TEXAS COMMERCE BANK - AUSTIN

NATIONAL ASSOCIATION

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INTERSTATE COMMERCE COMMISSION
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INTERSTATE COMMERCE COMMISSION
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INTERSTATE COMMERCE COMMISSION

P.O. Box 550
Austin, Texas 78789
512 476-6611

November 17, 1981

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

Re: Clement M. and Nancy V. Evans

Dear Sir:

Enclosed for filing pursuant to 49 U.S.C. 20c and 49 C.F.R. 1116 are the following documents:

(1) Original Management Agreement and two certified copies of a Management Agreement dated October 8, 1980, between Rex Leasing, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, and Clement M. Evans, 8301 Appalachian Drive, Austin, Texas 78759; Original Management Agreement and two certified copies of a Management Agreement dated October 8, 1980, between Rex Leasing, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, and Nancy V. Evans, 8301 Appalachian Drive, Austin, Texas 78759. 50 10

(2) Original Purchase Contract and two certified copies of a Purchase Contract dated October 8, 1980, between Rex Leasing, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, and Clement M. Evans, 8301 Appalachian Drive, Austin, Texas 78759; Original Purchase Contract and two certified copies of a Purchase Contract dated October 8, 1980, between Rex Leasing, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, and Nancy V. Evans, 8301 Appalachian Drive, Austin, Texas 78759; 60 10

(3) Original and two certified copies of a Collateral Assignment between Clement M. Evans and Nancy V. Evans, 8301 Appalachian Drive, Austin, Texas 78759, and The Capital National Bank in Austin, 7th and Lavaca, Austin, Texas 78701; 70

(4) Original and two certified copies of a Security Agreement between Clement M. Evans and Nancy V. Evans of 8301 Appalachian Drive, Austin, Texas 78759, and The Capital National Bank in Austin, 7th and Lavaca, Austin, Texas 78701 50

Texas Commerce Bank
Austin

The documents shown in (1), (2), and (3) are being submitted for filing concurrently in accordance with 49 U.S.C. 116, 3(d) (2). Accordingly, a cashier's check in the amount of $100.00 is enclosed as the filing fee for all documents.

The rolling stock involved in the transactions is described as follows:

> Three (3) 4650-cubic foot capacity, 100-ton truck steel covered hopper cars with reporting marks and serial numbers MILW 101940, MILW 101941, and MILW 101935 and ID number MIL/RRRX1169, PULLMAN RRRX3092 and PULLMAN RRRX 3093.

After the documents have been filed, please return the originals to Texas Commerce Bank-Austin, Attn: Collateral Department, P. O. Box 550, Austin, Texas 78789. (As of November 16, 1981, Capital National Bank is now Texas Commerce Bank-Austin).

Thank you for your cooperation.

Sincerely,

Kathy A. Beckham

Kathy A. Beckham
Administration Assistant

kb
Enclosures
Collateral papers
Cashiers check

685-51794

[This Agreement is Subject to Arbitration]

RECORDATION NO. 13338 FILED 1425

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INTERSTATE COMMERCE COMMISSION

Owner: Nancy V. Evans

MANAGEMENT AGREEMENT

THIS AGREEMENT made by and between Rex Leasing, Inc., a New Jersey corporation (hereinafter called "Rex"), and the person executing this Agreement as owner (hereinafter called "Owner").

WHEREAS, Owner has, pursuant to a Covered Hopper Railcar Purchase Contract (the "Purchase Contract") with Rex, agreed to purchase the number of covered hopper railcars set forth in Exhibit A attached hereto and incorporated herein by reference (such covered hopper railcars, which shall be identified as provided in Section 1, being hereinafter referred to as the "Cars");

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

WHEREAS, initially each Car, upon its delivery to the lessee, will be subject to a lease agreement or agreements (the "Lease") with a shipper or railroad; and

WHEREAS, Rex intends to manage covered hopper railcars similar in most respects to the Cars and to perform for the owners thereof, under management agreements substantially identical to this Agreement, services substantially identical to those which Rex will perform for Owner hereunder, and Owner desires that the Gross Revenues (as hereinafter defined) and the Operating Expenses (as hereinafter defined) attributable to the Cars be accounted for and combined with the Gross Revenues and Operating Expenses of all cars managed by Rex under Rex Leasing Covered Hopper Railcar Management Program 1980 (the "Management Program"), all on the terms and conditions set forth herein;

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

1. **Engagement of Rex.**

Subject to all the terms and conditions set forth herein, Owner hereby engages Rex as agent of Owner to manage the Cars, collect amounts due to or on behalf of Owner with respect to the Cars and disburse funds of Owner to pay costs, expenses and obligations of Owner with respect to the Cars, all on the terms and conditions set forth herein, and Rex accepts such engagement and agrees to act as agent for Owner and perform in accordance with the terms and conditions hereof. Upon identification of the Cars by insertion by Rex in Schedule 1 to the Purchase Contract of the name of the manufacturer of the Cars, the number of Cars, the description of the Cars and the reporting marks and serial numbers of the Cars, Rex shall list the name of the manufacturer of the Cars, the number of Cars, the description of the Cars and the reporting marks and the serial numbers of the Cars in Exhibit A hereto.

2. **Term.**

(a) The term of this Agreement and the agency created hereby shall commence on the execution of this Agreement by both parties and, unless terminated earlier pursuant to this Section 2, shall continue for a period of 15 years following delivery under the Lease of the last of the Cars to be delivered under the Lease.

(b) Anything herein to the contrary notwithstanding, except for Sections 10, 11(a) and 11(c) and 16, which shall remain in effect with respect to any Car transferred as described in Section 11(a), this Agreement:

(i) shall terminate with respect to any Car which is sold, foreclosed upon, lost or totally destroyed as of the date that such sale or foreclosure is consummated or such Car is lost or destroyed.

(ii) shall terminate if Rex shall dissolve or institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the institution of bankruptcy proceedings against it or shall file a petition or answer or consent seeking reorganization under the Bankruptcy Act of the United States or shall consent to the filing of any such petition or the appointment of a receiver or trustee or assignee in bankruptcy or insolvency of it or all or a substantial part of its property or shall make an assignment for the benefit of creditors or shall

admit in writing its inability to pay its debts generally as they become due or if there shall have continued undischarged or unstayed for 90 days an order of a court of competent jurisdiction adjudging Rex a bankrupt or insolvent or approving as properly filed a petition seeking reorganization of Rex under the Bankruptcy Act or any similar Federal or State law or appointing a receiver, trustee or assignee in bankruptcy or insolvency of Rex or all or a substantial part of its property or winding up or liquidating the affairs of Rex on the application of any creditor in any insolvency or bankruptcy proceedings or other creditor's suit, which termination shall be effective as of the 5th day following the giving of written notice of such termination.

(iii) may be terminated by Owner, in Owner's sole discretion, if there shall have occurred an event of default under any instrument covering a debt obligation of Rex-Noreco, Inc., a New Jersey corporation and owner of all of the outstanding capital stock of Rex (provided that, if such event of default arises from a failure to pay an obligation when due or to observe a financial covenant or from an act indicating the insolvency or bankruptcy of Rex-Noreco, Inc., then Owner's right to terminate shall exist only so long as such event of default has not been cured or waived; and, if such event of default does not arise from a failure to pay an obligation when due or to observe a financial covenant or from an act indicating the insolvency or bankruptcy of Rex-Noreco, Inc., then such right to terminate shall exist only so long as the lender under the agreement under which such event of default has occurred has accelerated payment of such debt obligation and such default has not been cured or waived).

(c) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(c), this Agreement may be terminated by Owner, in Owner's sole discretion,

(i) by the giving of written notice of such termination within 30 days after the effective date of any increase in the compensation payable to Rex under Section 6(a); or

(ii) if for any period of twelve consecutive months commencing after the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car the following fraction exceeds 1/12:

$$\frac{\text{number of car days off lease during such twelve-month period}}{\text{number of car days during such twelve-month period}}$$

For the purpose of this Section 2(c)(ii), the "number of car days off lease during such twelve-month period" shall mean the sum for each car managed under the Management Program of the number of days during such twelve-month period on which such car was not subject to a lease, or was subject to a lease or other arrangement that provided for rental or other fees at a rate lower than rental rates generally prevailing for leases of a similar term for railcars similar to such car at the time such lease or other arrangement was entered into; but shall not include (y) any day after a lease covering the car has expired or otherwise terminated but prior to delivery of such car to the next lessee thereof and the commencement of accrual of rentals under such lease, if such car is then subject to a successor lease that has been signed and delivered and provides for the delivery of cars subject thereto as soon as may be reasonably practicable, and (z) any day on which there is a "force majeure event". For the purpose of this Section 2(c)(ii), "force majeure event" shall mean any delay caused by any alterations, modifications, improvements or additions to the car of the type referred to in Section 7(c); the failure of Owner to consent to such alterations, modifications, improvements or additions; any acts of God; acts of a public enemy; riot; civil commotion; storms; fire; floods; earthquakes; strikes; lockouts; material shortages; inability to procure labor, materials or supplies after diligent efforts to do so; delays in the delivery of materials or supplies; defaults on the part of any repair facility, repairman, contractor, subcontractor, supplier or materialman; and other events or circumstances of a similar nature beyond Rex's reasonable control. The "number of car days during such twelve-month period" shall mean the sum for each car managed under the Management Program of the number of days during the same twelve-month period as is used in computing the numerator on which such car was managed under the Management Program.

Within 60 days after the end of any such 12-month period, Rex shall notify Owner of Owner's right to terminate this Agreement and such termination shall be effective only if written notice thereof shall be given to Rex within 45 days of notice to Owner.

If Owner terminates this Agreement pursuant to this Section 2(c), Rex may, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d), the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which a Car may then be subject, without recourse, withdraw the Car from such lease and substitute thereunder a Car identical to the Car so withdrawn.

(d) Except for Sections 10, 11(d) and 16, which shall remain in effect notwithstanding the termination of this Agreement pursuant to this Section 2(d), this Agreement may be terminated by Rex, in Rex's sole discretion, if Owner is in default for a period of 90 days after notice and demand from Rex in the payment of obligations pursuant to Section 7(b) if at the date of such notice and demand and thereafter during such 90-day period the total of Owner's obligations so owed equals or exceeds three times the amount of the aggregate monthly management fee for which Owner is responsible for the month in which such notice and demand is given; and Rex may also, in its sole discretion, at or after the date of such termination, require pursuant to Section 11(d) the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which the Cars may then be subject, without recourse, withdraw the Cars from such lease and substitute thereunder cars identical to the Cars so withdrawn.

(e) Notwithstanding any termination of this Agreement, whether upon the expiration of 15 years after delivery under the Lease of the last of the Cars to be delivered under the Lease or pursuant to Section 2(b), 2(c) or 2(d) Rex shall continue to be obligated to collect all rental payments, time and mileage charges and other sums (including insurance benefits, payments under manufacturers' warranties covering the Cars or lessee or railroad indemnity payments payable in connection with any damage to or loss or total destruction of a Car), and to pay or arrange for payment of all expenses, taxes and other charges on Cars as to which this Agreement has been terminated, due for or with respect to periods prior to such termination of this Agreement.

(f) At least 6 months prior to the expiration of the term of this Agreement on account of the passage of the period of 15 years after Rex's acceptance of the last Car to be so accepted, but in no event more than 12 months prior to such expiration, Rex shall give to Owner written notice of such pending expiration of this Agreement, which notice shall state whether Rex proposes to negotiate a new agreement for the management of the Cars and, if Rex does so propose, the terms of such new agreement which it proposes.

(g) Not earlier than 9 months and not later than 6 months prior to the effective date of any anticipated change in the aggregate monthly management fee payable to Rex under Section 6(a), Rex shall give Owner written notice of the effective date of the next increase in such fee and of the approximate amount by which such fee would be increased pursuant to Section 6(a) if such increase were effective as of the date of such notice.

(h) Upon termination of this Agreement, Rex shall cooperate with Owner either to sell or otherwise dispose of the Cars or to effect an orderly transition of the management or use of the Cars to any new manager or any new lessee thereof, as the case may be (it being understood that any costs of constructive or physical redelivery of Cars to Owner will be borne by Owner).

3. **Duties of Rex.**

In consideration of the compensation to be paid to Rex by Owner pursuant to Section 6(a), subject to any provisions herein requiring Rex to obtain the consent of Owner, and subject to the agreement of Owner to reimburse Rex pursuant to Section 7, Rex shall, and is hereby authorized to, provide and perform the services on behalf of Owner and to take the action described below during the term of this Agreement:

(a) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, accept and take delivery of the Cars and, where applicable, import them into the United States as agent and attorney for Owner for the purpose of managing and operating the Cars, as herein provided.

(b) Use its best efforts to keep such Cars under lease for the term of this Agreement, entering into, as agent for Owner, lease agreements providing for the lease of the Cars to railroads, shippers or other financially responsible parties for that purpose on terms and conditions which are customary in the industry and using its best efforts to take such steps as may, based on its good faith judgment be desirable and prudent to insure that all obligations and duties arising under such leases, whether of lessors or lessees, are performed or complied with in an orderly and timely fashion.

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

(d) Take such steps as Rex may, based on its good faith judgment, deem desirable, prudent and in the best interests of Owner to collect or cause to be collected all rental payments and time and mileage charges payable with respect to the Cars, identifying itself as agent for that purpose, and account for and remit all sums due to Owner as hereinafter provided. In determining the amount of such time and mileage charges, Rex shall be entitled to rely upon reports received from railroads or other persons upon whose tracks the Cars have traveled and lessees of the Cars and other cars managed under the Management Program after such investigation, if any, as Rex in its good faith judgment shall deem reasonable.

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

(f) Review all maintenance and repair costs incurred or to be incurred by the Cars, use its best efforts to ensure that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Cars to be maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Cars or cars of a similar class by the AAR, Interstate Commerce Commission ("ICC") or U.S. Department of Transportation ("DOT"), (ii) any standard set by a lessee, whether by terms of a lease or by other understanding or agreement between lessee and Rex, as agent for Owner, and (iii) any standard set by any insurance policy under which any of the Cars shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Cars to comply with applicable laws or regulations; provided, however, that no alterations, modifications, improvements or additions of the type referred to in Section 7(c) shall be made without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of Rex giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given Rex notice that Owner objects to the making of such alteration, modification, improvement or addition.

(g) Use its best efforts to place in Owner's name such insurance as shall be reasonably available to protect the interest of Owner in the Cars (with Rex, in its capacity as agent for Owner, being named in each such policy of insurance as a co-insured or additional insured), including, without limitation, insurance against (i) personal liability, including property damage and bodily injury, (ii) loss of or damage to the Cars and (iii) loss of revenues with respect to the Cars; provided, however, that if Rex effects such insurance under a blanket insurance policy, or insurance policy covering Owner's Cars and other cars of other owners, such insurance need not be placed in Owner's name so long as Owner is named as an insured; and, provided further, however, that, if Rex determines that the cost of insurance described above is unreasonably high, or cannot be obtained, Rex need not place or acquire such insurance and shall so notify Owner.

(h) Pay on behalf, and in the name, of Owner all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Cars of whatever kind or nature and, in Rex's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, and, where Rex deems such action prudent and desirable, seek rulings and determinations of the Internal Revenue Service ("IRS") with respect to Federal tax issues affecting the ownership, use and/or operations of the Cars, all such actions to be in the name of Owner.

(i) Make all efforts reasonable under the circumstances to monitor and record and cause any lessee of the Cars to monitor and record movement of the Cars.

(j) Make all efforts reasonable under the circumstances to maintain and cause any lessee of the Cars to maintain complete and accurate records of all transactions relating to the Cars and make such records available for inspection by Owner or any of Owner's representatives (including Rex) during reasonable business hours.

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

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

(m) Use its best efforts to collect all sums due Owner, including, without limitation, insurance benefits, payments under manufacturers' warranties covering the Cars or railroad or lessee indemnity payments, in the event of damage to, or loss or total destruction of, a Car which is incurred during the term of this Agreement and to remit all sums due Owner in accordance with Section 7(e).

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

(o) If Owner has elected to borrow to finance a portion of the purchase price for the Cars and, prior to the expiration of the term of this Agreement, Owner shall have requested that Rex assist in arranging refinancing of all or part of the amount borrowed, to the extent permitted by applicable laws, rules and regulations (including without limitation any regulation issued by the Board of Governors of the Federal Reserve System), use its best efforts to arrange such refinancing. Neither Rex nor any of its affiliates shall have any obligation to provide, guarantee or undertake any other liability with respect to such refinancing. If Owner is contemplating financing, or has financed, a portion of the purchase price for the Cars, Rex will consult with Owner's lender concerning how to file documents giving rise to a security interest in the Cars with the ICC, will provide information concerning the Cars as may be reasonably requested by the lender and will use its best efforts, if requested by Owner, to make such lender an additional loss payee under any casualty and liability insurance policies covering the Cars.

(p) Pay all Operating Expenses (as defined in Section 5(b)), including management fees payable to Rex.

(q) Pay to the party to whom it is owed the amount of any additional payment in respect of the Actual Purchase Price (as defined in Section 5(c)) of any Car pursuant to Paragraph 1.06 of the Purchase Contract, and any amounts in respect of costs of storage, transit or switching of any Car owed by Owner to Rex pursuant to Paragraph 1.07 of the Purchase Contract.

(r) Pursue any claim arising with respect to Cars under manufacturers' warranties covering the Cars, including any claims pursued pursuant to Section 16, which Rex, based on its good faith judgment, deems desirable, prudent and in the best interests of Owner to pursue.

(s) Provide such advice and perform such services incidental to the foregoing for Owner in connection with the provisions hereof and of the Purchase Contract as may from time to time be reasonably necessary in respect of the purchase, importation, leasing and operation of the Cars.

4. Authority, and Limitations on Authority, of Rex.

(a) It is recognized that Rex will manage under the Management Program all the covered hopper railcars, including the Cars, purchased by investors thereunder pursuant to management agreements substantially identical to this Agreement. It is recognized that Rex will receive from owners of other cars managed under the Management Program compensation comparable to that payable by Owner hereunder. It is recognized and agreed that Rex's services for and obligations to and rights with respect to Owner and the owners of other cars managed under the Management Program are several. Except as expressly provided in Section 4(b), Rex will not act or purport to act for or in the name of the Management Program or the owners of cars managed under the Management Program collectively or as an entity; it being expressly understood that any actions taken on behalf of the owners of cars managed under the Management Program will be taken as agent for such owners, severally and individually, either naming such owners or naming Rex as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement and the Management Program are not intended to create a partnership, joint venture or other entity among Owner, other owners of cars managed under the Management Program and/or Rex. Rex shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between owners of cars managed under the Management Program or that such owners are acting collectively or as an entity and Rex shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) Notwithstanding the provisions of Section 4(a), Owner recognizes that the IRS might assert that there exists among Owner and the other owners of cars managed under the Management Program and/or Rex a partnership for Federal income tax purposes and that, pursuant to Section 6698 of the Internal Revenue Code of 1954, as amended (the "Code"), Owner and the other owners of cars managed under the Management Program might be liable for a penalty for failure to file a Federal information return with respect to the Management Program. Rex is authorized to seek, at its discretion, a determination by the IRS whether pooling arrangements such as those embodied in the Management Program constitute partnerships for Federal income tax purposes and whether the election referred to in clause (i) below would be available if such pooling arrangements were determined to be such partnerships. Solely in order to avoid any

such liability, until there shall have been an IRS or judicial determination that pooling arrangements such as those embodied in the Management Program do not constitute partnerships for Federal income tax purposes, Rex is authorized and directed either (i) in the event Rex determines, either by an IRS ruling or an opinion of counsel, that the owners (including Owner) of cars managed under the Management Program are eligible to elect to be excluded from the application of subchapter K of the Code, to make such election or (ii) in the event that Rex so determines that such election may not be made, to file a Federal information return on Form 1065 with respect to the operations of the Management Program and, solely for such purpose, Owner consents to being identified in such election or return as a "partner". For the purpose of making such election or preparing and filing such information return, Owner hereby constitutes and appoints Rex as the agent and attorney-in-fact of Owner and, with the consent of the other owners of cars managed under the Management Program, of the Management Program for and on behalf of, and in the name, place and stead of, the Management Program to prepare and sign as agent and attorney-in-fact and file such election or such Federal information returns for the Management Program, as the case may be. In furtherance of such designation of Rex as agent and attorney-in-fact, Owner will, if Rex shall so request, execute and deliver a Power of Attorney on Form 2848 and/or an Authorization and Declaration on Form 2848-D.

(c) Rex shall not have any authority to:

(i) offer for sale, contract or agree to sell or sell any Cars, except as Owner may from time to time hereafter expressly request or direct; or

(ii) make any alterations, modifications, improvements or additions to the Cars of the type referred to in Section 7(c) without the consent of Owner, which consent shall be deemed to have been granted if, within thirty days of Rex giving notice to Owner of the alteration, modification, improvement or addition required and of the approximate cost thereof, Owner shall not have given Rex notice that Owner objects to the making of such alteration, modification, improvement or addition; or

(iii) permit any loan to it or any of its affiliates of Owner's funds or funds of any other owner of a car managed under the Management Program.

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

(a) The actual Gross Revenues (as hereinafter defined) and the actual Operating Expenses (as hereinafter defined) derived from and incurred by the Cars shall be accounted for and combined together with all Gross Revenues and Operating Expenses derived from and incurred by all cars managed under the Management Program.

(b)(i) As used in this Agreement, and except as provided in Section 7(e) the term "Gross Revenues" for any fiscal period shall mean all revenues for such fiscal period (unreduced by any expenses or costs) derived from the ownership, use and/or operation of cars managed under the Management Program, including, but not limited to, rentals under leases and time and mileage charges payable or creditable to a person which is not a railroad, and all income for such period from interim investment of funds held for the account of owners of cars managed under the Management Program.

(ii) As used in this Agreement, the term "Operating Expenses" for any fiscal period shall mean all expenses and costs for such fiscal period incurred in connection with the ownership, management, use and/or operation of cars managed under the Management Program including, but not limited to:

(A) the aggregate monthly managment fee provided for in Section 6(a)(i) of this Agreement;

(B) maintenance;

(C) repairs, except to the extent that the cost of such repairs is the responsibility of Owner under Section 7(e) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(D) legal fees and expenses incurred in connection with pursuing, enforcing or realizing on claims under manufacturers' warranties covering, or insurance or lessee or railroad payment or indemnity obligations in respect of, the Cars or other cars managed under the Management Program;

(E) mileage credits or payments under the rules of the AAR creditable or payable to a lessee of the Cars or of other cars managed under the Management Program;

(F) painting;

(G) costs of modifications and improvements which are not alterations, modifications, improvements or additions of the type described in Section 7(c) of this Agreement or the agreements with other owners of cars managed under the Management Program;

(H) accounting fees incurred pursuant to Section 13(d);

(I) legal fees incurred in connection with enforcing lease rights or repossessing the Cars or other cars managed under the Management Program;

(J) accounting, legal and other fees and expenses incurred in connection with complying with, including the preparation and filing of reports and other information relating to the Management Program under, the Securities Exchange Act of 1934, as amended and state securities laws;

(K) accounting, legal and other fees and expenses incurred in connection with registering (or updating such registration) under the Securities Act of 1933, as amended, any offer or sale of the Cars by or on behalf of Owner or any offer of other cars managed under the Management Program by or on behalf of the owners thereof or of complying with state securities and other applicable laws in connection therewith;

(L) legal fees and expenses incurred in connection with seeking determinations by the IRS with respect to tax issues affecting the ownership, use and/or operation of cars managed under the Management Program;

(M) insurance premiums (or, if such insurance has been effected under a blanket insurance policy, or insurance policy covering cars in the Management Program and other cars of other owners, the portion of such insurance cost allocable to the cars managed under the Management Program, it being understood that Rex will use its best efforts to allocate to cars managed under the Management Program only such portion of such insurance cost as is attributable to such cars);

(N) charges, assessments or levies imposed upon or against cars managed under the Management Program of whatever kind or nature;

(O) losses from liabilities which are not the responsibility of Owner under Section 7(f) or of owners of other cars managed under the Management Program under Section 7(f) of management agreements with such owners;

(P) fees payable for the recording under the Interstate Commerce Act and under the Uniform Commercial Code of any state of any lease to which the Cars are subject; and

(Q) that portion of ad valorem, gross receipts and other property taxes which are determined by Rex, or, in the event that cars managed under the Management Program are subject to a lease or leases and bear the reporting marks of the lessee or lessees thereunder, such lessee or lessees to be attributable to the cars managed under the Management Program (it being understood that it may not be possible to make an exact allocation of such taxes but that Rex will use its best efforts, and will cause such lessee or lessees to use its or their best efforts, to allocate to the cars managed under the Management Program only such taxes as are attributable to such cars).

(iii) Gross Revenues and Operating Expenses shall be accounted for hereunder on a monthly basis on the cash receipts and disbursements method, rather than on the accrual method, of accounting, except as otherwise expressly provided in this Agreement.

(c) Owner's Gross Revenues and Owner's Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues or Operating Expenses, as the case may be, for such fiscal period multiplied by (ii) a fraction the numerator of which is the sum of the products for each Car of the Actual Purchase Price of such Car (as defined below) and the number of days in such fiscal period that such Car is managed under the Management Program and the denominator of which is the sum of the products for each car (including the Cars) managed under the Management Program of the Actual Purchase Price of such car and the number of days in such fiscal period that such car is managed under the Management Program; except that, with respect to that portion, if any, of Gross Revenues that consists of rental income in respect of any car managed under the Management Program payable under the applicable lease for any month commencing prior to the first day of the second month succeeding that in which the last car managed under the Management Program is delivered under lease, for purposes of calculating Owner's Gross Revenues the fiscal period referred to in clause (ii) above shall be the month or months for which such rentals were payable under applicable leases rather than the month or months during which such rentals were received by Rex. The number of cars (or Cars, as the case may be) managed under the Management Program shall be the number of cars actually managed under the Management Program from time to time during such fiscal period and, if any cars are destroyed, lost, foreclosed upon,

sold, disposed of or withdrawn from the Management Program during such fiscal period, any computation under this Section 5(c) shall reflect such destruction, loss, foreclosure, sale, disposition or withdrawal; provided, however, that (x) notwithstanding that the owner of any cars managed under the Management Program shall have entered into a management agreement with Rex, the cars owned by such owner (who may be Owner) shall not be considered to be managed under the Management Program until such cars shall first have been delivered to the Lessee under the Lease and (y) there shall not be any adjustment of computations under this Section 5(c) on account of the temporary withdrawal from service of any car for repairs, maintenance or reconstruction. For the purposes of this Agreement, the Actual Purchase Price of any car (including a Car) not manufactured by Marine Industrie Limitee ("MIL") shall be the Actual Purchase Price thereof calculated in accordance with Paragraph 1.06 of the Purchase Contract. For the purposes of this Agreement, the Actual Purchase Price as of any date of any car (including a Car) manufactured by MIL shall be the Actual Purchase Price thereof calculated in accordance with Paragraph 1.06 of the Purchase Contract based on amounts actually paid as of that date, except that any change in the Actual Purchase Price of such car resulting from any redetermination of, the Actual Purchase Price, including any such change in (1) the actual and final manufacturer's invoice price of such car, (2) the commencement fee based thereon, (3) the cost of transporting such car from MIL's manufacturing plant to the F.O.T. delivery point specified in the initial lease to which the car is subject, (4) the United States import duties on such car, (5) fees payable to customs brokers retained in connection with the importation of such car, (6) the portion of the cost of obtaining the letter of credit required under the terms of the purchase agreement between Rex and MIL allocated to such car and (7) foreign exchange costs, shall be effective for purposes of this Agreement from and after the day (if it is the first day of the month) on which, or from and after the first day of the month succeeding the month in which, the cost or benefit of such redetermination of the portion of the Actual Purchase Price is borne or realized by the owner of such car.

(d) As used in this Agreement, the term "Net Earnings" for any fiscal period shall mean Owner's Gross Revenues for that fiscal period less the sum of (i) Owner's Operating Expenses for that fiscal period; (ii) all compensation due and payable to Rex hereunder pursuant to Sections 6(b) or 9 not theretofore paid; (iii) such reserves (allocated among owners in the same proportion as Operating Expenses are allocated under Section 5(c)) as Rex shall, in its sole discretion, have reasonably created during that fiscal period to provide for the efficient administration of this Agreement and for payment of Operating Expenses; (iv) any amount due and payable from Owner pursuant to Section 7(b) and not theretofore paid; (v) the amount of any additional payment in respect of the Actual Purchase Price (as defined in Section 5(c)) of any Car pursuant to Paragraph 1.06 of the Purchase Contract and not theretofore reimbursed to Rex; and (vi) any storage and transit costs (including the cost of switching the Cars into and out of storage) owed to Rex by Owner under Paragraph 1.07 of the Purchase Contract and not theretofore reimbursed to Rex; provided, however, that Net Earnings distributed to Owner upon the expiration or termination of this Agreement shall include any reserves previously excluded from Net Earnings pursuant to clause (iii) of this Section 5(d), to the extent such reserves are not applicable to expenses arising or payable after the termination or expiration of this Agreement.

6. **Compensation.**

(a) *Management Fee to Rex.*

(i)(A) The aggregate monthly management fee payable to Rex, for each full month to and including December 1986, shall be $70 for each car managed under the Management Program in such month.

(B) The aggregate monthly management fee payable to Rex, for each full month commencing with January 1987 to and including December 1991, shall be the greater of $70 for each car managed under the Management Program in such month and the product of:

(1) $70 for each car managed under the Management Program in such month and

(2) a fraction (x) the numerator of which is the aggregate stated rental plus other amounts generated during the period from September 1, 1986, through December 31, 1986, for all cars managed under the Management Program on January 1, 1987, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the stated monthly rental for all cars managed under the Management Program for the month following the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car, divided by the number of cars managed under the Management Program on the date of such delivery.

(C) The aggregate monthly management fee payable to Rex, for each full month commencing with January 1992 to and including the date of termination of this Agreement, shall be the greater of $70 for each car managed under the Management Program in such month and the product of:

(1) $70 for each car managed under the Management Program in such month and

(2) a fraction (x) the numerator of which is the aggregate stated rental plus other amounts generated during the period from September 1, 1991, through December 31, 1991, for all cars managed under the Management Program on January 1, 1992, divided by the number of cars managed under the Management Program on such day, and (y) the denominator of which is four times the stated monthly rental for all cars managed under the Management Program for the month following the month in which the last car to be managed under the Management Program is delivered under the lease initially covering such car, divided by the number of cars managed under the Management Program on the date of such delivery.

(D) The amount of stated rental plus other amounts generated during any period by a car managed under the Management Program for the purposes of this Section 6(a)(i) shall mean the stated rental as set forth in the applicable lease, if any, for the period in question and all other amounts payable for the use of the car and properly allocable to such period, including but not limited to rentals and fees for any arrangement for the use of the car. In computing such amount, no effect shall be given to the fact that rental may have abated with respect to any car pursuant to the terms of the lease covering such car if on that day such lease is in full force and effect.

(ii) The monthly management fee payable to Rex for any Car for any partial month during which such Car is managed under this Agreement shall be the monthly management fee then payable to Rex for a car for a full month reduced proportionately to reflect the portion of such month for which such Car was so managed under this Agreement.

(iii) The inclusion of the aggregate monthly management fee as an Operating Expense has the effect of obligating Owner to pay a fraction of the aggregate monthly management fee specified in Sections 6(a)(i) and 6(a)(ii) the numerator of which is the sum of the product for each Car managed under the Management Program in that month of the Actual Purchase Price of such Car (as defined in Section 5(c)) and the number of days in such month that such Car is managed under the Management Program and the denominator of which is the sum of the product for each car (including the Cars) managed under the Management Program in that month of the Actual Purchase Price of such car and the number of days in such month that such car is managed under the Management Program. It is acknowledged that, in paying Operating Expenses on behalf of Owner and the owners of other cars managed under the Management Program in accordance with Section 3(p), Rex will be paying itself the aggregate monthly management fee.

(iv) The aggregate monthly management fee shall be payable monthly.

(v) The monthly management fee payable to Rex for any car managed under the Management Program shall accrue only so long as such car is managed under the Management Program. For the purposes of this Section 6, management of a car (including any Car) under the Management Program shall be deemed to begin on the day on which such car is delivered under lease and shall be deemed to continue until the termination or expiration of the management agreement (including this Agreement) with respect to such car.

(b) *Refinancing Fee to Rex.* If, as provided in Section 3(o), Rex shall have arranged refinancing of all or part of the purchase price for the Cars and Owner shall have elected to accept such refinancing, Owner shall pay to Rex a refinancing fee equal to 1% of the principal amount refinanced, one-quarter of which fee shall be payable 30 days after the closing of such refinancing, one-quarter on the same day of the third month following the date of the first payment, one-quarter on the same day of the sixth month following the date of the first payment and the final quarter on the same day of the ninth month following the date of the first payment.

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

(a) *Regular Distributions of Net Earnings.* As soon as practicable but in any event within 45 days after the end of each calendar quarter, Rex shall distribute to Owner Net Earnings for such quarter.

(b) *Payment of Operating Deficits.* Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the amount by which Net Earnings for a calendar quarter shall be less than zero.

(c) *Payment for Special Improvements.* The cost of any alterations, modifications, improvements or additions which are required by the AAR, ICC or DOT or other regulatory agency or are otherwise required to comply with applicable laws, regulations or requirements and are consented to by Owner shall be the sole responsibility of Owner. Rex shall have the right to require Owner, if Owner consents to such alterations, modifications, improvements or additions as provided in Section 4(c), to pay the approximate cost thereof to Rex upon 10 days prior written notice. Upon completion, Rex shall notify Owner of the exact amount of such costs, and in the event that Owner has already paid more than such cost, Rex shall refund the difference to Owner. If the amount already paid by Owner is less than the exact amount of such costs, Owner shall promptly pay to Rex the amount of such difference.

(d) *Payment for Additional Insurance.* If Rex determines, as provided in Section 3(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and Owner elects to purchase such insurance, the cost thereof shall be the sole responsibility of Owner. Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the cost of any such insurance placed or purchased by Owner through Rex.

(e) *Payment For Certain Property Damage.* The cost of repair of damage to any Car (other than the costs of repairs which Rex determines constitute maintenance of such Cars) is the sole responsibility of Owner. Any payments, including, without limitation, insurance benefits or railroad or lessee indemnity payments, received to cover the damage to such Car (but not to cover loss of rental payments) shall be solely for the account and benefit of Owner (and shall not be included within the term "Gross Revenues"). Rex shall have the right to require Owner to pay to Rex, upon 10 days prior written notice and demand therefor, the approximate cost of the repairs which are the responsibility of Owner or, at Rex's election, such portion of such cost as Rex believes will not be covered by any such payments which may be received by Rex (as co-insured or additional insured, as provided in Section 3(g)) to cover the cost of such damage (it being understood that Rex may apply to such cost of such repair any payments so received by Rex to cover the cost of damage to such Car). Upon completion of such repairs and determination of the payments received by Rex and applied to payment of the cost of such damage, Rex shall notify Owner of the exact amount of such costs and payments, and in the event that Owner has already paid more than the amount of such costs not paid from such payments received and applied by Rex to such repair, Rex shall refund the difference to Owner. If the amount already paid by Owner is less than the amount of such costs not paid from such payments received and applied by Rex to such repairs, Owner shall promptly pay to Rex the amount of such difference. Rex shall promptly remit to Owner any payments to cover such damage to such Car which are received by Rex and not applied to payment of the cost of repair of such damage.

(f) *Payment of Uninsured Losses.* Losses from liability to a third party or parties for bodily injury or property damage caused by any Car, to the extent not covered by insurance, are the sole responsibility of Owner. Within 10 days of receipt of notice and demand from Rex, Owner shall pay to Rex the amount of such liability.

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

8. Indemnification and Subrogation

(a) In addition to any other obligations of Owner hereunder (including Section 7(b)) or otherwise, Owner shall defend (if such defense is tendered to Owner), indemnify and hold Rex harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses, settlements or liabilities incurred or asserted against Rex (i) as a result of any failure (unless caused by the negligence, bad faith or misconduct of Rex) on the part of Owner to perform Owner's obligations under this Agreement, the Purchase Contract or the Lease (or any lease entered into subsequent to the Lease to which any one or more of the Cars may be subject); (ii) arising as a result of or in any way connected with the negligence, bad faith or willful misconduct of Owner; or (iii) arising as a result of or in any way connected with the use, operation, possession, control, maintenance, repair or storage of any Car if it shall be determined that the claimant against Rex did not have a valid claim or was otherwise not entitled to relief against Rex. **Rex shall be entitled to indemnification under Section 8(a)(ii) or 8(a)(iii) only after a determination to that effect (which determination shall include a finding that the cost, liability or expense in question was not a result of Rex's negligence, bad faith or misconduct) by a sole arbitrator, whose jurisdiction shall be exclusive, under the then-effective rules of the American Arbitration Association (to which arbitration Owner and Rex hereby consent).** For the purpose of Section 8(a)(ii), Owner shall be deemed to have acted negligently if Owner withholds consent under Section 4(c) to any alteration, modification, improvement or addition to the Cars of the type referred to in Section 7(c), or if Owner takes any action, or omits to take any action after due notice of the necessity therefor, preventing Rex from providing for the maintenance or repair of any Car or from pursuing any claim arising with respect to Cars under manufacturers' warranties covering any Car.

(b) If (i) Rex incurs any cost or expense (including reasonable attorneys' fees) in connection with any claim, action, damage, loss or liability as a result of the use, operation, possession, control, maintenance, repair or storage of any Car, (ii) Rex shall not have been found to have been negligent or acting with bad faith or misconduct in connection therewith, and (iii), owner is entitled to insurance or lessee or railroad indemnity payments in respect of such cost or expense, then to the extent of the lesser of Rex's cost or expense or owner's said entitlement, Rex shall be subrogated to Owner's said entitlement.

9. Sales Agency

(a) During the terms of this Agreement, upon the request of Owner, Rex shall act as agent in the sale of the Cars.

(b) Except in the case of any sale or other disposition of a Car to Rex or any of its affiliates (that is, any company, person or firm controlling, controlled by or under common control with, Rex) or upon or in connection with a foreclosure, loss or destruction of a Car, Owner shall pay to Rex a sales commission determined as follows:

(i) Upon the sale of a Car arranged by Rex and consummated within four years from the date on which Owner purchased such Car the sales commission shall be in an amount determined by Rex that shall not exceed the sum of (A) 4% of total sale proceeds of the Car and (B) 25% of any total sale proceeds in excess of 100% of the Actual Purchase Price; or (ii) upon the sale of a Car arranged by Rex and consummated after four years from the date on which Owner purchased such a Car the sales commission shall be equal to the lesser of (A) the sales commission that would be payable if the sale were subject to Section 9(b)(i) or (B) the excess, if any, over the Actual Purchase Price of the sum of (x) the investment tax credit allowable to Owner in respect of the Car in the year the Car was placed into service, (y) the aggregate amount of Net Earnings and amounts held in reserve distributed or to be distributed to Owner during the term of this Agreement and (z) the total sale proceeds from the sale of the Car.

(c)(i) If during the term of this Agreement, Owner has received a bona fide offer to purchase a Car otherwise than through Rex acting pursuant to Section 9(a) on terms acceptable to Owner, then, immediately upon receipt of such offer and prior to consummating such sale, Owner shall promptly give Rex written notice of the terms of such offer, including the amounts of any commissions and the net sale proceeds that would be payable in connection therewith, and the terms, if any, thereof that limit the period during which the offer shall remain open.

(ii) Except where the terms of an offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days (in which case Section 9(c)(iii) shall govern), then for a period of 45 days after the giving to Rex of the notice provided for in Section 9(c)(i), Owner shall not consummate such sale, and Rex shall have the right to find for Owner, and owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i).

(iii) If the terms of the offer to purchase a Car referred to in Section 9(c)(i) provide that the offer shall remain open for a period less than 45 days, then for the period that such terms provide that the offer shall remain open (or, if such offer would by its terms remain open for five days or fewer after the giving to Rex of the notice provided for in Section 9(c)(i), for five days after the giving to Rex of the notice provided for in Section 9(c)(i)), Owner shall not consummate such sale, and Rex shall have the right in its discretion either (A) to find for Owner, and Owner shall be obligated to accept, an offer for the purchase of the Car that results in Owner receiving net sale proceeds that are the same as or greater than Owner would receive in making the sale referred to in Section 9(c)(i), or (B) to purchase the Car at a price that results in Owner receiving the same net sale proceeds that Owner would receive in making the sale referred to in Section 9(c)(i).

(d) For the purposes of this Section 9, "net sale proceeds" shall mean the gross sale proceeds from the sale of the Car less any commissions payable in connection therewith. For the purposes of this Section 9, Rex shall be deemed to have found an offer for the purchase of a Car or to have purchased a Car if there is tendered to Owner on or prior to the second full business day prior to the date on which Owner may consumate the third party sale under Section 9(c)(ii) or 9(c)(iii) an offer for the purchase and sale of the Car signed by the purchaser and subject only to inspection to determine the Car's suitabilility for interchange according to the rules of the Association of American Railroads, cleaning, repainting, restenciling, the delivery of the Car to a point reasonably designated by the purchaser, and other standard conditions and warranties.

10. **Subordination.**

This Agreement and Rex's authority and rights hereunder (i) are subject to the lien and security interest upon the Cars and revenues generated by the Cars held by any lender to whom Owner has granted a security interest in the Cars and (ii) are subject and subordinate to the terms of any chattel mortgage, security agreement or other financing document given by Owner to such lender providing for the loan or such lien or security interest (any and all such agreements collectively being the "Finance Documents"); provided, however, that all such liens and security interests are subject to any lease (including the Lease) entered into during the term of this Agreement (including any rights of the lessee under any such lease) covering any Car, to Rex's right to collect Gross Revenues derived from the ownership, use and/or operation of the Cars accruing under any lease entered into during the term of this Agreement covering any Car and to Rex's right to apply such Gross Revenues to Owner's Operating Expenses and sums due Rex hereunder to the extent such Operating Expenses and sums due Rex hereunder accrue during the term of this Agreement.

11. **Dealings With Lessees; Withdrawal of Cars From the Lease; Manager's Remedies Against Defaulting Owner.**

(a) It is intended that leases of cars managed under the Management Program (including the Lease) will cover several or all of the cars so managed under the Management Program at any time. Unless the lessee of such cars shall be willing to pay rental to several lessors (and such lessee may decline, in its sole discretion, to pay rental to more than a single lessor), any purchaser, foreclosing mortgagee, donee or other transferee of any car subject to such lease (even though such car is not then managed under the Management Program) shall, until the expiration or termination of such lease, acknowledge Rex as such purchaser's, foreclosing mortgagee's, donee's or other transferee's agent for the purpose of receiving rentals under such lease (which rentals Rex shall remit, forthwith upon receipt, without deduction or charge); provided, however, that any foreclosing mortgagee or transferee of such foreclosing mortgagee and Rex shall select a person or entity, which may be Rex, as agent of such foreclosing mortgagee or transferee of such foreclosing mortgagee for the purpose of receiving rentals under such lease.

(b) Rex, on behalf of Owner, shall exercise all rights of the lessor of the Cars under the Lease or any other lease to which the Cars may then be subject without being required to seek or receive the consent of or instructions from Owner.

(c) If Rex determines, in its sole discretion, that any purchaser, foreclosing mortgagee, donee or other transferee of any Car which is subject to the Lease or any other lease to which the Cars may then be subject and which is not managed under the Management Program is not capable of performing the duties and obligations of a lessor under such leases in accordance with the terms thereof, then Rex may require the transfer to Rex of all the right, title and interest under such leases of such purchaser, foreclosing mortgagee, donee or transferee, without recourse, withdraw the Cars of such person from such leases and substitute thereunder cars identical to the Cars so withdrawn.

(d) If Rex terminates this Agreement pursuant to Section 2(d), or if Owner terminates this Agreement pursuant to Section 2(c), until such time as Rex requires the transfer to Rex of all of Owner's right, title and interest under the Lease or any other lease to which the Cars may then be subject pursuant to Section 2(c) or Section 2(d), as the case may be, unless the then lessee(s) of the Cars shall be willing to pay rental to Owner, Owner shall, until the expiration of such Lease or lease, acknowledge Rex as Owner's agent for the purpose of receiving rentals under such lease(s), which rentals Rex shall remit, after deducting the amount of any obligations of Owner pursuant to Section 7(b) accruing on or prior to such termination, forthwith upon receipt. In the event of such termination, Rex shall in addition be entitled to pursue any remedy at law or in equity for Owner's failure to fulfill obligations under Section 7(b), including the right to recover money damages.

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

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

13. **Reports.**

(a) As soon as practicable but not later than 45 days after the end of each calendar quarter other than the fourth calendar quarter, Rex will distribute to Owner an unaudited report showing, in reasonable detail, the Owner's Gross Revenues, Owner's Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of Owner's pro rata share of any items.

(b) Within 60 days after the close of each calendar year, Rex will distribute to Owner a report showing for the fourth calendar quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 13(a).

(c) Not later than 60 days after the close of Owner's taxable year (which will be deemed to be the calendar year unless Owner shall otherwise notify Rex in writing) Rex will deliver to Owner a statement setting forth all information (including computation, on the same or similar bases as those set forth in the analytic models contained in the prospectus of Rex Leasing Covered Hopper Railcar Management Program 1980 to which a form of this Agreement is attached as an exhibit, as modified by the elections set forth in Schedule A to this Agreement, of depreciation deductions and amortization of the advisory fee payable to Merrill Lynch Leasing Inc. and the lease negotiation fee payable to Rex as described in such prospectus, but excluding information relating to the financing of the Cars) necessary in connection with the preparation of Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year Rex will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to Rex and its affiliates, as to their review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Cars) of the operations of the Management Program, the mathematical correctness of the computations made by Rex in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by Rex to the obligations and duties of Rex under this Agreement. Such accountants shall also prepare the Federal information return on Form 1065 with respect to the operations of the Management Program if, pursuant to Section 4(b), Rex files such information return.

14. **Books and Records; Bank Account; Communications with Third Parties.**

(a) Rex shall maintain books and records reflecting solely transactions arising from the operations of the cars managed under the Management Program, including, without limitation, the receipt of items constituting Gross Revenues, the incurrence, accrual and payment of items constituting Operating Expenses, the distribution of Net Earnings, receipt of payments for operating deficits from owners of such cars, and the payment of fees to Rex pursuant to Section 6. Such books and records shall (i) reflect only the transactions arising from operations of the cars managed under the Management Program, (ii) be kept physically apart from any other books and records maintained by Rex for whatever purpose, and (iii) be available to Owner upon Owner's request for examination during the normal business hours of Rex. At the termination of the term of this Agreement Rex shall furnish (i) one copy of each annual report previously delivered to Owner pursuant to Section 13(b) and (ii) one copy of such other books and records which (x) relate to the Cars and (y) Rex maintains at the time of such termination in the normal course of its record keeping under this Section 14(a) to Owner within 30 days after Owner gives notice to Rex requesting such materials, which notice shall be given within 30 days after such termination. Upon the written request of Owner and payment by Owner of the reasonable expenses therefor, Rex shall provide Owner with the list of the names and addresses of each other owner of a car managed under the Management Program; provided that such other owner has consented in writing to Rex's providing such owner's name and address to Owner.

(b) Neither the receipt nor the disbursement (other than payments made by or on behalf of Owner or other owners of cars managed under the Management Program to Rex, as compensation or reimbursement of Rex's expenses hereunder, pursuant to the terms of this Agreement or the agreements with such other owners) of any amounts generated by the operation of the Cars and the other cars managed under the Management Program shall appear in the accounting records or financial statements of Rex or any of its affiliates, and any assets of Owner and the other owners of cars in the Management Program shall not be treated by Rex as assets of Rex or any of its affiliates or appear in the accounting records or financial statements of Rex or any of its affiliates. Mileage charges generated by the Cars and other cars managed under the Management Program shall be kept in a bank account which is in the name of, or for the benefit of, Owner and the other owners of cars managed under the Management Program.

(c) Rex shall cause to be maintained in the name of Owner and the owners of the other cars managed under the Management Program a bank and/or investment account (the "Management Program Account") into or through which Rex shall deposit or invest the funds received by it and generated by the operation of the Cars and the other cars

managed under the Management Program (and not any other cars managed by Rex otherwise than under the Management Program) pending disbursement of such funds in accordance with this Agreement and the agreements for the management of the other cars managed under the Management Program. Rex shall maintain the Management Program Account only at a bank and/or other institution(s) which either (i) do not have regular banking or investment relations with Rex or any of its subsidiaries or its parent or (ii) agree in writing that such account is not subject to a right of set-off or any other claim or lien arising from any relationship between such bank and/or other institution(s) and (x) Rex or any of its affiliates or (y) any owners of cars managed by Rex otherwise than under the Management Program. Rex shall have the authority to invest funds in the Management Program Account in direct obligations of the United States or of an instrumentality thereof which are backed by the full faith and credit of the United States; certificates of deposit of United States banks or trust companies with a combined capital and surplus of at least $400,000,000; and commercial paper rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Services, Inc. Pursuant to such authority and so long as Rex may lawfully do so, Rex shall invest funds in the Management Program Account, pending distribution pursuant to Section 7(a) and to the extent that cash in not required in the performance of Rex's duties hereunder and under agreements with owners of cars managed under the Management Program, in a manner that Rex, in its sole discretion judges will maximize the return on such funds.

(d) In dealing with third parties in connection with the Cars and the other cars managed under the Management Program, Rex shall designate itself as agent for Owner or owners of such other cars, as the case may be, in papers directed to such third persons, including, without limitation, letters, invoices and drafts drawn on the Management Program Account.

15. **Use of Cars.**

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

16. **Declaration of Trust and Covenant to Pursue Warranty Claims.**

As to each Car, if any, manufactured by MIL:

(a) Rex hereby grants in trust to, and declares that it will hold in trust as trustee for the benefit of, Owner to the fullest extent permitted under applicable law and the purchase agreement referred to below, any and all rights against MIL in respect of the Cars (including the contractual warranties provided in article 9 of such purchase agreement) arising under the Purchase Agreement dated as of November 1, 1979, between Rex and MIL, such trust and the obligations of Rex as trustee to survive the termination of this Agreement and until such rights, if any, shall have expired or are no longer being pursued. The rights of Owner as beneficiary of such trust shall inure to the benefit of Owner's heirs, successors and assigns.

(b) Rex agrees, as trustee under the trust created herein and in its personal capacity as holder of such contractual warranties, to pursue, for the account and at the expense of Owner, any claims arising under such warranties which Rex in its good faith judgment deems it desirable, prudent and in the best interests of Owner to pursue. Rex's covenant under this Section 16(b) will survive the termination of this Agreement and until such rights, if any, shall have expired or are no longer being pursued, and will inure to the benefit of Owner's heirs, successors and assigns.

(c) Rex shall not receive compensation for such services in its personal capacity or as trustee under the trust created herein.

17. **Other Covenants of Rex.**

Rex agrees that, during the term of this Agreement, it will (a) use its best efforts to maintain its net worth at an amount at least equal to $1,000,000, (b) not incur any indebtedness other than accounts payable arising in the ordinary course of its business, obligations owing to Rex-Noreco, Inc. and obligations incurred in connection with the purchase of

the cars offered for management under the Management Program and (c) limit its activities to those necessary or appropriate in connection with the performance by Rex of its obligations under this Agreement and similar agreements with the owners of other cars managed under the Management Program.

18. **Notices.**

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

If to Rex:	Rex Leasing, Inc. 616 Palisade Avenue Englewood Cliffs, New Jersey 07632 Attn: President
If to Owner:	To the address set forth on the signature page to this Agreement;

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

19. **Miscellaneous.**

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

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

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

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

(e) *Successors and Assigns.* The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto; provided, however, that, except as provided in Section 16, no assignment hereof by Owner or transfer of any of the Owner's rights hereunder whether by operation of law or otherwise shall be valid and effective as against Rex without the prior written consent of Rex. Rex hereby consents, subject to the provisions of Section 10 of this Agreement, to Owner's assignment to any lender party to Finance Documents referred to in Section 10 of Owner's rights, interests, powers and benefits under this Agreement as collateral security for the loan and the obligations of Owner under such Finance Documents.

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

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

(i) in the event that railroad cars similar to or competitive with the Cars, but (x) owned by any of Rex's affiliates or any officers or directors of Rex or any of its affiliates, and (y) not managed under the Management Program, are available for leasing at the same time the Cars are so available, subject to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, Rex shall, and Rex-Noreco shall and shall cause Rex's affiliates to, re-market the Cars before any of Rex's affiliates re-markets any such similar or competitive railroad cars; and

(ii) in the event that any affiliate of Rex manages for persons who are not participating in the Management Program railroad cars similar to or competitive with the Cars and not owned by any of Rex's affiliates or any officers or directors of Rex or any of its affiliates and the number of such railroad cars exceeds the demand therefor, subject

to the business needs of prospective lessees and all applicable regulations of the AAR, ICC and DOT, Rex shall, and Rex-Noreco shall and shall cause Rex's affiliates to, generally re-market first those railroad cars (including the Cars) which have been off lease and available for the longest period of time.

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

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

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

REX LEASING, INC.

By _____ 10-24-80
(Authorized Signature)

OWNER:

Name Nancy V. Evans
(Please Print)

By _____
(Signature)

This Agreement must be signed before a notary public by all parties hereto.

Owner must complete Schedule A hereto.

Title of signer if Owner is other than a natural person:

Signature of Joint Owner: _____

Address 8301 Appalachian Drive

Austin, TX 78759

Dated: October 8 1980

Undertaking by Rex-Noreco, Inc.

In consideration of the execution and delivery by Owner of this Agreement, Rex-Noreco, Inc., a New Jersey corporation and owner of all the outstanding capital stock of Rex, hereby agrees (i) not to permit Rex to declare any dividend or lend any money to Rex-Noreco, Inc., if the effect of such dividend or loan would be to reduce the net worth of Rex to an amount less than $1,000,000; (ii) not to permit Rex to engage in any activity other than (a) participating in the offering made by the prospectus of Rex Leasing Covered Hopper Railcar Management Program 1980 to which a form of this Agreement is attached as an exhibit and (b) serving as manager under the Management Program; and (iii) to observe, and to cause Rex and affiliates of Rex to observe, the provisions of Section 19(g) of this Agreement.

REX-NORECO, INC.

By _____ 10-24-80
(Authorized Signature)

For Owner who is an individual:

STATE OF MISSOURI
COUNTY OF St. Louis SS:

ON THIS 8 DAY OF Oct, 1980, BEFORE ME PERSONALLY APPEARED NANCY V. EVANS (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME KNOWN TO BE THE PERSON DESCRIBED IN AND WHO EXECUTED THE FOREGOING INSTRUMENT AND HE OR SHE ACKNOWLEDGED THAT HE OR SHE EXECUTED THE SAME AS HIS OR HER FREE ACT AND DEED.

[SEAL] JAMES W OSTERHAGEN NOTARY PUBLIC STATE OF MISSOURI ST LOUIS CO MY COMMISSION EXPIRES OCT. 16 1982 MISSOURI NOTARY ASSOC.

MY COMMISSION EXPIRES

J. W. Osterhagen
NOTARY PUBLIC

For Owner that is an entity:

STATE OF
COUNTY OF SS:

ON THIS _____ DAY OF _____, 1980, BEFORE ME PERSONALLY APPEARED _____ (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, SAYS THAT HE OR SHE IS THE _____ (TITLE OF OFFICE) OF _____ (NAME OF ENTITY), A _____ (TYPE OF ENTITY); THAT THE SEAL, IF ANY, AFFIXED TO THE FOREGOING INSTRUMENT IS THE SEAL OF SAID ENTITY, THAT SAID INSTRUMENT WAS SIGNED, SEALED (IF APPLICABLE) AND DULY AUTHORIZED ON BEHALF OF SAID ENTITY, AND HE OR SHE ACKNOWLEDGED THAT THE EXECUTION OF THE FOREGOING INSTRUMENT WAS THE FREE ACT AND DEED OF SAID ENTITY.

[SEAL]

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES

STATE OF New Jersey
COUNTY OF Bergen SS:

ON THIS 24th DAY OF October, 1980, BEFORE ME PERSONALLY APPEARED Mark A. Saltan (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, SAYS THAT HE IS THE President (TITLE OF OFFICE) OF REX LEASING, 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

[illegible] NOVAK
[illegible] NEW JERSEY
My Commission Expires June 16, 1985

STATE OF New Jersey
COUNTY OF Bergen SS:

ON THIS 24th DAY OF October, 1980, BEFORE ME PERSONALLY APPEARED Mark A. Saltan (NAME OF SIGNER OF FOREGOING INSTRUMENT), TO ME PERSONALLY KNOWN, WHO BEING BY ME DULY SWORN, SAYS THAT HE IS THE President (TITLE OF OFFICE) OF REX-NORECO, 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

[illegible] K. NOVAK
[illegible] NEW JERSEY
My Commission Expires June 16, 1985

SCHEDULE A TO THE MANAGEMENT AGREEMENT

Set forth below are the assumptions relating to tax issues that Rex intends to use in preparing reports to Owner under Section 13(c) of the Management Agreement. Unless Owner instructs Rex otherwise by indicating an exception to an assumption and recording an alternative assumption, Rex will prepare such reports based on the assumptions set forth below. These assumptions are based on the assumptions used in preparing the Analytic Model of Covered Hopper Railcar Ownership and Operations attached to the prospectus as Exhibit A. They are not intended to be and should not be regarded in any way as a recommendation as to which of many possible alternative choices is most suitable for any particular Owner, and no assurance can be given that the assumptions will not be challenged by the IRS upon examination.

Each Owner is urged to consult with his, her or its own tax advisors with respect to the tax consequences of Car ownership and participation in the Management Program.

ASSUMPTIONS:	Exception to Assumption
1. Owner is married.	
2. Owner will file a joint income tax return.	
3. The cost of each Car for Federal income tax purposes will be the sum of	
(a) The Actual Purchase Price of such Car calculated in accordance with Paragraph 1.06 of the Purchase Contract less commencement fee referred to in Paragraph 1.06(a)(ii) thereof;	
(b) Portion of commencement fee referred to in Paragraph 1.06(a)(ii) of the Purchase Contract paid to Rex that is attributed to the acquisition of cars (2.5% of the amount of item 3(a) above); and	
(c) Portion of commencement fee referred to in Paragraph 1.06(a)(ii) of the Purchase Contract paid to Rex that is paid to Merrill Lynch as a selling agent's fee (2.375% of the amount of item 3(a) above).	
4. Owner (if a married individual) will claim first-year "bonus depreciation" with respect to the cars in the amount of $4,000.00. Other Owners will claim no "bonus depreciation".	
5. Owner will initially utilize the 200% declining balance method in determining the depreciation allowance for each Car and will change to the sum-of-the-years' digits method when the latter method results in greater depreciation deduction than the former.	
6. The salvage value of each Car is 10% of cost which is reduced by 10% of cost pursuant to Section 167 (f) of the Code.	
7. The portion of the commencement fee paid to Rex which is paid to Merrill Lynch Leasing Inc. as a fee for its advisory services in structuring the Management Program (2.375% of the amount of item 3(a) above) is amortized over 15 years.	
8. Car owner will elect to use the Asset Depreciation Range "Class Life" (ADR) System for the determination of the depreciation allowance for the Cars and will elect to use the half-year convention, pursuant to which the depreciation allowance for the Cars for 1980 will be determined by treating the Cars as placed in service on July 1, 1980, the first day of the second half of the owner's taxable year.*	
9. Each Car has a depreciable life of twelve years.	
10. The portion of the commencement fee paid to Rex which is attributed to its lease negotiation services (1.25% of the amount of item 3(a) above) is amortized over the weighted average term of the Initial Leases.	

* Rex will advise Owner if the proposed amendment to the Treasury Regulations is adopted, which proposed amendment is discussed under "Depreciation and Other Deductions—Methods of Computing Depreciation" under "Tax Aspects of Car Ownership" in the prospectus and may affect Owner's decision as to assumption 8.

EXHIBIT A TO THE MANAGEMENT AGREEMENT

Cars subject to the Management Agreement:

Manufacturer	Number of Cars	Description of Cars	Reporting Marks and Serial Numbers
MTL	two	4650 cubic foot capacity, 100-ton truck, steel covered hopper cars	MILW 101940 MILW 101941

CAPITAL NATIONAL BANK

P.O. Box 550
Austin, Texas 78789
(512) 476-6611

November 6, 1981

This should certify that the Management Agreement between Nancy V. Evans and Rex Leasing, Inc. of New Jersey, dated October 8, 1980, is a true and certified copy of the original contract.

Sworn to and subscribed before me this 6th day of November, 1981.

SEAL

Kathy A. Beckham

Kathy A. Beckham, Notary Public
in and for Travis County, Tex.
Commission expires 6/22/85.

Capital National Bank