/100 Dollars (\$1,903.43) with the last installment in an amount equal to the unpaid principal and any accrued interest, evidencing the loan granted by Bank to Owner concurrently herewith;

1.11. "Debt" means, collectively, (a) the principal of and interest on the Note and each extension, renewal or refinancing thereof, (b) every obligation or other liability assumed by Owner in this Security Agreement, (c) every payment, if any, made by Bank pursuant to this Security Agreement and (d) every other liability, if any, now or hereafter owing to Bank by Owner, whether owing by Owner only or by Owner with another or others in a several, joint or joint and several capacity, whether owing absolutely or contingently, whether created by note, overdraft, guaranty of payment or other contract or by quasi-contract, tort, statute or other operation of law, whether incurred directly to Bank or acquired by Bank by purchase, pledge or otherwise, and whether participated to or from Bank in whole or in part.

2. (SECURITY INTEREST) Owner hereby grants to Bank a security interest in the Collateral as security for the Debt and Owner agrees that the security interest shall remain in full effect until payment in full of all of the Debt.

3. (OWNER'S WARRANTIES) Subject only to such exceptions, if any, as may have been fully disclosed in writing to Bank by Owner prior to or concurrently with the execution and delivery hereof, Owner represents and warrants as follows:

3.1. Owner is, or upon disbursement of the proceeds of Owner's Note Owner will be, the sole and absolute owner of the Leased Chattels and the Lease Moneys, free from any security interest, financing statement, lien, equity, restriction or claim whatever, other than Lessee's rights under the Lease and Rex's right to collect certain sums pursuant to Section 10 of the Management Agreement and Bank's rights hereunder. The Internal Revenue Service has not alleged the nonpayment or underpayment of any tax by Owner or threatened to make any assessment in respect thereof. None of the Collateral is subject to any financing statement other than any naming only Bank as secured party.

3.2. The Lease and Management Agreement are valid in every respect and binding upon Owner, Lessee, and/or Rex, as the case may be, in accordance with their provisions. Neither Owner nor Lessee nor Rex is in default thereunder in any respect.

3.3. Owner has full legal power and right to execute and deliver this Security Agreement and to perform and observe the provisions hereof and to execute and file appropriate financing statements in respect hereof, and when those authorized acts are done, this Security Agreement will be valid and binding upon Owner in accordance with the provisions hereof and will constitute the first and only lien upon the Lease, the Management Agreement, the Leased Chattels (subject to Lessee's rights under the Lease) and the Lease Moneys (subject to Rex's right to collect certain sums pursuant to Section 10 of the Management Agreement).

4. (OWNER'S COVENANTS) Owner agrees to perform and observe each of the following provisions:

4.1. (LEASE) Without the prior written consent of Bank, Owner will not, and will not permit or cause Rex to, (a) terminate the Lease, retake possession of the Leased Chattels or any thereof or exercise any other remedy available to Owner upon any

default by Lessee, (b) assent to any reduction of the rents payable by Lessee under the Lease, to any change in the time or manner of payment of the rents or to any amendment, supplement, extension, termination or other modification in, to or of the Lease or any provision thereof or any interest therein, (c) sell, transfer or assign the Lease or any interest therein or grant any security interest in the Lease or suffer or permit any thereof to be subject to any lien of any kind, except the security interest granted by this Security Agreement, or (d) suffer or permit Lessee to assign its interest in the Lease or Leased Chattels.

4.2. (MANAGEMENT AGREEMENT) Without the prior written consent of Bank, Owner will not, (a) terminate the Management Agreement, (b) assent to any reduction of Net Earnings (as that term is defined in the Management Agreement) or to an amendment, supplement, extension, termination or other modification in the Management Agreement, or (c) sell, transfer or assign the Management Agreement or any interest therein or grant any security interest in the Management Agreement or suffer or permit any thereof, to be subject to any lien of any kind, except the security interest granted by this Security Agreement.

4.3. (COLLATERAL) Owner will (a) cause the Leased Chattels to be maintained in as good condition and repair as they now are (reasonable wear excepted), all at Owner's or Lessee's expense, (b) cause the Leased Chattels to be insured at all times, in such amounts, by such policies, by such insurers and against such losses and hazards as Bank may from time to time reasonably require, all at no cost or expense to Bank, each of which insurance policies shall include a loss payable clause (in form satisfactory to Bank) in favor of Bank as its interest may appear, (c) deliver to Bank, in each case not less than ten days prior to the last day for making payment without penalty, a receipt for the payment of each premium thereon, (d) forthwith upon each request of Bank, execute and deliver such financing statements, affidavits and other writings, furnish such documents and instruments and make and do all such further other acts and things, all at no cost or expense to Bank, as Bank may from time to time deem necessary or desirable for the better perfection or validity of Bank's security interest in the Collateral, (e) promptly upon each request of Bank, pay the cost of any title search or credit investigation deemed necessary by Bank in respect of the Collateral and the Debt and pay all other claims and charges which in Bank's opinion might prejudice, imperil or otherwise affect the Collateral or any thereof or the security interest hereby granted to Bank, (f) defend, indemnify and save Bank harmless from and against every out-of-pocket cost, expense, loss or liability (as the case may be), if any, incurred by Bank by reason of this Security Agreement (including but not limited to any loss or liability incurred by Bank as a result of any defense, claim, counterclaim or offset of any kind asserted by Lessee in respect of the Collateral), (g) not encumber or grant a security interest in or file a financing statement covering the Collateral or any of it, or permit any of the foregoing without the prior written consent of the Bank, (h) not, without the prior written consent of Bank, change, or permit to be changed, the identifying letters and numbers of the Cars from the letters and numbers of the Cars set forth in the Schedule of Collateral attached hereto; and (i) not, without the prior written consent of Bank, lease the Cars, or permit the Cars to be leased, except in accordance with the Lease or as provided in Section 3(b) of the Management Agreement.

4.4. (LEASE MONEYS) Owner shall instruct Rex, by completing Exhibit B to the Management Agreement, to remit to Bank out of Net Earnings, as that term is defined in the Management Agreement, on the first day of every month, the amount of One Thousand Nine Hundred Three and 43/100 Dollars (\$1,903.43) (referred to herein as

"Debt Service") or the Net Earnings attributable to the Cars for the preceding month, whichever is greater, as provided in Section 7(a) of the Management Agreement. Until Bank shall give Owner written notice to the contrary, Owner will collect and enforce all Lease Moneys in excess of the Debt Service each month. At any time after Bank has exercised its rights pursuant to subsection 5.1 hereof, Owner agrees that Owner will not make demand upon Lessee or Rex for the payment of any Lease Moneys without in each case first obtaining Bank's written consent and that if Owner shall at any time or times receive any Lease Moneys, Owner will (a) refrain from commingling the Lease Moneys with any other funds or property of Owner, (b) receive and hold the Lease Moneys in trust for Bank, (c) immediately upon receipt execute such endorsements and assignments thereon as may be necessary or helpful for the collection thereof by Bank and (d) immediately deliver directly to Bank all said Lease Moneys in the very form received but with said assignments and endorsements.

4.5. (ADDITIONAL PAYMENT) Owner agrees to give Bank prompt written notice whenever any Car becomes destroyed, lost or damaged beyond repair and within ten days after each such destruction, loss or damaging either (a) to replace each such destroyed, lost or damaged Car with another railroad car (referred to herein "Substituted Car"), which shall be of the same or later year of manufacture or complete rebuilding (as the case may be), the same or costlier type and the same or better physical condition, and to execute and deliver to Bank a security agreement which shall grant Bank a security interest in each such Substituted Car as security for the Debt and (except for necessary changes in dates and in references to the Debt and the Collateral) shall be in the same form and of the same substance as this Security Agreement or (b) pay Bank in cash, for application to the principal installments of the Debt in the inverse order of their respective maturities, an amount bearing the same ratio to the then unpaid principal balance of the Debt as the aggregate value of the destroyed, lost or damaged Car bears to the aggregate value of the Collateral.

4.6. (LESSEE'S DEFAULT) If Lessee or Rex shall become in default under the Lease or Management Agreement in any respect, (a) Owner will give Bank prompt written notice thereof, and (b) Bank shall have the right (but not the duty) for and on behalf of Owner and Bank to exercise the rights and remedies available to Owner under or in respect of the Lease or Management Agreement as the case may be.

5. (BANK'S DEALINGS WITH LESSEE; LIABILITIES)

5.1. (LEASE MONEYS) Owner expressly authorizes, empowers and directs Bank, in Bank's sole discretion, (a) to make demand upon Lessee and Rex that Lessee and Rex pay all Lease Moneys directly to Bank, (b) to receive and collect Lease Moneys, (c) to enter into compromises and settlements in respect of the Lease Moneys, (d) to execute and deliver in Bank's name or that of Owner, as Bank in its discretion may prefer, vouchers, receipts and acquittances in full discharge of Lease Moneys, and such endorsements and assignments thereof as may be necessary or helpful for Bank to collect the same, (e) to enforce delivery and payment of the Lease Moneys by suit or otherwise if Bank so desires and (f) to take all steps which Bank may deem proper or necessary in connection therewith, until payment in full of the Debt; provided, that nothing herein contained shall be construed to require or obligate Bank to make or do any of the foregoing (including, without limitation, the institution of any suit) or having commenced or attempted any of the foregoing thereafter to continue or maintain the same, Owner's intention herein being only to grant rights, powers, privileges and immunities to Bank and not to impose any duty or liability of any kind upon Bank. So long as Owner is not in default hereunder, Bank shall apply all Lease Moneys received

by it from Lessee first to the payment of the portion of the Debt then due and payable or becoming due and payable within thirty (30) days thereafter and may in its discretion apply the remainder, if any, to the Debt (whether or not due) with such allocation as to item and maturity as Bank in its discretion may deem advisable. If Owner shall become in default hereunder, Bank in its discretion may apply the Lease Moneys to the Debt (whether or not due) with such allocation as to item and maturity as Bank in its discretion may deem advisable. Owner agrees that (i) there shall be no duty or obligation of any kind or nature upon Bank to ascertain or determine the correct amount due at any time or from time to time under the Lease or Management Agreement, (ii) in the event Lessee or Rex shall at any time or from time to time pay to Bank moneys in excess of the amount then due and owing or to become due and owing under the Lease or Management Agreement, there shall be no duty or obligation upon Bank to remit to Lessee or Rex such excess or any part thereof, whether or not such excess or any part thereof has been paid by Bank to Owner or applied by Bank toward the payment of the Debt and (iii) Lessee's or Rex's, as the case may be, right of recourse for any such excess payments shall be solely against Owner.

5.2. (PAYMENTS BY LESSEE) Owner irrevocably authorizes and directs Lessee and Rex, upon demand or request by Bank, thereafter to pay to Bank all of the Lease Moneys as the same becomes due and payable until Lessee or Rex shall have been notified in writing by Bank that this Security Agreement has been cancelled. Lessee shall have no responsibility for the disposition by Bank of any Lease Moneys paid by Lessee or Rex to Bank.

5.3. (BANK'S LIABILITY UNDER LEASE) Owner agrees that (a) Bank (i) has not assumed and does not hereby assume obligation or liability of any nature or description whatsoever either under the Lease or Management Agreement or in connection with the Leased Chattels, and (ii) shall not be liable to any person, firm or corporation for any injury or damages sustained in, on, about or in connection with the use of the Leased Chattels and (b) in the event Bank shall have exercised its rights pursuant to subsection 4.4 hereof, Bank shall not be liable to Owner for any act, omission or course of dealing other than fraud or gross negligence, if any, on Bank's part.

6. (DEFAULT) Owner shall be in default hereunder if (a) any of the Debt shall not be paid in full when due, (b) Owner shall be in default under the Lease or Management Agreement, (c) Owner shall fail or omit to perform any obligation imposed upon Owner by this Security Agreement or (d) any warranty or representation made by Owner shall be in any material respect false or erroneous.

7. (BANK'S REMEDIES) In addition to any other rights granted to Bank hereunder, Bank may exercise the following rights in the event Owner is in default hereunder.

7.1. (PERFORMANCE OF OBLIGATIONS) Bank shall have the right (but not the duty) to perform any obligation imposed upon Owner by this Security Agreement for and on behalf of Owner and at Owner's cost and expense, in which event each payment made by Bank in performing any said obligation shall, together with interest thereon at the rate of eight per cent (8%) per annum, constitute a part of the Debt and shall be secured by the Collateral pursuant to this Security Agreement.

7.2. (SALE OF COLLATERAL) Bank in its discretion (whether with or without resort to Owner or any other person or property upon such terms and in such manner as Bank may deem advisable, all of which Owner waives) may sell, assign, transfer and deliver the Collateral at any time or, from time to time, any part thereof. No prior notice need

be given to Owner or anyone else in the case of any sale of Collateral which Bank in good faith determines to be perishable or to be declining speedily in value or which is customarily sold in any recognized market, but in any other case Bank shall give Owner not less than ten days' prior notice of either the date after which any intended private sale is to be made or the time and place of any intended public sale. Owner waives advertisement of any said sale and (except only to the extent notice is specifically required by the next preceding sentence) waives notice of any kind in respect of any said sale. If Lessee shall then be in default under the Lease, any sale of the Leased Chattels or any thereof may in Bank's discretion be made either free of the Lease or subject thereto. At any said public sale Bank may purchase the Collateral or any part thereof free from any right of redemption, all of which rights Owner hereby waives and releases. After deducting all proper and reasonable costs, attorney's fees and other expenses incurred in the premises (including, without limitation, all costs and expenses incurred in pursuing, searching for, taking, repairing, keeping, storing and selling the Collateral or any part thereof) and after paying all claims (if any) secured by liens having precedence over this Security Agreement, Bank may apply the net proceeds of each such sale to or toward the payment of the Debt (whether or not then due) in such order and by such division as Bank in its sole discretion may deem advisable.

8. (INTERPRETATION) Each right, power or privilege specified or referred to in this Security Agreement is cumulative and in addition to and not in limitation of any other rights, powers and privileges that Bank may otherwise have or acquire by operation of law, by contract or otherwise. No course of dealing by Bank in respect of, nor any omission or delay by Bank in the exercise of, any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any further or other exercise thereof or of any other, as Bank may exercise each such right, power or privilege either independently or concurrently with others and as often and in such order as Bank may deem expedient. No waiver, consent or other agreement shall be deemed to have been granted by Bank pursuant to this Security Agreement or the Note or be binding upon Bank unless specifically granted in writing, and each such writing shall be strictly construed. No notice required or permitted to be given to Bank hereunder shall be deemed to have been given unless delivered in writing to an officer in Bank's Equipment Financing and Leasing Division. This Security Agreement shall be binding upon Owner and Owner's successors and assigns and shall inure to the benefit of, be enforceable and exercisable by, and be binding upon Bank and its successors and assigns. This Security Agreement and the rights and all obligations hereunder shall be construed in accordance with the laws of Ohio. The entire agreement between the parties as to the Collateral has been reduced to writing, and no oral agreement (if any) shall be binding.

Dated at CLEVELAND, Ohio, this 19th day of October, 1979.

Address: 346 Saddler Road
Bay Village, Ohio

DONALD DEAN SAXTON

Donald Dean Saxton
By: Eugene E. Miller
Attorney-in-fact pursuant to a
Power of Attorney dated October 16, 1979

Address: 900 Euclid Avenue
Cleveland, Ohio 44101

THE CLEVELAND TRUST COMPANY
By: William J. Sweeney, U.P.
and Richard L. Horne, L.O.

[Seal]

STATE OF OHIO)
) ss.:
COUNTY OF Cuyahoga

On this 19 day of October, 1979, before me personally appeared Eugene Miller, to me personally known as to be the person who executed the foregoing instrument in behalf of Donald Dean Saxton and he acknowledged that he executed the same as the free act and deed of said Donald Dear Saxton.

Millicent H. Nolan
Notary Public

My Commission expires:

MILLCENT H. NOLAN
State of Ohio, Cuyahoga County
My commission expires July 23, 1982

[Notarial Seal]

STATE OF OHIO)
) ss.:
)

On this 9 day of October, 1979, before me personally appeared Dennis Syncky and Richard Gorcey to me personally known, who being by me duly sworn, say that they are Vice President and Loan Officer respectively of The Cleveland Trust Company, 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 they acknowledged that the same was the free act and deed of said corporation.

Melissa L. Fette
Notary Public

MELISSA L. FETTE, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Aug. 15, 1982

E X H I B I T A

LEASE AGREEMENT

This lease agreement, made as of this 24th day of July, 1979 by and between Rex Railways, Inc., a New Jersey corporation of 616 Palisade Avenue, Englewood Cliffs, New Jersey, as principal and/or agent for the parties to be named on the schedule referred to in section 1B (Rex Railways, Inc. and such parties are herein collectively referred to as Rex, except that, as to any particular Boxcar referred to in section 1A, only Rex Railways, Inc. and the party identified in the Schedule as the owner/lessor of such boxcar are referred to as Rex), as lessor, and Lamoille Valley Railroad Company, a Vermont corporation of Morrisville, Vermont (hereinafter referred to as Lessee), as lessee, witnesseth:

1. Scope of Agreement

A. Rex leases to Lessee, and Lessee leases from Rex, four hundred (400) boxcars substantially identical to those fifty (50) boxcars previously leased by Lessee under a lease agreement dated October 12, 1978 between Lessee and Rex Railways, Inc. and shown in The Official Railway Equipment Register, volume 94, number 4, as its boxcars numbers 4050-4099. The boxcars herein leased are collectively referred to as the Boxcars. No party named on the Schedule

referred to in section 1B shall be obligated hereunder to lease to Lessee any Boxcars other than the particular Boxcars identified in such Schedule as being owned by such party.

B. Rex may, from time to time and without the consent of Lessee, assign all rights and privileges, subject to all duties appurtenant thereto, in and to any one, some or all of the Boxcars to any party or parties for whom Rex is acting as agent. The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto, each of which, when signed by Rex Railways, Inc. and Lessee, shall be a part of this agreement, except that any Schedule may be amended by Rex Railways, Inc. alone from time to time, upon which such amendment shall be a part of this agreement, in order to identify

(i) any principal for whom Rex is so acting as agent and who owns any Boxcars, and

(ii) the particular Boxcars owned by such principal.

C. It is the intent of the parties hereto that Rex, or its principal or principals or their assignees, shall at all times be and remain the lessor of all of the Boxcars. Lessee shall not take any action, or file any document which is inconsistent with this intent, and Lessee will take such action and execute such documents as may be necessary to accomplish this intent.

2. Term of Agreement

The term of this agreement with respect to each Boxcar shall be for either five and one-half (5-1/2) years or ten (10) years, as indicated in the Schedule in the case of such Boxcar, and shall commence upon the date of delivery of such Boxcar as determined in accordance with section 3 hereof.

3. Delivery and Supply

Rex will inspect each Boxcar tendered by the manufacturer thereof for delivery to Lessee. If the Boxcar conforms to the specifications of the equipment ordered by Rex, and to the specifications hereof, and to all applicable governmental regulatory specifications and specifications of the Association of American Railroads (AAR), and this agreement has not been terminated, Rex will accept delivery thereof at the manufacturer's facility and Rex will further notify Lessee in writing of such acceptance. The Boxcars shall, for the purpose of this agreement, be deemed to have been delivered to Lessee upon the acceptance thereof by Rex. The Boxcars shall be moved to Lessee's railroad at no cost to Lessee as soon after acceptance by Rex as is consistent with mutual convenience and economy. Rex cannot control when the Boxcars will actually be available to Lessee for its own use on its own railroad tracks, and shall not be deemed to be in breach

hereof on account of a delay in such delivery to Lessee's railroad line. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars, Lessee shall pay to Rex the rental charges set forth in section 8 of this agreement. To move the Boxcars to Lessee's railroad line and to insure optimal use of the Boxcars during the term of this agreement, Rex shall assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee and Rex, issue movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission (ICC) and AAR interchange agreements, rules and car service rules.

4. Right of First Refusal; Priority of Loading Rights; Limitation on Purchase or Lease of Additional XM Boxcars

A. So long as Lessee shall have on lease one or more of the Boxcars, Lessee shall not lease boxcars from any other party unless it shall have had delivered to it the four hundred (400) Boxcars leased under this agreement. Once the four hundred (400) Boxcars have been delivered to Lessee, that is, upon Rex's acceptance of them at the manufacturer's facility, Lessee shall not lease boxcars similar to the Boxcars leased hereunder from any other party unless it shall have given to Rex Railways, Inc. at least thirty (30) days prior written notice of its desire to so lease additional boxcars.

Rex Railways, Inc. or a principal for which Rex Railways, Inc. acts as agent shall then, within fifteen (15) days of receipt of such notice, have the right to lease such additional boxcars to Lessee upon the same or at better terms and conditions than those offered to Lessee by such other party. The foregoing, however, shall not prohibit Lessee from leasing boxcars of similar type to the Boxcars leased hereunder if Rex Railways, Inc. does not offer to lease the same upon the same terms and conditions within fifteen (15) days of receiving written notice as provided for above.

B. Lessee warrants herein that it now has only two hundred (200) XM boxcars leased from Rex or others and has no other XM boxcars leased under terms which grant priority loading rights to such boxcars in preference over the Boxcars. Notwithstanding the purchase of boxcars by Lessee, or Lessee's leasing or direct interchange of boxcars from other parties, Lessee shall give first preference to Rex and shall load the Boxcars prior to loading other boxcars, subject only to loading rights affecting two hundred (200) XM boxcars subject to leases entered into between Lessee and Rex Railways, Inc. and others prior to the date hereof; provided, however, that in no event shall Lessee be prevented or prohibited from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor to shippers on its

railroad tracks. If Boxcars subject to the five and one-half (5-1/2) year lease term are re-leased to the Lessee after the termination of such five and one-half (5-1/2) year term, Lessee shall afford such Boxcars the same priority as to loading which such Boxcars have under this agreement. Lessee agrees to provide for such priority in all leases it enters into after the date hereof.

C. Anything in section 4A to the contrary notwithstanding, Lessee agrees not to purchase or lease additional XM boxcars without the consent of Rex unless Lessee can prove that utilization (as defined in section 8A) for the Boxcars for the 12 calendar months immediately preceding such proposed purchase or lease has exceeded 85% and, in such case, Lessee may purchase or lease such number of XM boxcars as will not cause the Boxcars' utilization to fall below 85%. The restriction contained in the foregoing sentence shall not apply to any purchase of boxcars wholly funded with funds received by Lessee as incentive per diem payments on Boxcars subjected to this lease for a term of five and one-half (5-1/2) years, as indicated in the Schedule.

5. Railroad Markings.

On or before the delivery of the Boxcars, the Boxcars shall be lettered with the railroad reporting marks of Lessee, with the name and insignia used by Lessee and, if so requested by Rex, with a legend in standard form indicat-

ing that the Boxcar in question is subject to documents recorded with the ICC. Such name and markings shall comply with all applicable regulations and shall be affixed to the Boxcars in the space directly above Lessee's reporting marks, and with a width of not more than seven (7) feet. Lessee's insignia shall be placed on the Boxcar in compliance with all applicable regulations and, where physically possible, at Lessee's direction.

6. Record Keeping

Rex Railways, Inc. (and not the parties referred to in the Schedule) 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 an owning railroad with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents:

(i) an appropriate AAR interchange agreement with respect to the Boxcars including an application for relief from Rules 1 and 2 of the AAR Code of Car Service Rates-Freight when required by section 16 hereof:

(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 other regulatory agencies with respect to the Boxcars.

All registrations and filings and keeping of records shall be at no cost to Lessee. Rex Railways, Inc. 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 interchange agreements and rules, including but not limited to car hire reconciliation. Correspondence from railroads using the Boxcars shall be addressed to Lessee at Lessee's principal office, that is, Lamoille Valley Railroad Company, Stafford Avenue, Morrisville, Vermont 05661. Copies of all such correspondence shall be promptly forwarded by Lessee to Rex Railways, Inc. Lessee agrees to cause all reports issued by the AAR relating to use of the Boxcars by other railroads (including Train II reports and the like) to be sent directly to Rex Railways, Inc. or the designee of Rex Railways, Inc. All record keeping performed by Rex Railways, Inc. hereunder and all record of payments, charges and correspondence related to the Boxcars shall be separately recorded and maintained by Rex Railways, Inc. in a form suitable for reasonable inspection by Lessee from time to time during regular business hours of Rex Railways, Inc. Lessee shall supply Rex Railways, Inc. with such reports regarding the use of Boxcars by Lessee on Lessee's railroad line as Rex Railways, Inc. may reasonably request. Lessee agrees to cause all payments made

in respect of use of the Boxcars (including per diem, incentive per diem and mileage charges) or in respect of damage to or destruction of the Boxcars to be deposited directly in the bank account or accounts designated by Rex Railways, Inc.

7. 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 leased term, including but not limited to repairs, maintenance and servicing, unless the same arise from damage to or destruction of a Boxcar occurring while such Boxcar was in Lessee's physical possession. Lessee shall inspect all Boxcars interchanged to it to insure that such Boxcars are in good working order and condition and Lessee shall be liable to Rex for any repairs required on Lessee's railroad line and 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 Lessee's right, title and interest in any warranty in respect of the Boxcars. All claims or actions on any warranty 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, and Lessee hereby assigns any such recovery to Rex. All proceeds from such recovery shall be used to repair or replace such Boxcars on account of which such recoveries are made.

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 receiving prior written consent from Rex. If Lessee makes an alteration to any Boxcar without the prior written consent of Rex, Lessee shall be liable to Rex for any revenues lost to Rex due to such alteration or for any losses due to the diminished use of such Boxcar because of 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 track 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 each Boxcar in good operating condition throughout the term of this agreement for such Boxcar.

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 Code of Car Service Rules - Freight for cars not owned by Lessee which are

operating on Lessee's railroad tracks and Lessee shall protect against the consequences of an event of loss involving the Boxcars by obtaining insurance. Lessee shall furnish Rex concurrently with the execution hereof and thereafter at intervals of not more than twelve (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 assignees or principals) as their respective interests may appear.

E. Rex shall 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 the state and local laws requiring the filing of ad valorem tax returns on the Boxcars. Rex and Lessee shall each review all tax returns prior to filing.

8. Rental Charges

A. For the purpose of this agreement, utilization of the Boxcars for any period shall be a fraction, the numerator of which is the sum for all Boxcars subject to this agreement of the number of hours in such period that per diem is earned on each Boxcar (regardless of whether such Boxcar is leased for a 5-1/2 or 10 year term), commencing from the initial loading of such Boxcar, and the denominator of which is the sum for all Boxcars subject to this agreement of the number of hours in such period that each Boxcar is on lease to Lessee hereunder, commencing from the initial loading of such Boxcar.

B. Lessee agrees to pay the following rental charges to Rex for the use of the Boxcars indicated on the Schedule as being leased hereunder for a term of ten (10) years:

(i) If utilization of all of the Boxcars on an aggregate basis is equal to or less than 80 per cent in any period, Rex shall receive all of the mileage charges and car hire revenues (including for all purposes of this section 8B both straight and incentive per diem) received by or on behalf of Lessee from other railroad companies.

(ii) If such utilization is more than 80 per cent but not more than 90 per cent in any period, Rex shall receive an amount equal to the Rex 10-Year Base Rental plus an amount equal to one-half of the mileage charges and

car hire revenues earned in excess of the Rex 10-Year Base Rental. Rex 10-Year Base Rental shall mean an amount equal to the total mileage charges and car hire revenues for such period multiplied by a fraction, the numerator of which is 80 per cent and the denominator of which is such utilization for such period.

(iii) If such utilization is more than 90 per cent in such period, Rex shall receive an amount equal to the Rex 10-Year Additional Rental. Rex 10-Year Additional Rental shall mean an amount equal to the total mileage charges and car hire revenues for such period multiplied by a fraction, the numerator of which is 85 per cent and the denominator of which is such utilization for such period.

C. (i) Subject to sector 8C(ii) hereof, Lessee agrees to pay the following rental charges to Rex for the use of the Boxcars indicated on the Schedule as being leased hereunder for a term of five and one-half (5-1/2) years:

(a) If utilization of all of the Boxcars on an aggregate basis is equal to or less than the First Breakpoint Percentage in such period, Rex shall receive all of the mileage charges and car hire revenues (excluding for all purposes of this section 8C incentive per diem) received by or on behalf of Lessee from other railroad companies.

(b) If such utilization is more than the First Breakpoint Percentage but not more than the Second

Breakpoint Percentage in any such period, Rex shall receive an amount equal to the Rex 5-1/2-Year Base Rental plus an amount equal to one-half of the mileage charges and car hire revenues earned in excess of the Rex 5-1/2-Year Base Rental. Rex 5-1/2-Year Base Rental shall mean an amount equal to the total mileage charges and car hire revenues for such period multiplied by a fraction, the numerator of which is the First Breakpoint Percentage and the denominator of which is such utilization for such period.

(c) If utilization is more than the Second Breakpoint Percentage in such period, Rex shall receive an amount equal to the Rex 5-1/2-Year Additional Rental. Rex 5-1/2-Year Additional Rental shall mean an amount equal to the total mileage charges and car hire revenues for such period multiplied by a fraction, the numerator of which is the mean between the First Breakpoint Percentage and the Second Breakpoint Percentage and the denominator of which is such utilization for such period.

(ii)(a) For all periods for which incentive per diem payments are calculated at a rate equal to or higher than that in effect on May 31, 1979, both the First Breakpoint Percentage and the Second Breakpoint Percentage shall be 91%.

(b) For all periods for which incentive per diem payments are calculated at a rate less than that in effect on May 31, 1979, the Second Breakpoint Percentage shall be

91% and the magnitude of the First Breakpoint Percentage will depend on the percentage by which the rate at which incentive per diem payments are calculated during the period in question has been reduced as compared to the rate prevailing on May 31, 1979 as indicated in the following table:

<u>greater than:</u>	<u>but less than or equal to:</u>	<u>then the First Breakpoint Percentage shall be</u>
0%	10%	89.9%
10%	20%	88.8%
20%	30%	87.7%
30%	40%	86.6%
40%	50%	85.5%
50%	60%	84.4%
60%	70%	83.3%
70%	80%	82.2%
80%	90%	81.1%
90%	100%	80.0%

(c) Anything to the contrary in section 8C(ii)

(b) notwithstanding, for all periods for which incentive per diem payments have been eliminated, the First Breakpoint Percentage shall be 80% and the Second Breakpoint Percentage shall be 90%.

(d) If there shall be a change in the First Breakpoint Percentage and/or the Second Breakpoint Percentage during any quarterly or annual period for which rental is to be calculated under this section 8C, rental for such period shall be calculated by subperiods during which a single First

Breakpoint Percentage and Second Breakpoint Percentage prevail.

D. The rental charges payable to Rex by Lessee pursuant to this section 8 shall be paid from the monies received by or on behalf of Lessee in the following order until Rex receives the amounts due it pursuant to this section 8: (1) incentive per diem car hire payments, (2) straight per diem car hire payments and (3) mileage charges.

E. In the event damage to or destruction of a Boxcar has been reported in accordance with Rule 7 of the AAR Code of Car Service - Freight and the amount due Rex by Lessee on account thereof has been paid to and received by Rex, such damaged or destroyed Boxcar will be removed from the force and effect of this agreement as of the date payment of car hire revenues attributable to it ceased, and all relevant portions of this agreement shall be deemed to have been adjusted to properly reflect such removal.

F. As soon as practicable but in no event later than three (3) months after the end of each calendar quarter during which this agreement is in force and effect, Rex shall calculate, on a quarterly basis rather than a yearly basis, the rent earned by Rex hereunder for such quarter. Such rent shall be paid to Rex within ten (10) business days of receipt by Lessee of written notice from Rex of the amount of rent due hereunder. As soon as possible but in no event

later than three (3) months after the end of each calendar year during which this agreement is in force and effect, Rex shall calculate the rent earned by it hereunder for such calendar year and, within ten (10) business days of completing such calculation, give Lessee written notice thereof. Lessee shall, in such accounting, receive full credit for all payments made by it hereunder to Rex on account of such calendar year's rent. If such accounting shall show that a refund of rent paid by Lessee to Rex is due, Rex shall submit such refund with the accounting. If such accounting shall show that Lessee owes to Rex additional rent, such additional rent shall be paid to Rex within ten (10) business days of receipt by Lessee of such accounting.

G. In the event the utilization of the Boxcars in any calendar quarter is less than 80% on an aggregate basis, Rex may, at its option and upon not less than thirty (30) days prior written notice thereof to Lessee, terminate this agreement as to any number or all of the Boxcars.

H. Rex may, at its option, terminate this agreement (but only as to Boxcars subject to a ten (10) year lease term hereunder, in the case of an event described in section 8H(i) hereof) if the ICC shall, at any time,

(i) issue an order reducing incentive per diem for hire of Boxcars on an annual basis to three (3) months or less without imposing a corresponding increase (which in-

crease shall be deemed to include all increases effective since May 31, 1979), calculated on an annualized basis, in per diem or other revenues on account of car hire available to Rex and Lessee at least equal in amount to such reduction, or

(ii) correctly determine that Lessee may not apply its net credit balance from incentive per diem settlements in payment of the rental charges incurred by Lessee hereunder for Boxcars leased for a term of ten (10) years.

I. If any Boxcar remains on Lessee's railroad tracks for more than seven (7) consecutive days REX may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this agreement as to such Boxcar and withdraw such Boxcar from Lessee's railroad tracks, and in such event all relevant portions of this agreement shall be adjusted to reflect the changed number of Boxcars leased hereunder. If any such Boxcar has remained on Lessee's railroad tracks more than seven (7) days because Lessee has not given loading preference to the Boxcars as specified in section 4 above, Lessee shall, in addition, pay to Rex an amount equal to the car hire revenues Lessee would have earned on account of such Boxcar if such Boxcar had been in the physical possession of another railroad for the entire period after the expiration of such seven (7) days. This section 8I shall

not apply, however, if a Boxcar remains on Lessee's railroad tracks for more than seven (7) days solely because it was awaiting repairs in Lessee's repair facility, or a repair facility on Lessee's railroad line, and such repairs, because of circumstances beyond Lessee's control, could not be completed within such seven (7) day period. Rex shall have the right to select the repair facility at which any Boxcar will be repaired.

J. Notwithstanding any other provisions of this agreement, Rex shall not have the right to terminate this agreement as to any one, some or all of the Boxcars because utilization of them in any calendar quarter is less than 80% if Lessee tenders to Rex as rent, when rent is due hereunder, for such quarter a sum of money equal to the amount that would have been payable to Rex if utilization, on an aggregate basis, had been equal to 80%.

9. Possession and Use

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 hereof and in a manner and to the extent Boxcars are customarily used in the railroad freight business. Whenever Lessee has physical possession, or can control the 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 laws, rules and regulations and orders of any governmental bodies or officers having the 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, order or law in any reasonable manner and at the expense of the contesting party.

10. Encumbrances

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 own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest or claim if the same shall arise at any time.

11. Remedies Upon Default

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

(1) the non-payment by Lessee of any sum required hereunder to be paid by Lessee within ten (10) business days after receipt of written notice thereof;

(2) the default by Lessee under other terms,

covenants or conditions of this agreement which is not cured within ten (10) business days after receipt of written notice thereof by Lessee from Rex;

(3) any act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, organization, insolvency or moratorium law, or any other law or laws for the relief of debtors;

(4) 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;

(5) the subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by any creditors or governmental agency.

(6) the non-payment by Rex of any sum required hereunder to be paid by Rex to Lessee within ten (10) business days of receipt of written notice thereof by Rex.

B. Upon the occurrence of any event of default by Lessee, Rex may, at its option, terminate this agreement and may further:

(1) 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's costs and expenses, including reasonable attorney's fees, in securing such enforcement), or

(2) by notice in writing to Lessee, terminate Lessee's right of possession of the Boxcars, whereupon all right and interest of Lessee in the Boxcar shall terminate, subject to any rights or claims theretofore accrued hereunder, and thereupon Rex may by its agents enter upon any premises where the Boxcars may be located and take possession of the same and thereafter hold, possess and enjoy the same free from any right of Lessee. Rex shall, nevertheless, have the right to recover from Lessee any and all rental amounts which under the terms of this agreement may be due or which may have accrued to that date.

C. Upon the occurrence of any event of default by Rex, Lessee may, at its option, proceed by appropriate court action to enforce performance by Rex of this agreement or to recover damages (but not, under any circumstances, consequential damages) for a breach thereof (and Rex shall bear Lessee's costs and expenses, including reasonable attorney's fees, in such proceedings).

12. Termination

At the expiration or termination of this agreement as to any or all of the Boxcars, Lessee will surrender

possession of such Boxcars and deliver the same to Rex. The costs of assembling, delivery, storage and transporting of the Boxcars shall be borne by Rex. Upon such termination, Lessee's railroad markings shall be removed from each Boxcar so terminated. If such Boxcars are on Lessee's railroad line at the time of such termination, or are subsequently returned thereto in the ordinary course of railroad freight loadings and interchanges, Lessee at Rex's cost shall within five (5) business days of the commencement of its possession of such Boxcars after such termination remove its railroad markings from the Boxcars and place thereon such markings as may be designated by Rex. After such removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver the same to a connecting carrier for shipment. Lessee shall provide up to ten (10) days (and, if space is available, an additional twenty (20) days) free storage on its railroad tracks for Rex or the subsequent lessee of any terminated Boxcar. If such Boxcars are not on Lessee's railroad line upon termination, all costs, including the cost of removal of Lessee's railroad markings and the replacement thereof, shall be borne by Rex.

13. Indemnities

Rex will defend, indemnify and hold harmless Lessee from and against any and all loss of or damage to the Boxcars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Boxcars. Rex will

use its best efforts to provide basic insurance coverage of \$10,000,000 to insure Lessee against any claim, cause of action, damage, liability, costs or expenses (including legal fees and costs) arising from the Boxcars for which Lessee may be liable incurred in any manner by or for the account of any such Boxcar while such Boxcar is not on the tracks of Lessee, without 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). Notwithstanding anything herein to the contrary, it is clearly understood that Rex's liability herein is limited to the extent of the insurance coverage provided.

14. Warranties and Covenants

Lessee represents, warrants and covenants that:

A. Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Vermont and has the corporate power and 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;

B. 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 thereof, or constitute a default thereunder, 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;

C. 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;

D. There is no fact which Lessee has not disclosed to Rex in writing, and Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Lessee can now foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Lessee or the ability of Lessee to perform its obligations under this agreement;

E. Lessee has, during the years 1964-1968, neither leased nor purchased any boxcars. Lessee has no knowledge of any circumstance or fact that would prevent or limit the use of incentive per diem funds for the purpose of leasing the subject Boxcars for a ten-year term.

F. Lessee has not agreed, and will not agree during the term of this agreement without the prior written consent of Rex, with any railroad that such railroad is not obligated to pay mileage charges, per diem charges or incentive per diem charges otherwise payable with respect to the Boxcars.

15. 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 relevant 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.

16. AAR Car Service Rules

Lessee may, at its option, at any time during

the term of this agreement apply for relief from, or a waiver of, Rules 1 and 2 of the AAR Code of Car Service Rules-Freight. In addition, if the utilization of any or all of the Boxcars falls below 85% in any calendar quarter, Lessee, at the request of Rex, shall apply for such relief or waiver and shall apply for rescission of any special car order directive to the same or similar effect. In either event, Rex shall prepare all documents for Lessee's signature and filing relating to such application for relief or waiver.

17. Equipment Schedule Incorporated

The equipment schedule attached hereto is incorporated by reference herein as if fully set forth herein at length, and constitutes a binding part of this lease agreement.

18. Restriction on Foreign Movement of Boxcars

Lessee will use its best efforts to direct the movement of the Boxcars so as to ensure that each Boxcar will not be used predominantly outside the United States within the meaning of §48(a)(2)(A) of the Internal Revenue Code of 1954, as amended, and the regulations thereunder.

19. Binding Effect

This agreement shall be binding upon and 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, which may be unreasonably

withheld, assign this lease or any of the rights hereunder or sublease the Boxcars to any party, and any purported assignment or sublease in violation hereof shall be void. In addition to this lease, each party shall execute other documents contemplated by this transaction or as may be required in furtherance of this lease. It is expressly understood and agreed by the parties hereto that this lease constitutes a lease of Boxcars only, and no joint venture or partnership is being created hereby. Notwithstanding the calculation of rental payments, nothing herein shall be construed to convey to Lessee any right, title or interest in the Boxcars except as Lessee only. No failure or delay by either party shall constitute a waiver or otherwise affect or impair any right, power or remedy available to it nor shall any waiver or indulgence by either party 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 rights, power or remedy. This agreement shall be governed by and construed in accordance with the laws of the State of New York in effect at the time of execution hereof. 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 principal address of the other party.

IN WITNESS WHEREOF, the parties hereto have caused
this Lease Agreement to be executed as of the 24th day of
July, 1979.

REX RAILWAYS, INC.

By Robert W. Gruber, President

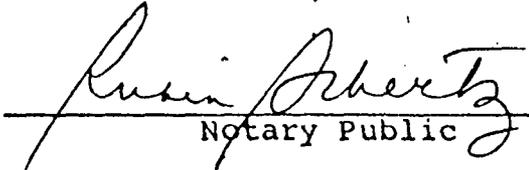
LAMOILLE VALLEY RAILROAD COMPANY

By Wm. H. Deery
President

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

On this 24th day of August, 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]



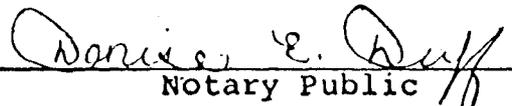
Notary Public
My commission expires

RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 4, 1982

STATE OF VERMONT)
 (WASHINGTON) ss.:
COUNTY OF CALEDONIA)

On this 21st day of August, 1979 before me personally appeared Robert A. Gensburg, to me personally known, who being by me duly sworn, says that he is the President of Lamoille Valley Railroad Company, 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]



Notary Public
My commission expires 2/9/83

EQUIPMENT SCHEDULE

LaMoille Valley

REX RAILWAYS, INC. hereby leases the following Boxcars to Railroad Company pur-
 suant to that certain Lease Agreement dated as of July 24 1979

A.A.R. Mech. Desig.	Description	Numbers	Dimensions			Doors Width	No. of Cars
			Length	Inside Width	Height		
XM	New 50' inside length 70-ton boxcars with 10" end of car cushioning	To be furnished by Lessor	Exact dimensions to be furnished by builder			10' sliding doors	400

REX RAILWAYS, INC.

LAMOILLE VALLEY RAILROAD COMPANY

Robert W. Greider

 (TITLE)

Samble Senz

 (TITLE) President

DATE: 8/28/79

DATE: 8/21/77



SCHEDULE OF COLLATERAL

<u>Quantity</u>	<u>Type</u>	<u>Identifying Marks and Numbers</u>
Four (4)	50-foot, 70-ton truck XM boxcars with a 5,344 cubic foot capacity	LVRC 5396 LVRC 5397 LVRC 5398 LVRC 5399

This Schedule of Collateral is the Schedule of Collateral referred to in a Security Agreement between DONALD DEAN SAXTON and THE CLEVELAND TRUST COMPANY dated the 19th day of October, 1979.

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, Donald Dean Saxton of the County of Cuyahoga, State of Ohio, have made, constituted and appointed, and by these presents do make, constitute and appoint

Eugene E. Miller, 216 James Street, Dover, of the County of Tuscarawas, State of Ohio, my true and lawful attorney in fact, for me and in my name, place and stead,

To sign and execute a note in the amount of \$125,100.00 for a term of five and one-half years at a rate of $13\frac{1}{2}\%$, and any security agreement, assignment and financing statement covering the boxcars, the boxcar lease agreement, the boxcar management agreement and such other related documents; the proceeds of said loan to be used to complete the purchase of four railroad boxcars to be managed by Rex Railways, Inc. under Boxcar Management Program 1979-D, Private Placement Memorandum #589 issued by Merrill, Lynch, Pierce, Fenner & Smith, Inc.,

giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do, if personally present,

with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or substitute shall lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, Donald Dean Saxton, hereunto set my hand at New Philadelphia, Ohio, this 16 day of October, 1979.

Signed in the Presence of:

Eugene E. Miller
Edwin G. Keller

Donald Dean Saxton

Donald Dean Saxton

State of Ohio)
Tuscarawas County) ss:

Before me a Notary Public in and for said County and State personally appeared the above named Donald Dean Saxton, who acknowledged that he did sign the foregoing instrument, and that the same was his free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at New Philadelphia, Ohio, this 16 day of October, 1979.

Edwin G. Keller

EDITH A. KOHLER, Notary Public
My Commission Expires March 27, 1983