

11517
RECORDATION NO. Filed 1425

FEB 20 1980 -12 55 PM
INTERSTATE COMMERCE COMMISSION

January 30, 1980

Mrs. Mildred Lee
Recordation Section
Interstate Commerce Commission
Washington D.C.

Re: Rex Railways Inc. Box Car Management Program 1979-D

Dear Mrs. Lee:

We have entered into certain lease transactions whereby we purchased railroad cars which had been purchased by investors in the above named program. Simultaneously with the purchase by us of the railroad cars we leased them back to the investors. This was the method chosen by these investors for the financing of the railroad box cars. Specifically, these investors and the railroad reporting numbers are:

- | | |
|---------------------------|------------|
| Lim, Kuy Ki and Timple W. | LVRC# 5147 |
| | 5148 |
| | 5149 |
| Jameson, John W. | LVRC# 5078 |
| | 5079 |
| Slagle, Robert G. | LVRC# 5084 |
| | 5085 |
| | 5086 |

We are informed by Rex Railways that they have previously filed in your office documents with respect to this transaction and the particular cars. We are attaching two copies of each of the lease agreements. These copies have original signatures on them. We would appreciate it if you would file these lease copies with the appropriate documentation so that our security interest and/or ownership in these cars is protected.

Very truly yours,

BANC ONE FINANCIAL CORPORATION


J. E. Duggan II
Vice President

JED/alb
Enclosures

11516
RECORDATION NO. Filed 1425

FEB 20 1980 -12 55 PM
INTERSTATE COMMERCE COMMISSION

BANC ONE LEASING
Suite 202
8060 Montgomery Road
Cincinnati, Ohio 45236
513 791-8300

11515
RECORDATION NO. Filed 1425

FEB 20 1980 -12 55 PM
INTERSTATE COMMERCE COMMISSION

LESSEE NO. 1350



FIRST BANC GROUP FINANCIAL SERVICES CORP.

SCHEDULE NUMBER 1

8060 Montgomery Road
Cincinnati, Ohio 45236

THIS IS A NON CANCELABLE LEASE

NAME AND ADDRESS OF LESSEE

Jameson, John W.
2505 Carew Tower
Cincinnati, Ohio 45202

SUPPLIER OF EQUIPMENT (COMPLETE ADDRESS)

RECORDATION NO. 11516 Filed 1425

BILL OF SALE

FEB 20 1980 - 2 53 PM

INTERSTATE COMMERCE COMMISSION

Neither the equipment supplier nor his salesmen are agents of Lessor.

NAME OF PERSON TO CONTACT:

SUPPLIER'S SALESMAN

QUANTITY	DESCRIPTION: MODEL #, CATALOG # OR OTHER IDENTIFICATION	PRICE
2	50 Foot 70 Ton Trucks XM Box Cars with a 5344 Cubic Foot Capacity Railroad Reporting Numbers: LVRC 5078; LVRC 5079	\$ 83,000.00
TOTAL LIST		83,000.00
OTHER CHARGES		
TRANSPORTATION		
COST TO LESSOR		
FILING FEE		10,000

LOCATION OF EQUIPMENT: STREET ADDRESS

STATE Vermont COUNTY CITY

TOTAL COST

\$ 83,000.00

TERMS OF PAYMENT

AMOUNT OF EACH RENT PAYMENT			PAYMENTS WILL BE MADE:	INITIAL TERM OF LEASE (NO. OF YEARS)	NO. OF RENT PAYMENTS	ADVANCE RENTAL & SECURITY DEPOSIT	RENEWAL TERMS	
RENT PAYMENT	SALES TAX	TOTAL					RENTAL	
5@ 671.60	-0-	671.60	MONTHLY <input checked="" type="checkbox"/>	10 5/12	45	\$ 23,671.60	\$ 0.00	PAYABLE ANNUALLY IN ADVANCE
40@ 2785.36	-0-	2785.36	QUARTERLY <input checked="" type="checkbox"/>					

NOTE: FIRST QUARTERLY PAYMENT DUE AUGUST 15, 1980.

Terms and Conditions of Lease

- LEASE.** Lessee hereby leases from lessor, and lessor leases to lessee, the personal property described above and in any schedule made a part hereof by the parties hereto (which, together with all replacement parts, repairs, alterations, additions, improvements and accessories incorporated therein or affixed thereto, is herein called "equipment"). This lease is for business enterprises only.
- SELECTION OF EQUIPMENT.** Lessee has requested equipment of the type, size, design, capacity, and quantity specified above and has selected the supplier named above. Lessor agrees to order such equipment from said supplier, but shall not be liable for specific performance of this lease or for damages if for any reason the supplier delays or fails to fill the order. Lessor shall have no obligation to install, erect, test, adjust or service the equipment. Lessee shall accept such equipment if delivered in good repair, and hereby authorizes lessor to add to this lease the serial number of each item of equipment so delivered. Any delay in such delivery shall not affect the validity of this lease. If the equipment has not been delivered to lessee within 90 days after the execution of this lease by lessor, lessor shall have the exclusive option to terminate this lease and its obligations hereunder at any time after the expiration of such 90 days by giving lessee written notice of lessor's exercise of such option.
- ERRORS IN ESTIMATED COST.** As used herein, "actual cost" means the cost to lessor of purchasing and delivering the equipment to lessee, including taxes, transportation charges and other charges. The amount of each rent payment, the security deposit, and the renewal rental initially set forth above are based on the total cost initially set forth above, which is an estimate, and shall each be adjusted proportionally if the actual cost of the equipment differs from said estimate. Lessee hereby authorizes lessor to correct the figures set forth above when the actual cost is known, and to add to the amount of each rent payment any sales tax that may be imposed on or measured by the rent payments. If the actual cost of the equipment differs from the estimated total cost by more than ten percent (10%) thereof, either party at its option may terminate this lease by giving written notice to the other party within fifteen (15) days after receiving notice of the actual cost or the corrected rent.
- WARRANTIES.** Lessor, not being the manufacturer of the equipment nor the manufacturer's agent, MAKES NO EXPRESS OR IMPLIED WARRANTIES AS TO ANY MATTER WHATSOEVER INCLUDING, WITHOUT LIMITATION, THE WORKMANSHIP, DESIGN, CAPACITY, OR CONDITION OF EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. Lessor will request the manufacturer or supplier of the equipment to authorize lessee to enforce in its own name all warranties, agreements or representations, if any, which may be made by the manufacturer or supplier to lessee or lessor. Notwithstanding the foregoing, no defect or unfitness of the equipment shall relieve lessee of the obligation to pay rent or any other obligation under this lease.
- INITIAL TERM.** The initial term of this lease commences upon the execution hereof by lessor and ends upon the expiration of the number of years specified above after the fifteenth day of the calendar month (herein called "month of shipment") in which the Lessee receives the equipment from the equipment supplier.
- RENT.** Lessee agrees to pay during the initial term of this lease total rent equal to the amount of each rent payment as specified above multiplied by the number of such payments as specified above. The first payment and the security deposit are due when this lease is signed by lessor. Subsequent rent payments, if monthly, shall be due on the fifteenth day of every calendar month after the month of shipment or, if quarterly, shall be due on the fifteenth day of every third calendar month after the month of shipment. All rent shall be paid to lessor at its address set forth above, or as otherwise directed by lessor in writing.
- SECURITY DEPOSIT.** Lessor may, but shall not be obligated to, apply the security deposit to cure any default of lessee hereunder in which event lessee shall promptly restore the security deposit to the full amount specified above. Upon termination of this lease and all renewals hereof, if lessee has fulfilled all the terms and conditions hereof, lessor shall return to lessee any remaining balance of the security deposit actually made by lessee.
- RENEWAL.** After its initial term, this lease shall be automatically renewed each year for a term of one year, at the renewal rental specified above, payable in advance, and otherwise upon the terms and conditions hereof, unless lessee gives lessor written notice of cancellation at least thirty (30) days before the expiration of the preceding term.

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE

The undersigned agree to all the terms and conditions set forth above and on the reverse side hereof, and in witness thereof hereby execute this lease.

EFFECTIVE DATE OF LEASE

12/28/79

DATE

December 28, 1979

NAME OF LESSEE Jameson, John W. (FULL LEGAL NAME)

BY John W. Jameson TITLE

BY John W. Jameson AUTHORIZED SIGNATURE FOR LESSEE TITLE

I hereby certify that I have authority to execute this Lease on behalf of Lessee.

LEASE ORIGINAL

NO ORAL ALTERATION OF THIS FORM SHALL BE BINDING UPON LESSOR, ITS SUCCESSORS OR ASSIGNS.



9. **LOCATION.** The equipment shall be delivered and thereafter kept at the location specified above or, if none is specified, at lessee's address as set forth above, and shall not be removed therefrom without lessor's prior written consent.

10. **NOTICE OF DEFECTS.** Unless lessee gives lessor written notice of each defect in an item of equipment within five (5) business days after receipt thereof, it shall be conclusively presumed, as between lessee and lessor, that the item was delivered in good repair and that lessee accepts it as an item of equipment described in this lease.

11. **USE.** Lessee shall use the equipment in a careful manner and shall comply with all laws relating to its possession, use or maintenance. Lessor shall have the right from time to time during reasonable business hours to enter upon the lessee's premises or elsewhere for the purpose of confirming the existence, condition or proper maintenance of the equipment.

12. **LABELS.** If lessor supplies lessee with labels stating that the equipment is owned by lessor, lessee shall affix and keep the same upon a prominent place on each item of equipment.

13. **REPAIRS AND REPLACEMENT PARTS.** Lessee, at its expense, shall keep the equipment in good repair and furnish all necessary replacement parts, mechanisms and devices, which shall thereupon become the property of lessor and be part of the equipment leased hereunder.

14. **ALTERATIONS, ADDITIONS AND IMPROVEMENTS.** Lessee shall not make any alterations, additions or improvements to the equipment without lessor's prior written consent. All alterations, additions and improvements to the equipment shall be at lessee's expense and shall be the property of lessor and part of the equipment leased hereunder.

15. **SURRENDER.** Upon the expiration or earlier termination of this lease, lessee, at its expense, shall return the equipment in good repair, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering it, packed and ready for shipment, to such place or carrier as lessor may specify.

16. **LOSS AND DAMAGE.** Lessee shall bear the entire risk of loss, theft, damage or destruction of the equipment or any part thereof from any cause whatsoever; and no loss, theft, damage or destruction of the equipment shall relieve lessee of the obligation to pay rent or of any other obligation under this lease.

In the event of damage to any item of equipment, lessee shall immediately place the same in good repair. If lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, lessee at the option of lessor shall:

(a) replace the same with like equipment of equivalent value in good repair which shall thereupon become the property of lessor and part of the equipment leased hereunder, or

(b) pay lessor in cash all of the following: (i) all amounts then owed by lessee to lessor under this lease, (ii) an amount equal to ten percent (10%) of the actual cost of said item, and (iii) the unpaid balance of the total rent for the initial term of this lease attributable to said item. Upon lessor's receipt of such payment, lessee shall be entitled to whatever interest lessor may have in said item, in its then condition and location, without warranty express or implied. The parties hereto agree that the sum of the amounts numbered (ii) and (iii) will equal the fair value of said item on the date of such loss, theft, damage or destruction.

17. **INSURANCE; TAXES; LIENS.** Unless lessor provides insurance coverage at lessee's request and expense, lessee shall provide and maintain at lessee's expense fire and extended coverage insurance against loss, theft, damage or destruction of the equipment in an amount not less than the total rent payable hereunder, plus an amount equal to ten percent (10%) of the actual cost of the equipment, with loss payable solely to lessor. Each policy shall expressly provide that said insurance as to lessor and its assigns shall not be invalidated by any act, omission or neglect of lessee, and shall expressly provide for at least 30 days' prior written notice of cancellation to lessor. At lessor's option, each such policy shall otherwise be in form and with companies satisfactory to lessor. At lessor's request, lessee shall furnish proof of said insurance. Lessee hereby appoints lessor as lessee's attorney-in-fact to make claim for, adjust, settle, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any said insurance policy.

Lessor may apply the proceeds of said insurance to replace or repair the equipment and/or to satisfy lessee's obligations hereunder.

If required by lessor, lessee will at lessee's expense carry public liability and property damage insurance with respect to the Equipment and the use thereof, in such amounts and with such companies as are reasonably satisfactory to lessor, and such insurance policies shall also name lessor as an insured thereunder. The proceeds of any public liability and property damage insurance shall be payable first to lessor to the extent of its liability, if any, and the balance to lessee.

Lessee agrees that if lessee fails to procure, maintain and pay for such fire and extended coverage insurance or any such public liability and property damage insurance required by lessor, lessor shall have the right, but not the obligation, to obtain such insurance on behalf of and at the expense of lessee. In the event lessor does obtain such insurance, lessee agrees to pay all costs thereof, and if lessor pays the same, to reimburse lessor at the date of the next scheduled rental payment (as additional rent hereunder).

Lessee agrees to pay any and all federal, state, and local taxes (including sales, use, excise, gross receipts, personal property, ad valorem, stamp, documentary and other taxes), assessments, fees and other governmental charges (including any penalties, interest, and fines) whether payable by lessor or lessee and whether during the term of this lease or thereafter (if applicable to the term of this lease, on or with respect to the Equipment or its ownership, use, value, delivery, transportation, registration, or operation, on or with respect to rental payments due or to become due hereunder, and on or relating to this lease, exclusive, however, of any taxes based upon net income of lessor. Lessee agrees to reimburse lessor at the date of the next scheduled rental payment (as additional rent hereunder) if lessor pays the same. Lessee agrees to prepare and file all returns and schedules required by taxing authorities in connection therewith and furnish copies to lessor at its request; and to provide permits and licenses, if any, necessary for installation or operation of the Equipment.

Lessee shall keep the Equipment free of all levies, liens and encumbrances.

18. **INDEMNITY.** Lessee shall indemnify lessor against, and hold lessor harmless from, any and all claims, actions, proceedings, expenses, damages, liabilities, losses, obligations, injuries, penalties, liens, costs and expenses, including attorneys' fees, (including any of the foregoing arising or imposed without lessor's fault or negligence, or under the doctrine of "strict liability") arising in connection with the equipment, including, without limitation, its manufacture, selection, purchase, delivery, possession, use, ownership, location, installation, leasing, renting, control, maintenance, repair, operation or return and the recovery of claims under insurance policies thereon. Lessee agrees that upon written notice by lessor of the assertion of such a claim, action, damage, liability or lien, lessee shall assume full responsibility for the defense thereof. Lessor assumes no liability and makes no representations as to the treatment by lessee of this lease, the Equipment, or the rental payments for financial statement or tax purposes. The provisions of this paragraph shall survive termination of this lease.

19. **ASSIGNMENT.** Without lessor's prior written consent, lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest therein, or (b) sublet or lend the equipment or permit it to be used by anyone other than lessee or lessee's employees.

Lessee may assign this lease and/or mortgage the equipment, in whole or in part, without notice to lessee; and its assignee or mortgagee may reassign this lease and/or such mortgage without notice to lessee.

Each such assignee and/or mortgagee shall have all of the rights but none of the obligations of lessor under this lease. Lessee shall recognize each such assignment and/or mortgage and shall not assert against the assignee and/or mortgagee any defense, counterclaim, or set-off that lessee may have against lessor. In the event of any assignment of rental payments hereunder and written notice thereof to lessee, lessee shall pay directly to any such assignee all rentals and other sums due or to become due under this lease.

20. **LATE CHARGES AND INTEREST.** Should lessee fail to pay any part of the rent herein reserved or any other sum required to be paid to lessor by lessee, within ten (10) days after the due date thereof, lessee shall pay unto lessor a late charge of Three Dollars (\$3.00) for each month or part thereof for which said rent or other sum shall be delinquent, plus interest on such delinquent payment from the due date thereof until paid at the maximum contract rate permitted by law.

21. **DEFAULT AND REMEDIES.** (a) Lessee shall be in default under this lease upon the happening of any of the following events or conditions ("Events of Default"): (i) if lessee fails to pay any rent or other amount herein provided when the same is due and payable; or (ii) if lessee fails to observe, keep, or perform any other provision of this lease required to be observed, kept, or performed by lessee; or (iii) if lessee has breached any other lease or agreement between lessee and lessor; or (iv) if any warranty, representation, or statement made or furnished to lessor for or on behalf of lessee proves to have been false in any material respect when made or furnished; or (v) upon loss, theft, substantial damage, destruction, attempted sale by lessee of any or all of the Equipment, subletting, or parting with possession by lessee of any or all of the Equipment; or (vi) upon any levy, seizure, or attachment upon any or all of the Equipment or lessee's interest therein; or (vii) upon the dissolution, termination of existence, discontinuance of business, insolvency, business failure, or appointment of a receiver for any part of the property of lessee; or (viii) if lessee makes an assignment for the benefit of creditors or if any proceeding is commenced under any bankruptcy, reorganization, or arrangement laws by or against lessee. (b) Upon the occurrence of any Event of Default and at any time thereafter, Lessor may without any further notice exercise any one or more of the following remedies: (i) declare all unpaid rentals and other amounts due and to become due under this lease to be immediately due and payable; (ii) take possession of the Equipment, wherever found, and for this purpose enter into any premises of or under control of lessee or any agent of lessee and remove all or any part of the Equipment, lessee hereby waiving all further rights to possession of the equipment and all claims for injuries suffered through or loss caused by such repossession; (iii) cause lessee at its expense to promptly return the Equipment to lessor; (iv) use, hold, sell, lease, or otherwise dispose of the Equipment or any part thereof on the premises of lessee or any other location without affecting the obligations of lessee under this lease; (v) sell or lease the Equipment or any part thereof at public auction or by private sale or lease at such time or times and upon such terms as lessor may determine, free and clear of any rights of lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by lessor to lessee not less than 10 days prior to the date hereof shall constitute reasonable notice thereof to lessee; (vi) proceed by appropriate action either by law or in equity to enforce performance by lessee of the applicable covenants of this lease or to recover damages for the breach hereof; (vii) terminate this lease as to any or all items of Equipment provided, however, that a termination hereunder shall be effective only upon written notice by lessor to lessee and only with respect to such item or items of Equipment as lessor specifically elects to terminate in such notice. Except as to such item or items with respect to which there is a termination, this lease shall continue in full force and effect and lessee shall be obligated to perform all acts and to pay all rent and other amounts required under this lease; (viii) exercise any and all rights accruing to a lessor under any applicable law upon a default by a lessee. (ix) Set off all unpaid rentals and other amounts due or declared by lessor, its assignees or mortgagees, to be due under this lease against any monies lessee has deposited with lessor, its assignees or mortgagees, at the time such rentals and amounts become or are declared to be due.

(c) In addition, Lessor shall be entitled to recover immediately as liquidated damages, and not as a penalty, a sum equal to the aggregate of the following: (i) all unpaid rentals and other amounts which are due and payable for the Equipment up to the date of redelivery to or repossession by lessor; (ii) any expenses paid or incurred by lessor in connection with the repossession, holding, repair, subsequent sale, lease, or other disposition of the equipment, including attorney's fees and legal expenses; (iii) all unpaid rentals due and to become due under this lease for any item of Equipment which lessee fails to return, as provided above, or converts or destroys, or which lessor is unable to repossess; (iv) an amount equal to the difference between (a) the present value of all unpaid rentals for the Equipment returned to or repossessed by lessor from the date of return or repossession to the end of the rental period therefor ("Remaining Rentals") and (b) the fair market rental value of such Equipment for such unexpired rental period, discounted to present value ("Unexpired Rental Value") provided, however, that, in the event of sale of any item of the Equipment by lessor, the Unexpired Rental Value of such Equipment shall be deemed to be an amount equal to the proceeds of such sale. Should lessor, however, estimate its actual damages to exceed the foregoing, lessor may, at its option, recover its actual damages in lieu of or in addition thereto. None of the remedies under this Lease are intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor in law or in equity. Any repossession or subsequent sale or lease by lessor of any item of Equipment shall not bar an action for a deficiency as herein provided and the bringing of an action or the entry of judgment against the lessee shall not bar the lessor's right to repossess any or all items of Equipment. **LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF THE EQUIPMENT BY LESSOR IN THE EVENT OF A DEFAULT HEREUNDER BY LESSEE.**

22. **NOTICES.** Any written notice or demand under this agreement may be given to a party by mailing it to the party at its address set forth above, or at such address as the party may provide in writing from time to time. Notice or demand so mailed shall be effective when deposited in the United States mail, duly addressed and with postage prepaid.

23. **OFFSET.** Lessee hereby waives any and all existing and future claims, and offsets, against any rent or other payments due hereunder; and agrees to pay the rent and other amounts hereunder regardless of any offset or claim which may be asserted by lessee or on its behalf.

24. **OWNERSHIP; PERSONAL PROPERTY.** The equipment is, and shall at all times remain, the property of lessor; and lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease. Equipment is, and shall at all times be and remain, personal property notwithstanding that equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to real property or any building thereon.

25. **FURTHER ASSURANCES.** Lessee shall execute and deliver to lessor, upon lessor's request such instruments and assurances as lessor deems necessary for the confirmation or perfection of this lease and lessor's rights hereunder. In furtherance thereof, lessor may file or record this lease or a financing statement with respect thereto so as to give notice to any interested parties. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code.

26. **NO PURCHASE OPTION.** Unless a written purchase option is executed by lessor and lessee and annexed hereto, lessee shall have no option to purchase or otherwise acquire title to ownership of any of the equipment and shall have only the right to use the same under and subject to the terms and provisions of this lease.

27. **SEVERABILITY.** No provision of this lease which may be deemed invalid or unenforceable upon the parties, their successors, legal representatives, or assigns shall in any way invalidate or make unenforceable any other provision or provisions of this lease, all of which shall remain in full force and effect.

28. **CONSTRUCTION.** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Ohio. The titles of the sections of this lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this lease in each and all of its provisions.

29. **PARTIES.** Subject to the provisions of paragraph 19 hereof, the provisions of this lease shall be binding upon and inure to the benefit of the parties, their successors, assigns, representatives, heirs and legatees. If there is more than one lessee named in this lease, the liability of each shall be joint and several.

30. **GENDER; NUMBER.** Whenever the context of this lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural; and whenever the word "lessor" is used herein, it shall include all assignees of lessor.

31. **NON-WAIVER.** No covenant or condition of this lease can be waived except by the written consent of lessor. Forbearance or indulgence by lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by lessee to which the same may apply, and, until complete performance by lessee of said covenant or condition, lessor shall be entitled to invoke any remedy available to lessor under this lease or by law or in equity despite said forbearance or indulgence.

32. **ENTIRE AGREEMENT; WAIVER.** This instrument constitutes the entire agreement between lessor and lessee. No agent or employee of the supplier is authorized to bind lessor to this lease, to waive or alter any term or condition printed herein or add any provision hereto. Except as provided in paragraph 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed and made a part hereof by an authorized officer of lessor. Waiver by lessor of any provision hereof in one instance shall not constitute a waiver as to any other instance.

LESSEE NO. 1350



FIRST BANC GROUP FINANCIAL SERVICES CORP.
8060 Montgomery Road
Cincinnati, Ohio 45236

SCHEDULE NUMBER 1

THIS IS A NON CANCELABLE LEASE

NAME AND ADDRESS OF LESSEE

Jameson, John W.
2505 Carew Tower
Cincinnati, Ohio 45202

SUPPLIER OF EQUIPMENT (COMPLETE ADDRESS)

BILL OF SALE

RECORDATION NO. 11516 Filed 1425
FEB 20 1980 - 12 55 PM

Neither the equipment nor the Interstate Commerce Commission are agents of Lessor.

NAME OF PERSON TO CONTACT:

SUPPLIER'S SALESMAN

QUANTITY DESCRIPTION: MODEL #, CATALOG # OR OTHER IDENTIFICATION PRICE

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS, WORKMANSHIP, DESIGN, CAPACITY, CONDITION, OR OTHERWISE, OF THE EQUIPMENT WHICH EXTEND BEYOND THE BELOW DESCRIPTION OF THE EQUIPMENT.

EQUIPMENT LEASED

2 50 Foot 70 Ton Trucks XM Box Cars with a 5344 Cubic Foot Capacity

Railroad Reporting Numbers:
LVRC 5078; LVRC 5079

LOCATION OF EQUIPMENT: STREET ADDRESS

STATE Vermont

COUNTY

CITY

TERMS OF PAYMENT

RENEWAL TERMS

Table with columns: AMOUNT OF EACH RENT PAYMENT (RENT PAYMENT, SALES TAX, TOTAL), PAYMENTS WILL BE MADE (MONTHLY, QUARTERLY), INITIAL TERM OF LEASE (NO. OF YEARS), NO. OF RENT PAYMENTS, ADVANCE RENTAL & SECURITY DEPOSIT, RENTAL. Includes handwritten corrections and values like 671.60, 2785.36, 10 5/12, 45, 23,671.60, 0.00.

NOTE: FIRST QUARTERLY PAYMENT DUE AUGUST 15, 1980.

Terms and Conditions of Lease

- 1. LEASE. Lessee hereby leases from lessor...
2. SELECTION OF EQUIPMENT. Lessee has requested equipment...
3. ERRORS IN ESTIMATED COST. As used herein, "actual cost" means...
4. WARRANTIES. Lessor, not being the manufacturer...
5. INITIAL TERM. The initial term of this lease commences...
6. RENT. Lessee agrees to pay during the initial term...
7. SECURITY DEPOSIT. Lessor may, but shall not be obligated...
8. RENEWAL. After its initial term, this lease shall be automatically renewed...

SEE REVERSE SIDE FOR ADDITIONAL TERMS AND CONDITIONS WHICH ARE PART OF THIS LEASE

The undersigned agree to all the terms and conditions set forth above and on the reverse side hereof, and in witness thereof hereby execute this lease.

EFFECTIVE DATE OF LEASE

1/25/79

DATE

December 28, 1979

FIRST BANC GROUP FINANCIAL SERVICES CORP.

NAME OF LESSEE Jameson, John W. (FULL LEGAL NAME)

BY

Handwritten signature of John W. Jameson

BY John W. Jameson TITLE

AUTHORIZED SIGNATURE FOR LESSEE TITLE

I hereby certify that I have authority to execute this Lease on behalf of Lessee.

LEASE COPY

6

NO ORAL ALTERATION OF THIS FORM SHALL BE BINDING UPON LESSOR, ITS SUCCESSORS OR ASSIGNS.



9. **LOCATION.** The equipment shall be delivered and thereafter kept at the location specified above or, if none is specified, at lessee's address as set forth above, and shall not be removed therefrom without lessor's prior written consent.

10. **NOTICE OF DEFECTS.** Unless lessee gives lessor written notice of each defect in an item of equipment within five (5) business days after receipt thereof, it shall be conclusively presumed, as between lessee and lessor, that the item was delivered in good repair and that lessee accepts it as an item of equipment described in this lease.

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16. **LOSS AND DAMAGE.** Lessee shall bear the entire risk of loss, theft, damage or destruction of the equipment or any part thereof from any cause whatsoever; and no loss, theft, damage or destruction of the equipment shall relieve lessee of the obligation to pay rent or of any other obligation under this lease.

In the event of damage to any item of equipment, lessee shall immediately place the same in good repair. If lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, lessee at the option of lessor shall:

(a) replace the same with like equipment of equivalent value in good repair which shall thereupon become the property of lessor and part of the equipment leased hereunder, or

(b) pay lessor in cash all of the following: (i) all amounts then owed by lessee to lessor under this lease, (ii) an amount equal to ten percent (10%) of the actual cost of said item, and (iii) the unpaid balance of the total rent for the initial term of this lease attributable to said item. Upon lessor's receipt of such payment, lessee shall be entitled to whatever interest lessor may have in said item, in its then condition and location, without warranty express or implied. The parties hereto agree that the sum of the amounts numbered (ii) and (iii) will equal the fair value of said item on the date of such loss, theft, damage or destruction.

17. **INSURANCE: TAXES: LIENS.** Unless lessor provides insurance coverage at lessee's request and expense, lessee shall provide and maintain at lessee's expense fire and extended coverage insurance against loss, theft, damage or destruction of the equipment in an amount not less than the total rent payable hereunder, plus an amount equal to ten percent (10%) of the actual cost of the equipment, with loss payable solely to lessor. Each policy shall expressly provide that said insurance as to lessor and its assigns shall not be invalidated by any act, omission or neglect of lessee, and shall expressly provide for at least 30 days' prior written notice of cancellation to lessor. At lessor's option, each such policy shall otherwise be in form and with companies satisfactory to lessor. At lessor's request, lessee shall furnish proof of said insurance. Lessee hereby appoints lessor as lessee's attorney-in-fact to make claim for, adjust, settle, receive payment of, and execute and endorse all documents, checks or drafts for, loss or damage under any said insurance policy.

Lessor may apply the proceeds of said insurance to replace or repair the equipment and/or to satisfy lessee's obligations hereunder.

If required by lessor, lessee will at lessee's expense carry public liability and property damage insurance with respect to the Equipment and the use thereof, in such amounts and with such companies as are reasonably satisfactory to lessor, and such insurance policies shall also name lessor as an insured thereunder. The proceeds of any public liability and property damage insurance shall be payable first to lessor to the extent of its liability, if any, and the balance to lessee.

Lessee agrees that if lessee fails to procure, maintain and pay for such fire and extended coverage insurance or any such public liability and property damage insurance required by lessor, lessor shall have the right, but not the obligation, to obtain such insurance on behalf of and at the expense of lessee. In the event lessor does obtain such insurance, lessee agrees to pay all costs thereof, and if lessor pays the same, to reimburse lessor at the date of the next scheduled rental payment (as additional rent hereunder).

Lessee agrees to pay any and all federal, state, and local taxes (including sales, use, excise, gross receipts, personal property, ad valorem, stamp, documentary and other taxes), assessments, fees and other governmental charges (including any penalties, interest, and fines) whether payable by lessor or lessee and whether during the term of this lease or thereafter (if applicable to the term of this lease, on or with respect to the Equipment or its ownership, use, value, delivery, transportation, registration, or operation, on or with respect to rental payments due or to become due hereunder, and on or relating to this lease, exclusive, however, of any taxes based upon net income of lessor. Lessee agrees to reimburse lessor at the date of the next scheduled rental payment (as additional rent hereunder) if lessor pays the same. Lessee agrees to prepare and file all returns and schedules required by taxing authorities in connection therewith and furnish copies to lessor at its request; and to provide permits and licenses, if any, necessary for installation or operation of the Equipment.

Lessee shall keep the Equipment free of all levies, liens and encumbrances.

18. **INDEMNITY.** Lessee shall indemnify lessor against, and hold lessor harmless from, any and all claims, actions, proceedings, expenses, damages, liabilities, losses, obligations, injuries, penalties, liens, costs and expenses, including attorneys' fees, (including any of the foregoing arising or imposed without lessor's fault or negligence, or under the doctrine of "strict liability") arising in connection with the equipment, including, without limitation, its manufacture, selection, purchase, delivery, possession, use, ownership, location, installation, leasing, renting, control, maintenance, repair, operation or return and the recovery of claims under insurance policies thereon. Lessee agrees that upon written notice by lessor of the assertion of such a claim, action, damage, liability or lien, lessee shall assume full responsibility for the defense thereof. Lessor assumes no liability and makes no representations as to the treatment by lessee of this lease, the Equipment, or the rental payments for financial statement or tax purposes. The provisions of this paragraph shall survive termination of this lease.

19. **ASSIGNMENT.** Without lessor's prior written consent, lessee shall not (a) assign, transfer, pledge, hypothecate or otherwise dispose of this lease or any interest therein, or (b) sublet or lend the equipment or permit it to be used by anyone other than lessee or lessee's employees.

Lessor may assign this lease and/or mortgage the equipment, in whole or in part, without notice to lessee, and its assignee or mortgagee may reassign this lease and/or such mortgage without notice to lessee.

Each such assignee and/or mortgagee shall have all of the rights but none of the obligations of lessor under this lease. Lessee shall recognize each such assignment and/or mortgage and shall not assert against the assignee and/or mortgagee any defense, counterclaim, or set-off that lessee may have against lessor. In the event of any assignment of rental payments hereunder and written notice thereof to lessee, lessee shall pay directly to any such assignee all rentals and other sums due or to become due under this lease.

20. **LATE CHARGES AND INTEREST.** Should lessee fail to pay any part of the rent herein reserved or any other sum required to be paid to lessor by lessee, within ten (10) days after the due date thereof, lessee shall pay unto lessor a late charge of Three Dollars (\$3.00) for each month or part thereof for which said rent or other sum shall be delinquent, plus interest on such delinquent payment from the due date thereof until paid at the maximum contract rate permitted by law.

21. **DEFAULT AND REMEDIES.** (a) Lessee shall be in default under this lease upon the happening of any of the following events or conditions ("Events of Default"): (i) if lessee fails to pay any rent or other amount herein provided when the same is due and payable; or (ii) if lessee fails to observe, keep, or perform any other provision of this lease required to be observed, kept, or performed by lessee; or (iii) if lessee has breached any other lease or agreement between lessee and lessor; or (iv) if any warranty, representation, or statement made or furnished to lessor for or on behalf of lessee proves to have been false in any material respect when made or furnished; or (v) upon loss, theft, substantial damage, destruction, attempted sale by lessee of any or all of the Equipment, subletting, or parting with possession by lessee of any or all of the Equipment; or (vi) upon any levy, seizure, or attachment upon any or all of the Equipment or lessee's interest therein; or (vii) upon the dissolution, termination or existence, discontinuance of business, insolvency, business failure, or appointment of a receiver for any part of the property of lessee; or (viii) if lessee makes an assignment for the benefit of creditors or if any proceeding is commenced under any bankruptcy, reorganization, or arrangement laws by or against lessee. (b) Upon the occurrence of any Event of Default and at any time thereafter, Lessor may without any further notice exercise any one or more of the following remedies: (i) declare all unpaid rentals and other amounts due and to become due under this lease to be immediately due and payable; (ii) take possession of the Equipment, wherever found, and for this purpose enter into any premises of or under control of lessee or any agent of lessee and remove all or any part of the Equipment, lessee hereby waiving all further rights to possession of the equipment and all claims for injuries suffered through or loss caused by such repossession; (iii) cause lessee at its expense to promptly return the Equipment to lessor; (iv) use, hold, sell, lease, or otherwise dispose of the Equipment or any part thereof on the premises of lessee or any other location without affecting the obligations of lessee under this lease; (v) sell or lease the Equipment or any part thereof at public auction or by private sale or lease at such time or times and upon such terms as lessor may determine, free and clear of any rights of lessee and, if notice thereof is required by law, any notice in writing of any such sale or lease by lessor to lessee not less than 10 days prior to the date hereof shall constitute reasonable notice thereof to lessee; (vi) proceed by appropriate action either by law or in equity to enforce performance by lessee of the applicable covenants of this lease or to recover damages for the breach hereof; (vii) terminate this lease as to any or all items of Equipment provided, however, that a termination hereunder shall be effective only upon written notice by lessor to lessee and only with respect to such item or items of Equipment as lessor specifically elects to terminate in such notice. Except as to such item or items with respect to which there is a termination, this lease shall continue in full force and effect and lessee shall be obligated to perform all acts and to pay all rent and other amounts required under this lease; (viii) exercise any and all rights accruing to a lessor under any applicable law upon a default by a lessee. (ix) Set off all unpaid rentals and other amounts due or declared by lessor, its assignees or mortgagees, to be due under this lease against any monies lessee has deposited with lessor, its assignees or mortgagees, at the time such rentals and amounts become or are declared to be due.

(c) In addition, Lessor shall be entitled to recover immediately as liquidated damages, and not as a penalty, a sum equal to the aggregate of the following: (i) all unpaid rentals and other amounts which are due and payable for the Equipment up to the date of redelivery to or repossession by lessor; (ii) any expenses paid or incurred by lessor in connection with the repossession, holding, repair, subsequent sale, lease, or other disposition of the equipment, including attorney's fees and legal expenses; (iii) all unpaid rentals due and to become due under this lease for any item of Equipment which lessee fails to return, as provided above, or converts or destroys, or which lessor is unable to repossess; (iv) an amount equal to the difference between (a) the present value of all unpaid rentals for the Equipment returned to or repossessed by lessor from the date of return or repossession to the end of the rental period thereof ("Remaining Rentals") and (b) the fair market rental value of such Equipment for such unexpired rental period, discounted to present value ("Unexpired Rental Value") provided, however, that, in the event of sale of any item of the Equipment by lessor, the Unexpired Rental Value of such Equipment shall be deemed to be an amount equal to the proceeds of such sale. Should lessor, however, estimate its actual damages to exceed the foregoing, lessor may, at its option, recover its actual damages in lieu of or in addition thereto. None of the remedies under this Lease are intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available to Lessor in law or in equity. Any repossession or subsequent sale or lease by lessor of any item of Equipment shall not bar an action for a deficiency as herein provided and the bringing of an action or the entry of judgment against the lessee shall not bar the lessor's right to repossess any or all items of Equipment. LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF THE EQUIPMENT BY LESSOR IN THE EVENT OF A DEFAULT HEREUNDER BY LESSEE.

22. **NOTICES.** Any written notice or demand under this agreement may be given to a party by mailing it to the party at its address set forth above, or at such address as the party may provide in writing from time to time. Notice or demand so mailed shall be effective when deposited in the United States mail, duly addressed and with postage prepaid.

23. **OFFSET.** Lessee hereby waives any and all existing and future claims, and offsets, against any rent or other payments due hereunder; and agrees to pay the rent and other amounts hereunder regardless of any offset or claim which may be asserted by lessee or on its behalf.

24. **OWNERSHIP; PERSONAL PROPERTY.** The equipment is, and shall at all times remain, the property of lessor; and lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease. Equipment is, and shall at all times be and remain, personal property notwithstanding that equipment or any part thereof may now be, or hereafter become, in any manner affixed or attached to real property or any building thereon.

25. **FURTHER ASSURANCES.** Lessee shall execute and deliver to lessor, upon lessor's request such instruments and assurances as lessor deems necessary for the confirmation or perfection of this lease and lessor's rights hereunder. In furtherance thereof, lessor may file or record this lease or a financing statement with respect thereto so as to give notice to any interested parties. Any such filing or recording shall not be deemed evidence of any intent to create a security interest under the Uniform Commercial Code.

26. **NO PURCHASE OPTION.** Unless a written purchase option is executed by lessor and lessee and annexed hereto, lessee shall have no option to purchase or otherwise acquire title to ownership of any of the equipment and shall have only the right to use the same under and subject to the terms and provisions of this lease.

27. **SEVERABILITY.** No provision of this lease which may be deemed invalid or unenforceable upon the parties, their successors, legal representatives, or assigns shall in any way invalidate or make unenforceable any other provision or provisions of this lease, all of which shall remain in full force and effect.

28. **CONSTRUCTION.** This lease shall in all respects be governed by and construed in accordance with the laws of the State of Ohio. The titles of the sections of this lease are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence of this lease in each and all of its provisions.

29. **PARTIES.** Subject to the provisions of paragraph 19 hereof, the provisions of this lease shall be binding upon and inure to the benefit of the parties, their successors, assigns, representatives, heirs and legatees. If there is more than one lessee named in this lease, the liability of each shall be joint and several.

30. **GENDER; NUMBER.** Whenever the context of this lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural; and whenever the word "lessor" is used herein, it shall include all assigns of lessor.

31. **NON-WAIVER.** No covenant or condition of this lease can be waived except by the written consent of lessor. Forbearance or indulgence by lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by lessee to which the same may apply, and, until complete performance by lessee of said covenant or condition, lessor shall be entitled to invoke any remedy available to lessor under this lease or by law or in equity despite said forbearance or indulgence.

32. **ENTIRE AGREEMENT; WAIVER.** This instrument constitutes the entire agreement between lessor and lessee. No agent or employee of the supplier is authorized to bind lessor to this lease, to waive or alter any term or condition printed herein or add any provision hereto. Except as provided in paragraph 3 hereof, a provision may be added hereto or a provision hereof may be altered or varied only by a writing signed and made a part hereof by an authorized officer of lessor. Waiver by lessor of any provision hereof in one instance shall not constitute a waiver as to any other instance.