

WINNE, BANTA, RIZZI & HARRINGTON

COUNSELLORS AT LAW

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P. O. Box 647

HACKENSACK, NEW JERSEY 07602

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201-487-3800

WALTER G. WINNE
1889-1972

TELECOPIER
201-487-8529

RECORDATION NO. 10192 D
Filed 1425

RECORDATION NO. 10872
Filed 1425

OCT 10 1979 -11 35 PM

OCT 10 1979 -11 32 AM

INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION
October 9, 1979

9-283A057

Date OCT 10 1979
Fee \$ 60.00

CC Washington, D.C.

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

Dear Sir:

As the attorneys for the United Jersey Bank, we have enclosed herewith for filing and recordation pursuant to 49 U.S.C. 11303 the original and two (2) executed counterparts each of a Loan and Security Agreement and Lease Agreement Assignment dated September 10, 1979. Kindly record same, returning the original of each agreement to us at the above address with the appropriate notion of recording thereon.

The following represents the filing information required by 49 C.F.R. §1116.1 et. seq.

1) Description of parties as to the Loan and Security Agreement.

- Mortgagee: United Jersey Bank
210 Main Street
Hackensack, New Jersey 07602
- Mortgagor: Rex Railways, Inc.
616 Palisades Avenue
Englewood Cliffs, N.J. 07632
- Guarantor: Rex-Noreco, Inc.
616 Palisades Avenue
Englewood Cliffs, N.J. 07632

OCT 10 11:29 AM '79
FEE OPERATION B
I.C.C.
RECEIVED

Donna Kelly
Charles M. Kelly

2) Description of parties as to Lease Agreement Assignment.

Assignee: United Jersey Bank
210 Main Street
Hackensack, New Jersey 07602

Assignor: Rex Railways, Inc.
616 Palisades Avenue
Englewood Cliffs, N.J. 07632

Lessee: Robert W. Meserve and
Benjamin H. Lacy,
Trustees of the Property of
Boston and Maine Corporation
150 Causeway Street
Boston, Massachusetts 02114

3) Prior recording information as to the lease agreement being assigned by the Lease Agreement Assignment enclosed herewith:

Recordation No. 10192A

Filed: March 12, 1979, 3:40 P.M.

4) Description of the equipment covered by the enclosed agreements.

<u>No. of Cars</u>	<u>Description</u>	<u>Cars Numbered</u>
50	70-ton 50'6" Box Cars	BM 79050- 79099 Inclusive

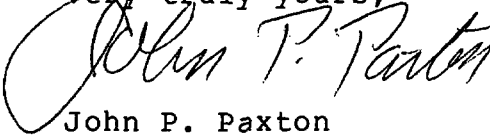
Finally, also enclosed is our check in the amount of \$60, representing the \$50 filing fee for the enclosed Loan and Security Agreement and the \$10 filing fee applicable to the Lease Agreement Assignment. Pursuant to 49 C.F.R. §1116.4(f), this letter has been signed by Hubert C. Mott, who is the Senior Vice President of United Jersey Bank and has knowledge of the matters set forth herein. Please return the original document transmitted

WINNE, BANTA, RIZZI & HARRINGTON

for filing herewith to: United Jersey Bank, c/o John P. Paxton,
Esq., 25 East Salem Street, P.O. Box 647, Hackensack, New Jersey
07602.

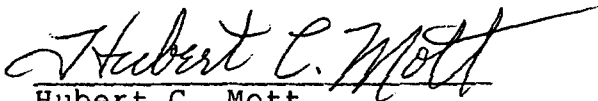
Thank you for your courtesy and cooperation in this
matter.

Very truly yours,



John P. Paxton

Executed and acknowledged
this 9th day of October,
1979



Hubert C. Mott,
Senior Vice President
of United Jersey Bank

Interstate Commerce Commission
Washington, D.C. 20423

10/10/79

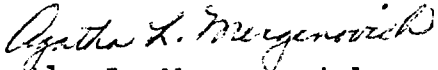
OFFICE OF THE SECRETARY

John P. Paxtpn
Winne, Banta, Rizzi & Harrington
25 East Salem Street
P.O. Box 647
Hackensack, N.J. 07602

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/10/79 at 11:30am, and assigned re-
recording number(s). 10872 & 10192-D

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. **10872** Filed 1425

LOAN AND SECURITY AGREEMENT

OCT 10 1979 - 11 32 AM

INTERSTATE COMMERCE COMMISSION

DATED AS OF *September 10*, 1979

BETWEEN

UNITED JERSEY BANK

AND

REX RAILWAYS, INC.,

(COVERING LOAN SECURED BY, AMONG OTHER COLLATERAL,
50 GENERAL PURPOSE BOX CARS)

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

LOAN AND SECURITY AGREEMENT

This AGREEMENT dated as of *September 10*, 1979, between UNITED JERSEY BANK, a New Jersey banking corporation having its principal place of business at 210 Main Street, Hackensack, New Jersey (the "Bank"), and REX RAILWAYS, INC., a New Jersey Corporation (the "Company").

WHEREAS, by Bill of Sale dated March 16, 1979, PULLMAN STANDARD DIVISION of PULLMAN INCORPORATED (hereinafter the "Builder") sold to MC DONNELL DOUGLAS FINANCE CORPORATION (hereinafter "McDonnell") the following units of railroad equipment (said equipment being hereinafter called collectively the "Equipment" or "Units" and individually a "Unit") manufactured by the Builder:

<u>No. of Cars</u>	<u>Description</u>	<u>Cars Numbered</u>
50	70-Ton 50'6" Box Cars	BM 79050-79099 Inclusive

WHEREAS, by Bill of Sale, McDonnell will sell to the Company all its right, title and interest in and to the Equipment; and

WHEREAS, the Company, as lessor, entered into a lease agreement (hereinafter the "Lease Agreement") dated as of November 30, 1978 with Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, a Delaware corporation, as lessee (hereinafter the "Lessee"), which Lease Agreement was approved by the court having jurisdiction over the Lessee's reorganization, and a copy of which Lease Agreement is attached hereto as Exhibit A; and

WHEREAS, the Company, as security for the loan which is the subject of this Agreement, is willing (1) to assign to the

Bank, pursuant to a Lease Agreement Assignment, dated as of the date hereof (hereinafter the "Lease Agreement Assignment"), substantially in the form of Exhibit B to this Agreement, all of the right, title and interest of the Company under the Lease Agreement, and (2) to grant to the Bank, pursuant to this Agreement, a security interest in the Equipment; and

WHEREAS, Rex-Noreco, Inc., a New Jersey corporation (hereinafter the "Guarantor") is willing to execute and deliver to the Bank a Guaranty (hereinafter the "Guaranty"), substantially in the form of Exhibit C hereto, guaranteeing the obligations of the Company under this Agreement and the Note hereinafter described;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1 - LOAN AGREEMENT

(a) Amount of Loan. The Bank agrees to lend to the Company the sum of \$1,477,111.26 (the "Loan") on or before October 12, 1979 (the "Closing Date").

(b) Note and Interest Rate.

(1) The Loan shall be evidenced by a promissory note of the Company, which shall be substantially in the form of Exhibit D attached hereto (the "Note"). The Note shall be payable to the order of the Bank in the principal amount of \$1,477,111.26 and shall be payable as follows:

(i) \$8,206.17 plus interest at the rate of 11 3/4% per annum on the unpaid balance on

October 15, 1979 and on the 15th of each month thereafter until August 15, 1984;

(ii) \$8,206.17 (plus interest at a rate equal to one and one half (1 1/2%) percent per annum plus the prime rate of the Bank in effect from time to time on the unpaid principal balance) on September 15, 1984 and on the 15th day of each month thereafter until February 15, 1989; and

(iii) The balance of principal in the amount of \$549,814.05 (hereinafter the "Balloon Payment") (plus interest accruing from February 16, 1989 at a rate equal to one and one half (1 1/2%) percent per annum plus the prime rate of the Bank in effect at the time on the unpaid principal balance) on March 15, 1989.

(2) The rate of interest on the Note shall be adjusted, for purposes of subsections (1) (ii) and (1) (iii) above, as of the first business day of each month and be based on the prime rate of the Bank in effect as of that date. The prime rate of the Bank is defined as the rate of interest charged the Bank's best corporate customers for short term loans, which rate is published from time to time by the Bank.

(3) If any payment date is not a business day, payment shall be made on the first such day thereafter.

(4) Interest under this Agreement and the Note shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

(c) Prepayment.

(1) The Company shall have the right to prepay the Note in whole only at any time with a prepayment penalty in the

amount of one (1%) percent of the then outstanding principal balance, provided, however, the Company shall give the Bank written notice of such prepayment not less than 30 days prior to the date of such prepayment. On the date fixed for prepayment in the aforesaid notice, the Company shall pay to the Bank an amount equal to the then outstanding principal balance to be prepaid, together with interest accrued thereon (at the rate of interest then in effect) to the date of such prepayment, and together with the prepayment penalty.

(2) Upon any prepayment of the Note pursuant to this Article 1 hereof, the Bank will promptly execute and deliver to the Company such instruments as shall be necessary to release the security interest in the Equipment granted to the Bank under Article 2 of this Agreement and as shall be necessary to release all other collateral granted to the Bank as security for the Loan.

(d) Payments.

(1) All payments and prepayment provided for in this Agreement or the Note shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall, except to the extent that the Bank is able to debit the Cash Collateral Account maintained by the Company at the Bank under, and defined in, Article 7 of this Agreement, for the purpose of making payments under this Agreement, be payable in immediately available funds.

ARTICLE 2 - SECURITY AGREEMENT

(a) The Company hereby grants to the Bank, as of the Closing Date, a continuing security interest in the Equipment and all monies at any time held in the Cash Collateral Account maintained under, and defined in, Article 7 of this Agreement.

(b) All proceeds of the Equipment are subject to the security interest herein created.

(c) The security interest herein created is given to secure the performance of the Company of each and every term, condition and covenant contained in this Agreement, the prompt payment of the Note, and the payment by the Company of all of the sums due or which may become due, including future advances, pursuant to the Note, together with any extensions, renewals or modifications thereof.

(d) The Company warrants to the Bank that, except for the security interest granted hereby, the Company is and will be, as of the Closing Date, the owner of the Equipment free from any lien or security interest.

(e) Upon the occurrence of any event of default or an event which, with the giving of notice or lapse of time, or both, constitutes an event of default hereunder, the Bank shall have the rights of a secured party pursuant to the Uniform Commercial Code of the State of New Jersey. All remedies of the Bank, whether contained herein or granted by law, shall be cumulative.

ARTICLE 3 - WARRANTIES AND REPRESENTATIONS

The Company warrants and represents to the Bank as follows:

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of New Jersey, has the corporate power and authority to own its properties and to carry on its business as presently conducted and to execute, deliver and perform this Agreement, the Note, the Lease Agreement and the Lease Agreement Assignment, and has taken all necessary corporate action to authorize the execution, delivery and performance hereof and thereof. This Agreement and the Lease Agreement have each been duly executed by the Company and delivered and constitute, and the Note and the Lease Agreement Assignment, when executed and delivered by the Company pursuant to the provisions of this Agreement, will constitute, legal, valid and binding obligations of the Company enforceable in accordance with their respective terms.

(b) No consent of any party and no consent, license, approval or authorization of, or registration or declaration with, any governmental body (except for the consent of the court having jurisdiction over the Lessee's reorganization herein referred to and the filings of instruments as described in the opinions referred to in Article 4 hereof) is presently required in connection with the execution, delivery, performance, validity or enforceability of this Agreement, the Note, the Lease Agreement or the Lease Agreement Assignment.

(c) The execution, delivery and performance of this Agreement, the Note, the Lease Agreement and the Lease Agreement Assignment will not violate any provision of any applicable law or regulation or of any order, judgment or decree of any court, tribunal or governmental instrumentality or of the Certificate of Incorporation or By-Laws of the Company, or of any indenture, contract, agreement or other undertaking to which the Company is a party or which purports to be binding upon it or upon any of its assets, and will not result in the creation or imposition of any lien on any of the assets of the Company except as contemplated by this Agreement.

(d) There is no action, suit, investigation or proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company or any of its assets which, if adversely determined, would have a material adverse effect upon the Equipment or upon the financial condition, business or operations of the Company.

(e) The financial statements of the Guarantor as at July 31, 1978, audited by Coopers & Lybrand, copies of which have been delivered to the Bank, fairly present the consolidated financial position and results of operations of the Guarantor as at and for the period ended said date, in accordance with generally accepted accounting principles. There has been no material adverse change in the financial condition, business or operations of the Company or the Guarantor since the date of such financial statements.

(f) The Company is not in default under the Lease Agreement; to the best of the Company's knowledge, the Lessee is not in default under the Lease Agreement; and no default or Event of Default exists under this Agreement.

(g) The Company warrants that the design, quality and component parts of each Unit of the Equipment conform to all Department of Transportation and Interstate Commerce Commission (hereinafter called the "ICC") requirements and specifications and to all standards recommended by the Association of American Railroads (hereinafter called the "AAR") reasonably interpreted as being applicable to railroad equipment of the same type as each such Unit.

(h) The Company has delivered to the Bank evidence of the fact that it has executed and delivered, with respect to each Unit of the Equipment, to the Builder and McDonnell a certificate of inspection and acceptance (hereinafter called a "Certificate of Acceptance") stating that each such Unit was delivered, inspected and accepted on behalf of the Company on the date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and are marked in accordance with Article 9 hereof.

(i) Full Disclosure. To the knowledge of the Company, neither any financial statements furnished to the Bank, nor this Agreement, nor any written statement furnished by the Company to the Bank in connection with the negotiation of the Loan, contain any untrue statement of a material fact or omit a material fact

necessary to make the statements contained therein or herein not misleading. There is no fact which the Company has not disclosed to the Bank in writing which materially affects adversely or, so far as the Company can now foresee, will or could prove to materially adversely affect, the properties, business, prospects, profits or conditions (financial or otherwise) of the Company or the ability of the Company to perform this Agreement.

(j) Erisa. The Company has no "employee pension benefit plans" (as such term is defined in Section 3 of ERISA) which are "underfunded" to the best of the Company's knowledge.

ARTICLE 4 - CONDITIONS OF CLOSING

(a) The obligation of the Bank to make the Loan is subject to the satisfaction on or prior to the date of the Loan of the following conditions precedent:

(1) This Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment and the Lessee's consent and agreement attached to the Lease Agreement Assignment (the "Lessee's Consent") shall have been duly executed and delivered by the respective parties thereto, shall be in full force and effect, and the Bank shall have received an executed counterpart of each thereof, and this Agreement, the Lease Agreement and the Lease Agreement Assignment shall have been duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303.

(2) The Note evidencing the Loan shall have been appropriately completed, and duly executed and delivered by the Company to the Bank pursuant to Article 1 hereof.

(3) McDonnell shall have duly executed and delivered to the Company a bill of sale transferring to the Company all its right, title and interest in and to the Equipment, warranting to the Company, its successors and assigns that (i) at the time of delivery of such bill of sale McDonnell had a security title to, and a security interest in, the Equipment and good and lawful right to transfer all its right, title and interest in and to the Equipment, and (ii) McDonnell's security title to, and security interest in, the Equipment was free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under McDonnell.

(4) A Certificate or Certificates of Acceptance with respect to the Equipment as contemplated by Article 3(h) hereof shall have been duly executed and delivered by or on behalf of the Company to the Builder and a Certificate or Certificates of Acceptance with respect to the Equipment as contemplated by Section 3 of the Lease Agreement shall have been duly executed and delivered by or on behalf of the Lessee to the Company, and the Bank shall have received copies of executed counterparts thereof.

(5) The Bank shall have received evidence satisfactory to it and its counsel that the insurance relating to the Units of Equipment required to be maintained under Article 6 hereof is in effect.

(6) The Bank shall have received the following opinions of counsel, each dated the Closing Date, and addressed and in form and substance satisfactory to the Bank:

a. An opinion of counsel to the Company stating (i) that the Company is a corporation organized and existing under the laws of the State of New Jersey and has the corporate power and authority to own its properties and carry on its business as presently conducted and to execute, deliver and perform this Agreement, the Note, the Lease Agreement and the Lease Agreement Assignment, (ii) that this Agreement, said Lease Agreement Assignment have each been duly authorized, executed and delivered, and constitute legal and valid instruments binding upon the Company and enforceable against the Company in accordance with their respective terms, (iii) that no consent or approval from any governmental body of the United States of America or of any state is, to the best of such counsel's knowledge, necessary for the valid execution, delivery and performance by the Company of this Agreement, said Note, the Lease Agreement or the Lease Agreement Assignment, or if any such consent or approval is necessary, it has been obtained, specifying the same, (iv) that the execution, delivery and performance of this Agreement, said Note, the Lease Agreement and the Lease Agreement Assignment will not violate any provision of the Certificate of Incorporation or By-Laws of the Company, or, to the best of such counsel's knowledge, any applicable order, judgment or decree of any court, tribunal or governmental instrumentality or of any indenture, contract, agreement or other undertaking known to such counsel to which the Company is a party or which purports to be binding upon it or upon any of its assets, or result in any lien, encumbrance, security interest or charge upon any assets of the Company except as contemplated hereby, (v) that this Agreement and Lease Agreement Assignment create a perfected first lien on, and security interest in, the Equipment and the Company's interest as lessor under the Lease Agreement free of all claims, liens, security interests and other encumbrances except only the rights of the Lessee under the Lease Agreement, and (vi) such other matters as the Bank shall reasonably request.

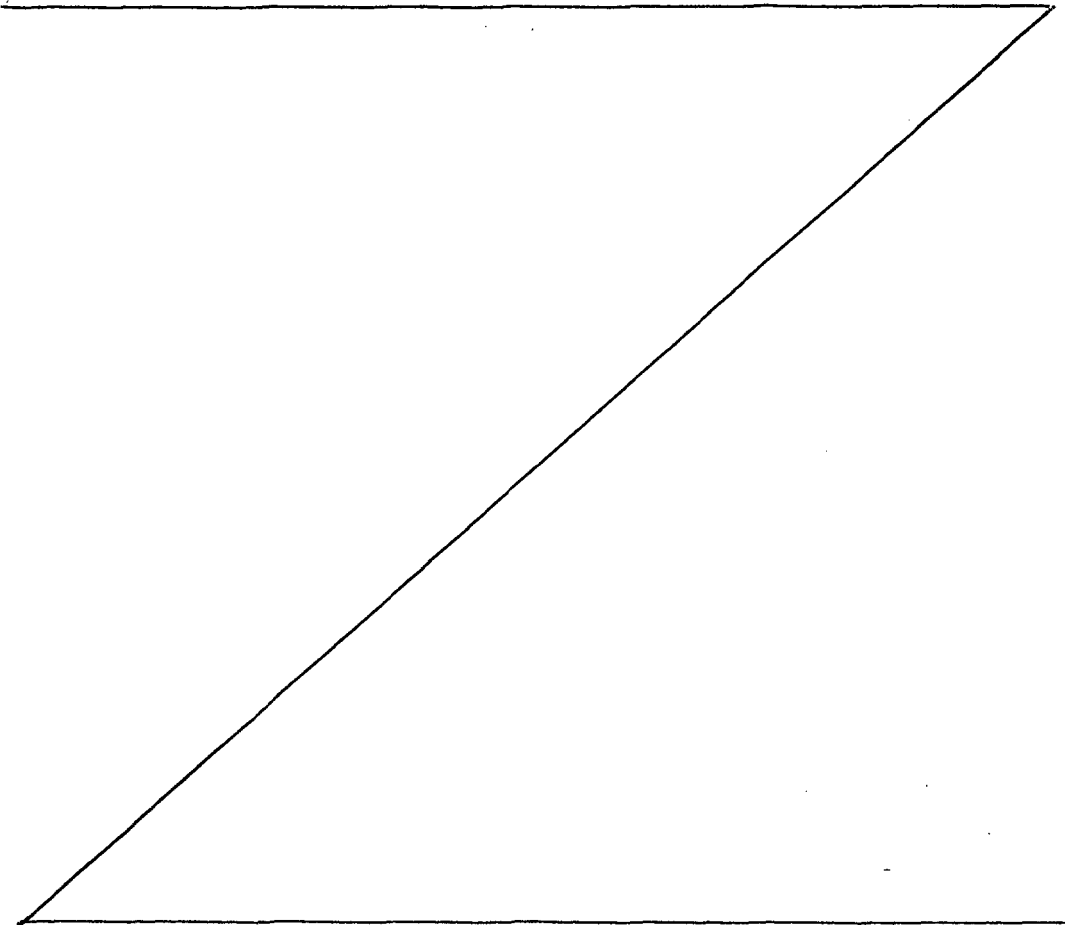
b. An opinion of counsel for the Lessee to the effect that (i) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into the Lease Agreement and carry out its obligations thereunder, (ii) the Lease Agreement has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms, (iii) the Equipment which is subject to the Lease Agreement is held by Lessee under and subject to the provisions of the Lease Agreement prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee, and (iv) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with the Lease Agreement or any action contemplated on its part hereunder, other than an order of the U.S. District Court for the District of Massachusetts approving the entry of the Lessee into the Lease Agreement.

c. An opinion of counsel for the Guarantor stating (i) that the Guarantor is a corporation organized and existing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its properties and carry on its business as presently conducted, and to enter into and perform its obligations under the Guaranty, (ii) that the Guaranty has been duly authorized, executed, and delivered by the Guarantor, and constitutes a legal and valid instrument binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, (iii) that the execution, delivery and performance of the Guaranty will not violate any provision of the Certificate of Incorporation or By-laws of the Guarantor, or, to the best of such counsel's knowledge, any applicable order, judgment or decree of any court, tribunal or governmental instrumentality or of any indenture, contract, agreement or other undertaking known to such counsel to which the Guarantor is a party or which purports to be binding upon it or upon any of its assets, or result in any lien, encumbrance, security interest or charge upon any assets of the Guarantor, and (iv) such other matters as the Bank shall reasonably request.

d. An opinion of counsel for McDonnell stating that the bill of sale referred to in Article 4 (a)(3) has been duly authorized, executed and delivered by or on behalf of McDonnell and is valid and enforceable to transfer all right, title and interest of McDonnell in and to the Equipment to the Company, free of all recorded claims, liens and encumbrances of any nature arising from, through or under McDonnell.

In giving any opinion specified in this Article 4 (6), counsel may qualify its opinion to the effect that the enforceability of any agreement or instrument is subject to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' or lessors' rights generally or by the availability of equitable remedies.

(7) No default or event of default or any event or con-



dition which with notice or lapse of time or both would constitute a default or event of default shall have occurred and be continuing under this Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment or the Lessee's Consent, and the Bank shall have received certificates to such effect dated as of the date of the making of the Loan, from the respective parties to the foregoing instruments.

(8) All of the representations and warranties contained in this Agreement, the Guaranty, the Lease Agreement, the Lease Agreement Assignment and the Lessee's Consent shall be true and correct on and as of the date of the making of the Loan, and the Bank shall have received certificates to such effect, dated the date of the making of the Loan, from the respective parties to the foregoing instruments.

(9) The Court approvals required pursuant to Paragraph 3 of Rider 1 of the Lease Agreement shall have been duly issued, shall be in full force and effect on the date of the making of the Loan, and the Bank shall have received copies or other evidence satisfactory to it of such approvals.

ARTICLE 5 - TITLE TO THE EQUIPMENT

The Bank shall and hereby will, as of the Closing Date, retain a security interest in the Equipment until the Company shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee as provided in the Lease. Except to the extent otherwise

provided in the Lease Agreement, any and all parts, mechanisms, devices, replacements, substitutions and additions installed on, or made for or to, any Unit from time to time, which are not readily removable without causing material damage to such Unit or without diminishing or impairing the utility or condition of such Unit, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement.

ARTICLE 6 - MAINTENANCE, CASUALTY OCCURRENCES, INSURANCE

The Company agrees that it will, at all times and at its own expense, maintain and keep the Equipment, or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards, and that it will cause to be furnished by the Lessee or otherwise all parts, services and other items required in the operation and maintenance of the Equipment, free of all liens, claims, security interests and encumbrances.

If any Unit shall become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned by condemnation or otherwise, or there shall occur an event of the type specified in section 16 of the Lease Agreement (such occurrences being herein called "Casualty Occurrences" and such Unit as so affected being herein called a "Damaged Unit"), the Company

shall, promptly after it shall have learned that such Unit has suffered a Casualty Occurrence, (a) cause the Bank to be fully notified in regard thereto (including without limitation, a full description of the Casualty Occurrence) and (b) specify to the Bank whether the Company shall (i) pay to the Bank, within forty-five (45) days after such notice to the Bank, a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit determined as of the date of such payment, or (ii) replace the Damaged Unit with a unit of the same type and having a value and utility at least equal to that of the Damaged Unit immediately prior to the Casualty Occurrence. If the Company has elected to, and does, make a payment to the Bank of Casualty Value within the forty-five (45) day period in question, then concurrently with each payment of Casualty Value pursuant to this Article 6, the Company shall file, or cause to be filed, with the Bank a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. Any money paid to the Bank pursuant to this paragraph shall be applied as a prepayment without penalty or premium of principal. Payments of principal in the amount of \$8,206.17 per month shall continue to be made thereafter, provided, however, that the Bank will promptly furnish to the Company a revised Balloon Payment of principal, in such number of counterparts as the Company may request. If the Company elects to, and does, replace such Damaged Unit within the forty-five (45)

day period in question, then the Company shall, within such forty-five (45) day period, take such steps satisfactory to counsel for the Bank as are necessary to subject the replacement Unit (the "Replacement Unit") to the security interest granted under this Agreement and to subject such Replacement Unit to the Lease Agreement and Lease Agreement Assignment and shall deliver to the Bank evidence of the foregoing.

Upon payment by the Company to the Bank of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, the Bank's security interest in such Unit of the Equipment shall terminate, and the Bank will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such termination.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence shall be deemed to be such portion of the unpaid principal balance of the loan as is determined by multiplying the unpaid principal balance of the loan by a factor, the numerator of which is one and the denominator of which is the number of Units (including the Unit of the Equipment suffering a Casualty Occurrence) which are at the time the subject of the security interest granted under this Agreement.

Any condemnation payments or insurance proceeds received in respect of Units suffering a Casualty Occurrence prior to the Casualty Value payment date shall be paid to the Bank and shall be deducted from the amounts payable by the Company to the Bank in respect of such Casualty Occurrence pursuant to the second paragraph

of this Article. If the Bank shall receive any condemnation payments or insurance proceeds in respect of such Units suffering Casualty Occurrence after the Company shall have made payments pursuant to this Article without deduction for such condemnation payments or insurance proceeds, the Bank shall pay such condemnation payments or insurance proceeds to the Company provided that no Event of Default or event which with notice or lapse of time would constitute an Event of Default shall have occurred and be continuing hereunder. All insurance proceeds received by the Bank in respect of any Unit or Units not suffering a Casualty Occurrence shall be paid to the Company upon proof satisfactory to the Bank that any damages to such Unit in respect of which such proceeds were paid have been fully repaired, or shall be disbursed upon written request of the Company to any third party in payment for such repairs.

The Company shall cause to be procured, maintained and paid for, by itself or its designee, with insurers acceptable to the Bank, insurance in an amount at all times at least equal to the Casualty Value of the Units then subject to this Agreement (subject to a deductible of \$500 per Unit), insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee.

The Company shall, to the extent not provided by the Lessee, further maintain or cause to be maintained with reputable insurers acceptable to the Bank public liability and property damage insurance with respect to the Equipment in amounts not less than \$10,000,000.00. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Bank and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

The Company warrants that the foregoing insurance coverage shall be in effect as of the Closing Date. Such insurance shall (i) name the Bank and any successor holder of a security interest in the Units as insureds or additional insureds in addition to the Company and the Lessee with losses to be payable to the Bank or any successor holder of a security interest, (ii) provide that the policies will not be invalidated as against the Bank or any successor holder of a security interest in the Units because of any violation of a condition or warranty of the policy or application thereof by the Company or Lessee and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Bank or any successor holder of a security interest in the Equipment.

The Company shall deliver to the Bank promptly after the execution and delivery of this Agreement original or duplicate policies, or certificates of insurers satisfactory to the Bank,

evidencing all the insurance which is then required to be maintained pursuant to the terms of the Agreement, and shall, within 30 days prior to the expiration of any such insurance, deliver other original or duplicate policies or satisfactory certificates of the insurers evidencing the renewal of such insurance.

ARTICLE 7 - APPLICATION OF PAYMENTS

(a) The Bank is entitled to receive payments made by the Lessee under the Lease Agreement and the Lease Agreement Assignment, or by any other person in respect of the Equipment under this Agreement, on account of the principal of and interest on the Loan and the Bank hereby agrees to the making of such payments by the Lessee or any other person (other than payments made by the Company to the Bank under Article 6 hereof with respect to Casualty Occurrence payments) directly to the Bank which will credit an account to be maintained by the Company at the offices of the Bank located at 750 Palisade Avenue, Englewood Cliffs, New Jersey, and entitled "Rex Railways, Inc. - Cash Collateral Account" (the "Cash Collateral Account"). The Company agrees that the Bank shall, in order to cause itself to be paid all sums due it on account of the principal of and interest on the Loan, debit the Cash Collateral Account in the following order of priority at the times set forth below:

(1) If no Event of Default has occurred and is continuing under this Agreement, then, on the next date for an installment payment of principal of and interest on the Note, the

Bank shall debit the Cash Collateral Account:

(A) First, for the payment of accrued interest then due and payable to the Bank pursuant to the Note;

(B) Second, for the payment of the principal installment then due and payable to the Bank pursuant to the Note; and

(C) Provided that no event which with notice or lapse of time would constitute an Event of Default has occurred and is continuing, then the balance, if any, then remaining in the Cash Collateral Account shall be paid to the Company.

(2) If an Event of Default has occurred and is continuing under this Agreement and except to the extent otherwise provided in Article 15 or 16 hereof, all monies deposited into the Cash Collateral Account or held by or coming into the possession of the Bank hereunder or under the Lease Agreement Assignment including, without limitation, payments in respect of Casualty Occurrences, and the net proceeds of any repossession and sale or lease of any Unit (after deduction of all expenses, including reasonable counsel fees, incurred by the Bank in connection with such repossession and sale or lease or otherwise hereunder in connection with this Agreement, the Lease Agreement and the Lease Agreement Assignment which shall not theretofore have been reimbursed to the Bank) immediately shall be applied by the Bank to satisfy the outstanding principal balance of the Note and interest accrued thereon. Upon payment in full of the Loan, together with interest accrued thereon and any and all other amounts due the Bank under this Agreement and

the Note, the Bank shall distribute the balance of any monies which are then in the Cash Collateral Account or which are then otherwise in its possession hereunder or which may thereafter come into its possession as set forth in Clause (1)(C) of this paragraph (a) as if no Event of Default were then in existence.

(b) When the Note shall have been paid, performed and discharged in full, the Bank shall pay or cause to be paid to the Company all amounts then on deposit in the Cash Collateral Account and shall notify the Lessee to make all further payments under the Lease Agreement directly to the Company or as the Company shall direct.

(c) Nothing contained in this Article or elsewhere in this Agreement is intended or shall impair, diminish or alter the obligation of the Company to pay to the Bank all principal under and interest on the Note and all amounts payable under the Agreement as and when the same shall become due and payable in accordance with the respective terms.

(d) All payments to be made by the Bank hereunder shall (subject to timely receipt by the Bank of available funds) be made to an account specified by the Company in immediately available funds by wire transfer on the date such payment is due.

(e) Any monies from time to time received by the Bank and held by the Bank pursuant to Article 7(a)(1)(C) during the occurrence and continuance of an event which with notice or lapse of time would constitute an Event of Default shall be held by the Bank as security for the performance

and observance of all the Company's obligations and indebtedness hereunder.

ARTICLE 8 - REPORTS OF INSPECTIONS

Upon written request of the Bank, but not more than once in any twelve month period, and upon not less than 120 days notice, the Company shall cause to be furnished to the Bank an accurate statement: (a) setting forth, as of the preceding December 31, the amount, description and numbers of all Units then subject to this Agreement; and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Bank shall have the right, by its agents, to inspect the Equipment and the records with respect thereto of the Company and any assignee of the Company at such reasonable times as the Bank may request during the term of this Agreement and the Company shall use its best efforts to cause any authorized lessee of the Equipment to comply with such request.

The Company shall also furnish, or cause to be furnished, to the Bank financial statements of the Guarantor, prepared in accordance with generally accepted accounting principles consistently applied by the Guarantor as follows:

(i) within 120 days after the end of each fiscal year, consolidated statements of income and retained earnings and changes in financial position of the Guarantor and its consolidated subsidiaries for such year and consolidated balance sheets of the Guarantor and its consolidated subsidiaries as at the end of such year, setting forth in comparative form the corresponding figures of the previous annual audit,

all in reasonable detail and audited by independent public accountants together with the audit report of such accountants for such fiscal year;

(ii) within 45 days after the end of each of the first three quarterly periods in each fiscal year, a consolidated statement of income and retained earnings of the Guarantor and its consolidated subsidiaries for the period from the beginning of the then current fiscal year to the end of such quarterly period and a consolidated balance sheet of the Guarantor and its consolidated subsidiaries as at the end of such quarterly period, all in reasonable detail and certified by the chief financial officer of the Guarantor, subject, however, to audit and year-end adjustments; and

(iii) such other financial information as the Bank may from time to time reasonably request.

The Company shall prepare and file, prior to the required date of filing, all reports, if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Company with any federal, state or other regulatory agency by reason of the ownership by the Company of title to the Equipment or the provisions hereof.

ARTICLE 9 - MARKING OF EQUIPMENT

The Company will cause each Unit of the Equipment to be kept numbered with the identifying number of the Lessee set forth in Annex A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "TITLE TO THIS CAR SUBJECT TO DOCUMENTS RECORDED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate words designated by the

Bank, with appropriate changes thereof and conditions thereto as from time to time may be required by law in order to protect the Bank's interest in the Equipment and its rights under this Agreement. The Company has not permitted and will not permit any such Unit to remain in operation, or exercise any control or dominion over the same, unless such numbers and markings are contained thereon, and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Company has not permitted and will not permit the identifying number of any Unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Bank and filed, recorded and deposited by or on behalf of the Company in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Company has not allowed and will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership or lien, encumbrance or security interest; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Company and/or the Lessee or their respective affiliates.

ARTICLE 10 - COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, the Company will

comply, and will use its best efforts to cause the Lessee and every user of the Equipment to comply in all material respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules, regulations and requirements of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws, rules, regulations and requirements affect the title, operation or use of the Equipment, and if such laws, rules, regulations and requirements require alteration, replacement or addition of or to any part on any Unit of the Equipment, the Company will conform therewith at its own expense; provided, however, that the Company shall be under no obligation to take such action in compliance with this Article 10 so long as it is, in good faith, contesting by appropriate legal proceedings the validity or application of any such law, rule, regulation or requirement and such noncompliance does not, in the opinion of the Bank, adversely affect the rights of the Bank in or to the Equipment or otherwise under this Agreement, or involve any danger of the sale, forfeiture or loss of any of the Equipment.

ARTICLE 11 - POSSESSION AND USE

The Company, so long as an Event of Default (as herein-

after defined) shall not have occurred and be continuing under this Agreement, shall be entitled to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may contract with the Lessee for the maintenance and use of the Equipment as provided in the Lease Agreement. The Company hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease Agreement without the prior written consent of the Bank, which consent shall not be unreasonably withheld, and hereby further agrees to furnish to the Bank copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease Agreement shall not be amended, modified or terminated by the Company without the prior written consent of the Bank, which consent shall not be unreasonably withheld.

So long as an Event of Default shall not have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this Agreement, be used (i) upon the lines of railroad owned or operated by the Lessee or its affiliates (or any other railroad company approved by the Bank) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to run-through agreements; provided, however, that the Company shall not assign or permit the assign-

ment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America; and provided, further, that at no time shall the Company knowingly permit more than ten percent (10%) of the Units to be outside the United States of America.

ARTICLE 12 - PROHIBITION AGAINST LIENS

The Company will pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment, or any Unit thereof, and will promptly discharge any such lien, charge or security interest which arises, provided, however, that the Company shall not be required to pay or discharge any such claim, lien, charge, or security interest so long as the validity thereof is being contested in good faith and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the rights of the Bank in or to the Equipment or otherwise under this Agreement or involve any danger of the sale, forfeiture or loss of any of the Equipment. Any amounts paid by the Bank in discharge of claims, liens, charges or security interests upon the Equipemnt shall be secured by and under this Agreement, and shall bear interest at the rate of fifteen (15%) percent per annum (or such lesser rate as shall be legally valid and enforceable) from the date of payment by the Bank to and including the date of reimbursement by the Company.

This covenant will not be deemed breached by reason of

liens for taxes, assessments, or governmental charges or levies, in each case not due and delinquent, or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and the payment of which, in each case, is not delinquent.

ARTICLE 13 - INDEMNITIES AND WARRANTIES

The Company agrees to indemnify, protect and hold harmless the Bank from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof (including strict liability in tort), and expenses in connection therewith, including but not limited to counsel fees and expenses incurred in connection with or as a result of the entering into or the performance of this Agreement, the Lease Agreement, the Lease Agreement Assignment or related documents, the retention by the Bank of a security interest in the Equipment, the ownership, lease, ordering, acquisition, use, operation, maintenance, condition, purchase, sale, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person, except, however, any losses, damages, injuries, liabilities, claims and demands caused by the willful misconduct or gross negligence of the Bank and except as limited by Article 19 hereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Loan and all interest thereon or the termination of this Agreement in any

manner whatsoever.

The Company will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit of or all the Equipment, except as to such damage, destruction or loss as is caused by the wilful misconduct or gross negligence of the Bank.

ARTICLE 14 - ASSIGNMENTS

The Company will not (a) except as provided in Article 11 hereof, transfer the right to possession of any Unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Bank. The Company shall at all times maintain its corporate existence, and it shall not consolidate with or merge into any other corporation (provided that the Company may merge into or consolidate with the Guarantor or any wholly owned subsidiary of the Guarantor) or convey, transfer or lease substantially all of its assets as an entirety or either of them to any other person (which means any individual, corporation, partnership, joint venture, association, trust, unincorporated organization or government or agency thereof) unless the corporation formed by such consolidation or merger or the person which acquires substantially all the assets of the Company shall be a corporation organized and existing under the laws of the United States or any state or the District of Columbia, and shall execute and deliver to the Bank an agreement in form satisfactory to the Bank containing an assumption of such

successor corporation or person of the due and punctual performance of the covenants and conditions of this Agreement; provided, further, immediately after giving effect to such transaction, no Event of Default and no event, which after notice or lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

All or any of the rights, benefits and advantages of the Bank under this Agreement, including the right to receive the payments herein provided to be made by the Company may be assigned by the Bank and reassigned by any assignee at any time or from time to time. Upon any such assignment, either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 15 - DEFAULTS

If any one or more of the following events of default ("Event of Default") shall occur and be continuing:

(a) if the Company shall fail to pay in full any portion of the Loan or any other sum payable by the Company as

provided in this Agreement or the Note within 5 days after receipt from the Bank of written notice that such payment is overdue hereunder; or

(b) if any representation or warranty made by the Company herein or by the Company or the Guarantor in any instrument or certificate delivered in connection with this Agreement shall prove to be untrue or incorrect in any material respect as of the date made or deemed made; or

(c) if the Company shall fail to observe or perform any covenant contained in the last three paragraphs of Article 6, Article 10, Article 12, or Article 14; or

(d) if the Company or the Guarantor shall, for more than 30 days after the Bank shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Lease Agreement, the Lease Agreement Assignment, the Note or the Guaranty, on its part to be kept and performed or to make provision satisfactory to the Bank for such compliance; or

(e) if by the order of a court of competent jurisdiction, a receiver or liquidator or trustee of the Company or the Guarantor shall be appointed and shall not have been discharged within a period of 60 days, or if, by decree of such a court, the Company or the Guarantor shall be adjudicated a bankrupt or any substantial part of its property shall be sequestered and such decree shall continue undischarged and unstayed for a period of 60 days after the entry thereof, or a petition to reorganize the Company or the Guarantor pursuant to any provision of the Federal

Bankruptcy Act, or pursuant to any other similar statute applicable to the Company or the Guarantor as now or hereafter in effect, shall be filed against the Company and shall not be dismissed within 90 days; or

(f) if the Company or the Guarantor shall file a voluntary petition in bankruptcy under the provisions of any bankruptcy law, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due, or if the Company or the Guarantor shall consent to the appointment of a receiver or receivers of all or any part of its property, or if the Company or the Guarantor shall consent to the filing of any bankruptcy or reorganization petition against it under any provision of any bankruptcy law, or if (without limitation of the generality of the foregoing) the Company or the Guarantor shall file a petition to reorganize itself pursuant to any provision of the Federal Bankruptcy Act, or pursuant to any other similar statute applicable to the Company or the Guarantor, as now or hereafter in effect, or if the Company shall be dissolved or the Company or the Guarantor or its directors or stockholders shall take action looking to the dissolution or liquidation thereof; or

(g) if the Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment; or

(h) if a default by the Lessee shall have occurred under

the Lease Agreement and shall be continuing for 120 days after delivery of written notice thereof by the Bank to the Company without the Company, with the consent of the Bank, having terminated the Lease Agreement pursuant to the terms thereof, and entered into a new lease or otherwise provided for the use of the Equipment by a lessee or other user acceptable to the Bank, in the Bank's sole and absolute discretion, upon terms acceptable to the Bank, in its sole and absolute discretion;

(i) if an event of default by the Company under any other loan agreement, conditional sale agreement or security agreement to which the Company is a party shall have occurred and be continuing for a period of 90 days and a declaration of default shall be in effect thereunder;

then at any time after the occurrence of any Event of Default and so long as such event shall be continuing the Bank may, upon written notice to the Company and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Bank, (i) upon occurrence of an Event of Default under subsection (h) hereof, cause the Lease Agreement and any other agreement with respect to the Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate to the extent permitted under the Lease Agreement Assignment and the Lease Agreement or exercise any other or further right or remedy available to the Lessor under the Lease Agreement upon the occurrence of an Event of Default thereunder, and/or (ii)

declare (hereinafter called a "Declaration of Default") the entire unpaid principal balance of the Loan, together with the interest thereon then accrued and unpaid, and together with all other amounts then due and owing hereunder or under the Note, immediately due and payable without further demand, whereupon all such amounts shall become and be forthwith due and payable, anything herein or in the Note to the contrary notwithstanding. The Company shall promptly notify the Bank of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an Event of Default under this Agreement or the Lease Agreement.

The Bank may, at its election, waive any such Event of Default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease Agreement or any such other agreement by notice to the Company and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such Event of Default had occurred and no Declaration of Default or notice of termination of the Lease Agreement or any such other agreement had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16 - REMEDIES

(a) At any time during the continuance of a Declaration of Default, the Bank may, (1) if the Lease Agreement shall still be in effect, exercise all of the lessor's rights thereunder and under the Lease Agreement Assignment; and (2) if the Lease Agreement shall no longer be in effect, then, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Bank, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Company or any other person and for such purpose may enter upon the premises of the Company or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company, subject to all mandatory requirements of due process of law. In case the Bank shall demand possession of the Equipment pursuant to this Agreement and shall designate a point or points for the delivery of the Equipment to the Bank, the Company shall, at its own expense and risk:

(A) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads to which any unit or units of the Equipment have been interchanged to

return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks as the Bank may designate; and/or

(B) permit the Bank to store the Equipment on such tracks or other premises at the risk of the Company without charge for rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Bank.

(b) At any time during the continuance of an Event of Default, the Bank, with or without retaking possession thereof, at its election and upon such reasonable notice as may be required to be given by the Bank in accordance with applicable law and subject to any prior rights of lessees under permitted leases of the Equipment, may sell the Equipment, or one or more of the Units thereof, free from any and all claims of the Company, or any other party (other than such lessees) claiming from, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Bank may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Company should tender full payment of the total unpaid principal balance of the Loan, together with interest thereon accrued and unpaid and all other payments due under this Agreement or the Note as well as expenses of the Bank in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Bank's reasonable attorneys' fees and expenses, then in such event the Bank shall, against full payments of all sums due and payable by the Company as provided herein, execute and deliver to the Company a termination statement and other appropri-

ate instrument or instruments, at the expense of the Company, in recordable form, terminating the Bank's security interest in and to the Equipment, free of this Agreement, and terminating the Bank's rights under the Lease Agreement Assignment.

The Bank may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. In the event that the Bank shall be the purchaser thereof, it shall not be accountable to the Company (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Bank shall be entitled to have credited on account thereof all sums due to the Bank hereunder.

If an Event of Default has occurred and the Bank has accelerated the Loan under Article 15 hereof, the Bank shall have the absolute right to sell, lease, transfer or otherwise dispose of all or any part of the Equipment, to any party whomsoever, as the Bank shall in the exercise of its reasonable discretion, deem advisable. In furtherance of the Bank's rights hereunder, the Company hereby agrees to execute any and all documents, agreements, instruments, releases and notices requested by the Bank to sell, lease, transfer or otherwise dispose of the Equipment, or any Unit thereof; and further hereby appoints the Bank as attorney-in-fact to execute any and all documents, instruments, notices or agreements for the sale, lease, transfer or other disposition of the Equipment, or any Unit, in the name and on behalf of the Company, including without limitation bills of sale and

leases. Notwithstanding the provisions of this subparagraph, the sums of money realized by the Bank hereunder shall be applied in accordance with the provisions of this Article 16.

Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Bank. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Bank in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder to other indulgence duly granted to the Company, the Lessee or the Guarantor shall not otherwise alter or affect the Bank's rights or the Company's obligations hereunder. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's obligations or the Bank's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Bank under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the

Company shall pay the amount of such deficiency to the Bank upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in the Note as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Company shall fail to pay such deficiency, the Bank may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. If, after applying as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall promptly be paid to the Company.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Agreement. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Bank may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

Except as herein agreed to the contrary, the foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17 - APPLICABLE STATE LAWS

Any provision of this Agreement prohibited by an applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective,

without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Company to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a loan and security agreement and enforced as such.

Except as otherwise provided in this Agreement, the Company, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Bank's rights under this Agreement and any and all rights of redemption.

ARTICLE 18 - RECORDING

The Company will cause this Agreement and any amendments or supplements hereto, in each case to be filed, registered, recorded, or deposited and refiled, reregistered, rerecorded, or redeposited, with the ICC in accordance with 49 U.S.C. 11303. The Company will, at its expense, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Bank for the purpose of proper protection in the United States of

America, to the satisfaction of the Bank and its counsel, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Company will promptly furnish to the Bank evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Bank and its counsel.

ARTICLE 19 - PAYMENT OF EXPENSES

The Company will pay all reasonable costs and expenses (payment of which shall not be illegal under any laws of the United States, any State or any foreign jurisdiction) incident to this Agreement, the Lease, the Lease Agreement Assignment, and any instrument supplemental or related hereto or thereto, including disbursements (not to exceed \$250) made by, and \$3,500 on account of the legal fees of, counsel for the Bank.

ARTICLE 20 - ARTICLE HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

As between the Bank and the Company, this Agreement, including the Annex hereto, exclusively and completely states the rights of the Bank and the Company with respect to the Equipment and supersedes all other prior agreements, oral, or written, between them with respect to the Equipment. No variation or

modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Bank and the Company.

ARTICLE 21 - INVESTMENT REPRESENTATION

The Bank represents that it is acquiring the Note for its own account, for investment and not with a view to, or in connection with, the distribution of the same, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control.

ARTICLE 22 - NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered personally or mailed by first class mail, postage pre-paid to it at the following specified address (or at such other address as such party shall hereafter specify by written notice to the other party):

(a) to the Company,

Rex Railways, Inc.
616 Palisades Avenue
Englewood Cliffs, New Jersey 07632
Attention: Mark A. Salitan
cc: Robert Gruber (same address)

(b) to the Bank,

United Jersey Bank
210 Main Street
Hackensack, New Jersey 07602
Attention: Commercial Department

ARTICLE 23 - LAW GOVERNING; SEVERABILITY

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303, such additional rights arising out of the filing, recording, registering, or depositing hereof, if any, as shall be conferred by the laws of any jurisdiction in which this Agreement shall be filed, recorded, registered or deposited, or in which any Unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment. In the event that any provision of this Agreement is invalid or unenforceable, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform with such statute, or rule or law. Any provision hereof which may prove invalid or unenforceable under any law shall not affect the validity or enforceability of any other provision hereof.

ARTICLE 24 - EXECUTION

This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Bank shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the

parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

REX RAILWAYS, INC.

ATTEST:

Dawn L. Maddock
[seal] *Asst Secretary*

ATTEST: DAWN L. MADDOCK

Eileen C. Pope
[seal] *Asst Sec*

EILEEN C. POPE

By: *Mark A. Salitan, Ex. V.P.*
Title: MARK A. SALITAN, EX. V.P.

UNITED JERSEY BANK

By: *H.C. Mott*
Title: H.C. MOTT A.V.P.

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this *10th* day of *September*, 1979, before me personally appeared *Mark A. Jalton*, to me personally known, who being by me duly sworn, says that he is the *Ex. V.* President of Rex Railways, Inc., that said instrument was signed on behalf of said corporation by authority to its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

~~(seal)~~

Joseph A. Rizzi

(Title of Officer)

~~My commission expires~~ _____

JOSEPH A. RIZZI
Attorney at Law of New Jersey

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this *10th* day of *September*, 1979, before me personally appeared *Hubert C. Mott*, to me personally known, who being by me duly sworn, says that he is the *Vice* President of United Jersey Bank, that said instrument was signed on behalf of said corporation by authority to its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

~~(seal)~~

Joseph A. Rizzi

(Title of Officer)

~~My commission expires~~ _____

JOSEPH A. RIZZI
Attorney at Law of New Jersey

ANNEX A

Description of Equipment

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>
70-Ton, 50' 6" General Purpose Box Cars	50	BM 79050 - 79099



EXHIBIT A

HM

RECORDATION NO. 10192-A Filed 1425 BM 79050-79099

MAR 12 1979 -3 40 PM

INTERSTATE COMMERCE COMMISSION
LEASE AGREEMENT

THIS LEASE AGREEMENT, made as of this 30th day of November, 1978, between REX RAILWAYS, INC., a N. J. corporation, 616 Palisade Ave., Englewood Cliffs, N.J. as principal alone, or with any partner, joint venture, or assignee ("Rex") as Lessor and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, a Delaware Corporation (the "Lessee"), as Lessee.

RECITALS

Lessee desires to lease from Rex as Lessor certain railroad cars, hereinafter specifically designated, all upon the rentals, terms and conditions set forth in this Lease.

AGREEMENT

It is Agreed:

1. *Lease of Cars.* Rex agrees to lease to Lessee and Lessee agrees to and does hereby lease from Rex railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof. The Lease shall become effective as to any Car immediately upon its delivery to and acceptance by Lessee pursuant to Paragraph 3.

2. *Delivery of Cars.* Rex shall deliver the Cars as promptly as is reasonably possible. Rex' obligations with respect to delivery of all or any of the Cars are hereby made expressly subject to, and Rex shall not be responsible for, failure to deliver or delays in delivering Cars due to labor difficulties, fire, delays and defaults of carriers and material suppliers or Car manufacturers, acts of God, governmental acts, regulations and restrictions or any other causes, casualties or contingencies beyond Rex' control. Initial delivery shall be at the point specified in the applicable Schedule. From and after acceptance of a Car, Lessee shall be liable for, and shall pay or reimburse Rex for the payment of all costs, charges and expenses of any kind whatsoever on account of or relating to switching, demurrage, detention, storage, transportation or movement of a Car, including specifically, but not exclusively, freight and switching charges for movement at any time and from time to time to and from repair shops, storage or terminal facilities.

3. *Condition of Cars - Acceptance.* All Cars delivered hereunder shall be in satisfactory condition for movement in the normal interchange of rail traffic and shall otherwise comply with the description and specifications contained in the applicable Schedule; but Lessee shall be solely responsible for determining that Cars are in proper condition for loading and shipment. Within five days after Rex shall give Lessee notice that some or all Cars are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point specified in the notice and accept or reject them as to condition. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall upon delivery thereof to Lessee as above provided be conclusively deemed to be accepted and subject to this Lease and to meet all requirements of this Lease. At Rex' request, Lessee shall deliver to Rex an executed Certificate of Acceptance in the form of Exhibit A with respect to all accepted cars.

interest in favor of, McDONNELL DODD & COMPANY, a Delaware corporation, pursuant to a Lease Agreement AS- signment dated as of March 9, 1979. This Lease Agreement has been executed in several counterparts of which this counterpart is counterpart No. 1 constituting the original counterpart.

BOSTON & MAINE CORPORATION
BY [Signature] Trustee
BY [Signature] Trustee
AGREED AND ACKNOWLEDGED
REX RAILWAYS, INC.
BY [Signature] Pres.

4. *Use and Possession.* Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada.

5. *Term.* This Lease shall be effective as to any Car on the date of delivery by Rex of such Car, as provided in Paragraph 2 hereof. The lease term shall commence on the Average Date of Delivery and shall terminate upon expiration of the lease term specified in the applicable Schedule unless sooner terminated in accordance with the provisions of this Lease.

6. *Rental.* (a) *Per Car.* During the term of this Lease, Lessee shall pay to Rex for each Car, commencing on the date of delivery thereof, the monthly rental specified in the applicable Schedule.

(b) *Mileage Credits.* If the Cars bear Rex' reporting marks and numbers, any time and mileage payments paid or allowed by railroads on the Cars shall be the property of Rex, but Rex shall credit time and mileage payments actually received by it (less taxes, other than income taxes, due or to become due on account thereof) against rental then or thereafter due under this Lease; provided, however, that in no event shall the aggregate time and mileage payments credited exceed the total rental payable by Lessee.

7. *Payment.* Lessee shall make payment of all sums due hereunder to Rex in immediately available funds at the address provided in Paragraph 21 hereof, or such other place as Rex may direct. Rental payments shall be made monthly in advance on or before the 1st day of each month for which such rental is due, except that the first full month's payment shall, in addition, include rental covering any prior period of less than one month.

8. *Title.* Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars except the rights herein expressly granted to it as Lessee.

9. *Repairs.* Lessee shall perform or cause to be performed and shall pay all costs and expenses of all Repair Work without any abatement in rent or other loss, cost or expense to Rex. Any parts, replacements or additions made to any Car shall be accessions to such Car and title thereto shall immediately vest in Rex.

10. *Substitution of Cars.* Rex may, at any time and from time to time, replace any Casualty Cars with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Casualty Cars, or to include any Replacement Cars within the terms and provisions of this Lease and of any other document under which Rex has assigned its rights hereunder, as permitted in Paragraph 19 hereof.

11. *Abatement of Rent.* Rental payments on any Car shall not abate if such Car is out of service for Repair Work nor on account of any other reason whatsoever.

12. *Taxes.* Lessee shall be liable at all times for and shall pay or reimburse Rex for payment of all Federal, State or other governmental charges or taxes assessed or levied against the

Cars, including but not limited to (i) all Federal, State or other governmental property taxes assessed or levied against the Cars; (ii) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars, this Lease, or use of the Cars for or under this Lease, (iii) all taxes, duties or imposts assessed or levied on the Cars or this Lease by a foreign country and/or any governmental subdivision thereof and (iv) all taxes or governmental charges assessed or levied upon its interest as Lessee of Cars. Lessee has no obligation for payment of any income taxes imposed on Rex resulting from rentals paid by Lessee.

13. *Liens.* Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect Rex' title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

14. *Indemnities — Patent Covenants.* Lessee agrees to indemnify Rex and hold it harmless from any loss, expense or liability which Rex may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from Rex' negligence. Rex agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by Rex upon delivery of a Car or upon the making of repairs thereto by Rex, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason of Lessee's specifications. The term "Rex" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 14. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 22. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

15. *Lettering — Inventory.* At Rex' election all Cars may be marked to indicate the rights of Rex, or an assignee, mortgagee, trustee, pledgee or security holder of Rex' or a lessor to Rex, and may bear the following inscription: "Title to this Car subject to documents recorded under Section 20c of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction or consent of Rex. Rex may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of Rex, but no more than once every year, furnish to Rex its certified inventory of all Cars then covered by this Lease.

16. *Loss, Theft or Destruction of Cars.* In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Rex of such occurrence. Except where Rex shall have received payment for such Casualty Car from a handling railroad or other party under and pursuant to Interchange Rules, Lessee shall, within 45 days after demand by Rex promptly make payment to Rex in the same amount as is prescribed in the Interchange Rules for the loss of such Car. This Lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent of any casualty occurrence, the risk of which shall be borne by Lessee, provided, however, that this Lease shall terminate with respect to a Casualty Car on the date Rex shall receive all amounts and things granted it on account of such Car under this Paragraph 16, and thereafter Lessee shall have no further liability to Rex hereunder with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 12, 13, and 14 hereof. Upon making the payment specified above, Title to the casualty car shall Vest in lessee.

17. *Return of Cars.* Upon the expiration or termination of this Lease with respect to any Car (other than pursuant to Paragraph 16 hereof), Lessee shall at its sole cost and expense forthwith surrender possession of such Car to Rex by delivering same to Rex at such repair shop, storage or terminal facility as Rex may designate by notice to Lessee. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars do not bear Rex' reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as Rex shall designate in writing to Lessee prior to the end of the lease term. Until the delivery of possession to

east of
Mississ
River

Rex pursuant to this Paragraph 17, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee shall in addition make all other payments and keep all obligations and undertakings required of Lessee under any and all provisions of this Lease as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage at its expense, upon the request of Rex for any or all of the Cars for a period of ninety (90) days from the date of expiration or termination of this Lease. Nothing in this Paragraph 17 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car.

Rex's
risk.

18. *Default.* If Lessee shall fail to make any payment required hereunder within 20 days after same shall have become due or shall default or fail for a period of 20 days in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Rex may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. Rex shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by Rex to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any sum or sums due and unpaid or any damages suffered by reason of Lessee's default hereunder shall survive the termination of the Lease and the retaking of the Cars.

The remedies provided in this Paragraph 18 in favor of Rex shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in Rex' favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

19. *Sublease and Assignment.* The right to assign this Lease by either party and the Lessee's right to sublease shall exist only as follows:

(a) Lessee shall have no right to assign or sublease or loan any of the Cars without the prior written consent of Rex, provided, however, that Lessee shall have the right to sublease any of the Cars for single trips within the continental limits of the United States to its customers or suppliers where the sole purpose of such sublease is to obtain exemption from demurrage on the subleased Cars. Any such sublease shall be upon terms which are in compliance with all applicable Interchange Rules, tariffs, regulations and laws and all terms and conditions of this Lease;

(b) all rights of Rex hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part without notice to or consent of Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any lease to Rex, chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Rex provided only that so long as Lessee is not in default under the Lease, Lessee shall be entitled to the peaceful and quiet possession of the Cars. If Rex shall have given written notice to Lessee stating the identity and post office address of any assignee entitled to receive future rentals and any other sums payable by Lessee hereunder, Lessee shall thereafter make such payments to the designated assignee.

The making of an assignment or sublease by Lessee or an assignment by Rex shall not serve to relieve such party of any liability or undertaking hereunder nor to impose any liability or undertaking hereunder upon any such assignee or sublessee except as otherwise provided herein or unless expressly assumed in writing by such sublessee or assignee.

20. *Opinion of Counsel.* Upon the request of Rex or its assignee, Lessee will deliver to Rex an opinion of counsel for Lessee, addressed to Rex or its assignee in form and substance satisfactory to counsel for Rex or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power and has taken all corporate action necessary to enter into this Lease and carry out its obligations hereunder;

(b) this Lease has been duly executed on behalf of Lessee and constitutes the legal, valid and binding obligation of Lessee, enforceable in accordance with its terms;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder, other than order of the U. S. District Court for the District of Massachusetts approving the entry of the Lessee into this lease.

21. *Notice.* Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Rex at: P. O. Box 968
Englewood Cliffs, N.J. 07632

or at such other addresses as Rex may from time to time designate by such notice in writing and to Lessee at the address first above written or any such other address as Lessee may from time to time designate by notice in writing.

22. *Warranty.* Rex agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at

Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. REX makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and REX shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 20(a), (b) and (c) shall be and are true and correct at all times that any Car is subject to this Lease.

23. *Governing Law — Writing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of N. J. The terms of this Lease and the rights and obligations of the parties hereto may not be changed or terminated orally, but only by agreement in writing signed by the party against whom enforcement of such change or termination is sought.

24. *Counterparts.* This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

25. *Severability — Waiver.* If any term or provision of this Lease or the application thereof to any persons or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of REX to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

26. *Terminology.* In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

27. *Past Due Payments.* Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

28. *Definitions.* For all purposes of this Lease the following terms shall have the following meaning:

(a) "Interchange Rules" — all codes, rules, interpretations, laws or orders governing hire, use, condition, repair and all other matters pertaining to the interchange of freight traffic reasonably interpreted as being applicable to the Cars, adopted and in effect from time to time by the Association of American Railroads and any other organization, association, agency, or governmental authority, including the Interstate Commerce Commission and the United States Department of Transportation, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

(b) "Average Date of Delivery" — that date which is determined by (i) multiplying the number of Cars delivered by REX on each day by the number of days elapsed between such day and the date of delivery of the first Car under the applicable Schedule, and (ii) adding all of the

products so obtained and dividing that sum by the total number of Cars delivered under the applicable Schedule and (iii) adding such quotient rounded out to the nearest whole number to the date of delivery of the first Car under the applicable Schedule. The date on which delivery of a Car shall be deemed to have been made will be the day following delivery of the Car to the Lessee. A Car shall be conclusively deemed delivered to the Lessee on the earliest date shown on any of the following: (i) Certificate of Acceptance or other writing accepting a Car signed by the Lessee; or (ii) a bill of lading showing delivery to Lessee or to a railroad for the account of Lessee.

(c) "Repair Work" — all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain the Cars in good working order and repair.

(d) "Casualty Cars" — Cars which are lost, stolen, destroyed or damaged beyond economic repair.

(e) "Replacement Cars" — Cars of substantially similar description and specification to that set forth in the applicable Schedule which are substituted for Casualty Cars.

29. *Benefit.* Except as otherwise provided herein the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 19 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 14 hereof shall apply to and inure to the benefit of any assignee of Rex, and if such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

IN WITNESS WHEREOF, Rex and Lessee have duly executed this Lease as of the day and year first above written.

REX RAILWAYS, INC.

By Robert W. Gruber
President

[CORPORATE SEAL]

ATTEST: Doris Wilson
Secretary

Robert W. Meserve and Benjamin H. I
Trustees of the Property of Boston
Maine Corporation. Debtor.

a() Delaware corporation

By Robert W. Meserve
as Trustee, not individually

By Benjamin H. Ivey
as Trustee, not individually

Page 1 of Rider 1 consisting of 2 pages attached to and made a part of Lease dated November 30, 1978 by and between Rex Railways, Inc. ("Rex") and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, ("Lessee").

1. It is understood that the Lessee is a railroad in reorganization under Sec. 77 of the Bankruptcy Act and that notwithstanding anything herein to the contrary, the following provisions shall apply

(i) No termination of this agreement by reason of any default shall be final except after delivery of written notice from the lessor to the Lessee, and the continuance uncured of the default or defaults specified in such notice for 30 days;

(ii) The Lessee's interests under this agreement shall be deemed assigned to and its obligations assumed by the reorganized debtor issuing from the reorganization proceedings upon approval and implementation of a Plan of Reorganization of the Lessee under Sec. 77 of the Bankruptcy Act;

(iii) If the reorganization proceedings are dismissed under Sec. 77 (g) of the Bankruptcy Act or otherwise and liquidation of the Lessee is instituted, the Lessee shall select one of the following options in order to fulfill its obligations under this Lease:

(a) The Trustees of the Lessee shall continue to perform this Lease in accordance with its terms and provisions; or

(b) This Lease may be assigned to a sub-lessee with the consent of the Lessor which shall not be withheld unreasonably and upon such assignment, the obligations of the Lessee hereunder shall terminate without further liability; or

(c) Lessee may cancel this lease after the effective date of the order of liquidation of the Lessee, provided however, that it be responsible and shall pay the next 12 monthly installments of rent for the railroad cars under this Lease. If Rex finds a new lessee within the aforesaid 12 month period in the place and stead of the Lessee, the Lessee shall be relieved of the remaining balance of said term upon the payment by the replacement lessee of the monthly installments of rent, provided however, that the Lessee shall pay all costs of repainting, restenciling and transportation of the railroad cars subject to this Lease to the replacement lessee. If this option shall be elected by the Lessee, the Lessee shall provide storage free of cost, and at a risk of the Lessee, during the 12 month period next following the effective date of order of liquidation of the Lessee.

2. Purchase Option. The Lessee shall have the right to purchase the cars if Lessee is not then in default hereunder at the expiration of the term of the Lease. By serving written notice on Rex at any time within the last year of such term, at least ninety (90) days prior to the last day of such term, the purchase price shall be the greater of:

Page 2 of Rider 1 consisting of 2 pages attached to and made a part of Lease dated November 30, 1978 by and between Rex Railways, Inc. ("Rex") and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, ("Lessee").

(i) the depreciated value of the Cars on reproduction costs basis as provided under the Interchange Rules as of the end of the lease term, whichever is applicable, or

(ii) the fair market value to be agreed upon by Rex and Lessee.

In the event that the parties cannot agree on fair market value, it shall be determined by three (3) arbitrators, one to be selected by Lessee, one by Rex and the third selected by the two arbitrators selected by the parties. Fair market value for the purposes hereof shall mean the value which would be obtained in an arm's length transaction between an informed and willing buyer other than a buyer currently in possession and an informed and willing seller under no compulsion to sell without deducting from such value costs or removal of the Cars from their location in current use.

3. The Lessor and Lessee agree that this Lease shall be of no force and effect and the Lessor shall be under no obligation to advance funds for payment of any item unless and until this Lease obligation shall have been expressly approved by the court having jurisdiction over Lessee's reorganization and the Lessee furnishes the Lessor with appropriate evidence satisfactory to the Lessor, that the obligations of the Lessee under the Lease will constitute a cost of administration entitled to priority with all other costs of administration.

Lessee Robert W. Meserve
as Trustee, not individually

Rex Robert H. Lacy

Lessee Benjamin H. Lacy
as Trustee, not individually

EXHIBIT A

Schedule 1 to Lease dated Nov. 30, 1978 by and between Rex Railways, Inc. as principal alone, or with any partner, joint venture, or assignee ("Rex") as Lessor and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, a Delaware Corporation (the "Lessee"), as Le

CERTIFICATE OF ACCEPTANCE

_____, 19____

Rex Railways, Inc.
P.O. Box 968
Englewood Cliffs, New Jersey 07632

Gentlemen:

The undersigned, being a duly authorized representative of Lessee, hereby accepts _____
(_____) Cars bearing numbers as follows:

for the Lessee pursuant to the Lease and certifies that each of said Cars is plainly marked in stencil on both sides of each Car with the words

Title to this Car subject to documents recorded under Section 20c of Interstate Commerce Act

in readily visible letters not less than one inch (1") in height, and that each of said Cars conforms to, and fully complies with the terms of said Lease and is in condition satisfactory to the Lessee. If the Lessee is a railroad, Lessee hereby certifies that it is an interstate carrier by rail and that the Cars are intended for actual use and movement in interstate commerce.

Schedule 2

Page 1 of Schedule 2 dated November 30, 1978 to Lease dated November 30, 1978 by and between REX RAILWAYS, INC. as principal alone, or with any partner, joint venture, or assignee ("Rex") as Lessor and Robert W. Meserve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, as Lessee.

TYPE AND DESCRIPTION OF CAR:

New 50'6" inside length XM Box Car equipped with 10' sliding doors, 70 ton trucks, nailable steel floors and interior lading strap anchors.

NUMBER OF CARS:

Fifty (50)

INTERIOR EQUIPMENT:

None

SPECIAL LININGS:

None

PERMITTED LADING USE:

General Commodities

*REPORTING MARKS AND NUMBERS:

BM 79050 to 79099 inclusive.

SPECIFICATIONS DESIGNATED BY LESSEE:

Boston and Maine Corporation paint and stencil requirements.

INITIAL F.O.T. DELIVERY POINT:

Manufacturing plant, Bessemer, Alabama

*When Rex reporting marks are specified, this lease is subject to the granting of all necessary consents to such use by carrier or any other approval now or hereafter required by tariff, Interchange Rules or other applicable laws and regulations.

~~November 30~~, 1978, by and between REX RAILWAYS, INC. as principal alone, or with any partner, joint venture, or assignee ("Rex") as Lessor and Robert W. Messerve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor, as Lessee.

LEASE TERM:

Fifteen Years (15)

MONTHLY RENTAL:

\$365.00 per car per month

SPECIAL TERMS:

See Rider Number 1

Robert W. Messerve and Benjamin H. Lacy, Trustees of the Property of Boston and Maine Corporation, Debtor.

a () Delaware corporation

By Robert W. Messerve
as Trustee, not individually

By Benjamin H. Lacy
as Trustee, not individually

REX RAILWAYS, INC.

By Robert W. Huber
President

[CORPORATE SEAL]

ATTEST:

Doris Wilson
Secretary

STATE OF New Jersey
COUNTY OF Bergen } ss

On this 17th day of March, 19 79, before me personally appeared Charles W. Krueger to me personally known, who being by me duly sworn, says that he is President of REX RAILWAYS, INC., and Charles Wilson to me personally known to be the Assistant Secretary of said corporation, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rudin Schertz
Notary Public

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

STATE OF Massachusetts
COUNTY OF Suffolk } ss

On this 16th day of February, 19 79, before me personally appeared Robert W. Meserve and Benjamin H. Lacy to me personally known, who being by me duly sworn, says that they are Trustees of the Property of Boston and Maine Corporation, Debtor

and that said instrument was signed on behalf of said debtor by authority of the U. S. District Court for the District of Massachusetts and they acknowledged that the execution of the foregoing instrument was the free act and deed of said trustees.

Edward L. Stone
Notary Public
my commission expires June 21, 1979

EXHIBIT B

LEASE AGREEMENT ASSIGNMENT dated as of _____, 1979 given by REX RAILWAYS, INC., a New Jersey corporation (hereinafter called the "Assignor"), to UNITED JERSEY BANK, a New Jersey banking corporation (hereinafter called the "Bank" or "Assignee").

WHEREAS, the Bank and the Assignor have entered into a loan and security agreement dated as of the date hereof (hereinafter the "Agreement") covering a loan, on the conditions therein set forth, by the Bank to the Assignor, secured by a security interest in the railroad equipment (50 70-ton, 50' 6" General Purpose Box Cars, Road Numbers BM 79050 - BM 79099) described in the Agreement (said equipment being hereinafter called collectively the "Equipment" or "Units" and individually a "Unit"), the obligations of the Assignor under the Agreement being guaranteed by Rex-Noreco, Inc., a New Jersey corporation (hereinafter the "Guarantor"); and the Assignor has entered into a lease agreement dated as of November 30, 1978 with Robert W. Meserve and Benjamin H. Lacy, as Trustees of the Property of the Boston and Maine Corporation, Debtor, a Delaware corporation, providing for the lease of the Equipment on the terms and conditions therein set forth (hereinafter the "Lease Agreement"); and

WHEREAS, it is a condition to the obligations of the Assignor under the Agreement that the Assignor shall have executed and delivered this Assignment in order to assign and transfer to the Assignee, as collateral security, the security title, rights, and interests of the Assignor as lessor under the Lease Agreement in the Units, all upon and subject to the terms and conditions more fully set forth herein:

NOW, THEREFORE, WITNESSETH:

That in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Assignor, the receipt of which is hereby acknowledged, and the mutual covenants herein contained:

1. The Assignor hereby, effective as of the Closing Date as defined in the Agreement, assigns, transfers and sets over unto the Assignee, as collateral security for the payment and performance of the obligations of the Assignor under the Agreement, all the Assignor's right, title and interest, powers, privileges, and other benefits under the Lease Agreement, including, without limitation, the immediate right to receive and collect all rentals, profits, proceeds and other sums payable to or receivable by the lessor under or pursuant to the provisions of the Lease Agreement whether as rent, mileage credits, purchase prices, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of a default specified in

the Lease Agreement, and to do any and all other things whatsoever which the lessor is or may become entitled to do under the Lease Agreement. In furtherance of the foregoing assignment, the Assignor hereby irrevocably authorizes and empowers the Assignee in its own name, or in the name of its nominee, or in the name of the Assignor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the lessor is or may become entitled under the Lease Agreement, and to enforce compliance by the lessee with all the terms and provisions thereof.

The Assignee agrees to accept any Payments for the account of the lessor pursuant to the Lease Agreement. To the extent received, the Assignee will apply such Payments to satisfy the obligations of the Assignor under the Agreement and remit any balance to the Assignor in the manner and subject to the terms and conditions set forth in the Agreement.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the lessor under the Lease Agreement, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the lessor to the lessee under the Lease Agreement shall be and remain enforceable by the lessee, its successors and assigns, against, and only against, the lessor or persons other than the Assignee.

3. The Assignor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease Agreement provides are to be performed by the lessor; without the written consent of the Assignee, the Assignor will not anticipate the rents under the Lease Agreement or waive, excuse, condone, forgive or in any manner release or discharge the lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease Agreement and the Assignor agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Assignor does hereby constitute the Assignee the Assignor's true and lawful attorney, irrevocably, with full power (in the name of the lessor, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease Agreement to which the lessor is or may become entitled, to enforce compliance by the lessee with all the terms and provisions of the Lease Agreement, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take

any action or institute any proceedings which to the Assignee may deem to be necessary or advisable.

5. Upon the full discharge and satisfaction of all sums due from the Assignor to the Assignee under the Agreement, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Lease Agreement shall revert to the Assignor.

6. The Assignor will pay and discharge any and all claims, liens, charges or security interests (other than those created by the Agreement or this Assignment) on the Lease Agreement or the Payments due or to become due thereunder claimed by any party from, through or under the Assignor, or its successors and assigns (other than the Assignee), including tax liens arising out of the receipt of the income and proceeds from the Units, which, if unpaid, might become a claim, lien, charge or security interest on or with respect to the Lease Agreement or such Payments, but the Assignor shall not be required to pay or discharge any such claims, liens, charges or security interests so long as it is contesting the same in good faith by appropriate proceedings and the nonpayment thereof does not, in the opinion of the Assignee, adversely affect such interests of the Assignee.

7. The Assignor represents to the Assignee that the Lease Agreement is in full force and effect without default by the Assignor thereunder or, to the best of the Assignor's knowledge, by the lessee thereunder, and the Assignor has not, except for the Assignment dated as of March 9, 1979 by the Assignor to McDonnell Douglas Finance Corporation which will be terminated on or before the Closing Date as defined in the Agreement, executed, made or consented to any other assignment, pledge, encumbrance of, or security interest on, the subject matter of the assignment hereby made to the Assignee. The Assignor will, from time to time, execute, acknowledge and deliver any and all further instruments and assurances required by law or reasonably requested by the Assignee in order to confirm or further assure the interest of the Assignee hereunder.

8. The Assignee may assign all or any of the rights assigned to it hereby or arising under the Lease Agreement, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

9. This Assignment shall be governed by the laws of the State of New Jersey, but the parties shall be entitled to all rights conferred by 49 U.S.C. 11303.

10. The Assignor shall cause copies of all notices received in connection with the Lease Agreement and all payments hereunder to be promptly delivered or made to the Assignee at its

address set forth in Article 22 of the Agreement or at such other address as the Assignee shall designate.

11. The Assignee hereby agrees with the Assignor that the Assignee will not, so long as no default under the Agreement has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or remedies conferred by Paragraph 18 of the Lease Agreement upon the occurrence of a default by the lessee thereunder, without the prior consent of the Assignor.

IN WITNESS WHEREOF, the parties hereto, pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, all as of the date first above written.

ATTEST:

REX RAILWAYS, INC., as Assignor

[seal]

By _____

Title:

ATTEST:

UNITED JERSEY BANK, as Assignee

[seal]

By _____

Title:

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this _____ day of August, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ President of Rex Railways, Inc., that said instrument was signed on behalf of said corporation by authority to its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

(Title of Officer)

My commission expires _____

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this _____ day of August, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ President of United Jersey Bank, that said instrument was signed on behalf of said corporation by authority to its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

(Title of Officer)

My commission expires _____

CONSENT AND AGREEMENT

The undersigned, Robert W. Meserve and Benjamin H. Lacy, as Trustees of the Property of the Boston and Maine Corporation, Debtor, a Delaware corporation (hereinafter called the "Lessee"), the lessee named in the Lease Agreement referred to in the foregoing Lease Agreement Assignment (hereinafter called the "Lease Assignment"), hereby (a) acknowledge receipt of a copy of the Lease Assignment, and agree that:

(1) the Lessee will pay all rentals, casualty payments, purchase prices, liquidated damages, indemnities and other moneys provided for in the Lease Agreement (which moneys are hereinafter called the "Payments") due and to become due under the Lease Agreement or otherwise in respect of the Units leased thereunder, without any set-off, abatement, counterclaim, deduction or defense whatsoever, directly to United Jersey Bank (hereinafter called the "Assignee"), the assignee named in the Lease Assignment, at the Assignee's address referred to in the Lease Assignment, namely, 750 Palisade Avenue, Englewood Cliffs, New Jersey;

(2) the Assignee shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease Agreement as though the Assignee were named therein as the Lessor;

(3) the Assignee shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease Agreement or otherwise; and

(4) the Lease Agreement shall not, without the prior written consent of the Assignee, be terminated or modified, nor shall any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease Agreement or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Assignee by signing the acceptance at the foot hereof, shall be deemed to be a contract, effective as of the date of acceptance, under the laws of the State of New Jersey and, for all purposes, shall be construed in accordance with the laws of said State.

Accepted as of the day of August, 1979
UNITED JERSEY BANK,
Assignee

_____, as
Trustee, not individually

By _____
Title:

_____, as
Trustee, not individually

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this _____ day of August, 1979, before me personally appeared before me ROBERT W. MESERVE and BENJAMIN H. LACY, to me known to be the persons named in and who executed the foregoing instrument and each of whom acknowledged that he executed the same as his free act and deed as trustee as aforesaid.

(seal)

Notary Public in and
for said County and State

My commission expires _____

STATE OF NEW JERSEY)
) SS:
COUNTY OF BERGEN)

On this _____ day of August, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ President of United Jersey Bank, that said instrument was signed on behalf of said corporation by authority to its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(seal)

(Title of Officer)

My commission expires _____

EXHIBIT C

GUARANTY

In order to induce United Jersey Bank (hereinafter the "Bank") to consummate the transactions contemplated by the Loan and Security Agreement (hereinafter the "Agreement") dated as of _____, 1979 between the Bank and a wholly-owned subsidiary of the undersigned, namely Rex Railways, Inc. (hereinafter the "Company"), the undersigned (hereinafter the "Guarantor") hereby, effective as of the Closing Date as defined in the Agreement, irrevocably and unconditionally guarantees to the Bank and its successors and assigns, payment by the Company of all sums to be paid by the Company under the terms of the Agreement, including, without limitation, the Loan evidenced by the Note (as those terms are defined in the Agreement), when and as such sums become due (whether as stated, by acceleration or otherwise), without offset, deduction, defense or counterclaim, and further guarantees full and timely performance of all other obligations and acts by the Company to be performed under the Agreement. This Guaranty is an absolute, continuing and unlimited guarantee of payment and not of collection, and the Bank, its successors and assigns, shall not be required to proceed first against the Company, or against any other person, firm or corporation, or against any collateral or security held by the Bank, before resorting to and claiming against the Guarantor for payment or performance. The obligations of the Guarantor hereunder shall not be affected, impaired or relieved by reason of the invalidity or unenforceability of any obligation or indebtedness of the Company guaranteed by the Guarantor under this Guaranty.

The Guarantor hereby waives notice of acceptance hereof, diligence, presentment, demand of payment or otherwise, filing of claims in the event of receivership or bankruptcy of the Company, any right to require a proceeding first against the Company or any other person or any collateral or security held by the Bank, and notice with respect to any obligations of the Company under the Agreement or the Note or otherwise.

The Guarantor agrees that it shall not assert any right of subrogation or contribution in respect of the Note or the Agreement unless and until the Bank shall have received payment in full of all amounts due or which may become due under this Guaranty, the Note or the Agreement. The Guarantor further agrees that if any payment made by the Company or any other person with respect to the principal of, premium, if any, or interest on the Note is subsequently recovered from or repaid by the recipient thereof, in whole or in part, in any bankruptcy, reorganization, insolvency or similar proceeding instituted by or against the Company or any other such person or otherwise, this Guaranty shall continue to be fully applicable to the same extent as

though the payment so recovered or repaid had not been originally made.

The Guarantor hereby represents and warrants that the Guaranty contained herein is within its corporate power and authority; does not violate any provisions of law, rule, regulation or decree or its Articles of Incorporation or By-Laws currently in force or of any mortgage, indenture, loan agreement or other instrument to which the Guarantor is a party or binding upon it or any of its properties; will not result in or give rise to any lien, encumbrance, security interest or charge upon any property of the Guarantor; and is a legal, valid and binding obligation of the Guarantor enforceable in accordance with its terms. The Guarantor hereby consents to the forbearance by the Bank against the Company or any renewal, extension, or acceleration of the Loan or the Note, and further consents to the granting of consent by the Bank to any modifications of the Agreement or the Note which do not increase the principal amounts payable thereunder.

The Bank may settle, release on terms satisfactory to the Bank or by operation of law or otherwise, or compromise, collect or otherwise liquidate any indebtedness of the Company and/or any collateral security therefor in any manner deemed advisable by the Bank, all without in any way diminishing, releasing or discharging the Guarantor's liability hereunder. Further, the Guarantor hereby waives notice of, and consents to, the release, substitution, withdrawal, waiver, exchange or any other application or alteration, of any collateral security by the Bank. The rights of the Bank hereunder are cumulative and this Guaranty shall be governed by the laws of the State of New Jersey and shall be binding upon the successors and assigns of the Guarantor and shall inure for the benefit of the successors and assigns of the Bank.

The Guarantor agrees to pay to the Bank any and all costs and expenses incurred by the Bank in the enforcement of or the collection of amounts due under this Guaranty, including reasonable attorneys' fees and disbursements and other expenses of collection.

IN WITNESS WHEREOF, the undersigned hereunto has caused this Guaranty to be executed as of the day of , 1979.

REX-NORECO, INC.

(Seal)

ATTEST:

By: _____
Title: _____

EXHIBIT D

PROMISSORY NOTE

\$1,477,111.26

, 1979

FOR VALUE RECEIVED, REX RAILWAYS, INC. ("Borrower") promises to pay to the order of UNITED JERSEY BANK ("Lender"), at the principal office of the Lender at 750 Palisade Avenue, Englewood Cliffs, New Jersey or at such other office as the Lender shall hereafter specify in a written notice given to the Borrower, in lawful money of the United States of American and in immediately available funds, the principal amount of One Million Four Hundred Seventy Seven Thousand One Hundred and Eleven and 26/100 Dollars (\$1,477,111.26) plus interest thereon or on the unpaid balance from the date hereof as follows:

(i) \$8,206.17 plus interest at the rate of 11 3/4% per annum on the unpaid balance on October 15, 1979 and on the 15th day of each month thereafter until August 15, 1984;

(ii) \$8,206.17 (plus interest at a rate equal to one and one half (1 1/2%) percent per annum plus the prime rate of the Bank in effect from time to time on the unpaid principal balance) on September 15, 1984 and on the 15th day of each month thereafter until February 15, 1989; and

(iii) The balance of principal in the amount of \$549,814.05 (plus interest accruing from February 16, 1989 at a rate equal to one and one half (1 1/2%) percent per annum plus the prime rate of the Bank in effect at the time on the unpaid principal balance) on March 15, 1989.

The rate of interest on the Note shall be adjusted, for purposes of (ii) and (iii) above, as of the 1st day of each month and be based on the prime rate of the Bank in effect as of that date. The prime rate of the Bank is defined as the rate of interest charged the Bank's best corporate customers for short term loans, which rate is published from time to time by the Bank. If any payment date is not a business day, payment shall be made on the first such day thereafter. Interest shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

This Note is the Note referred to in the Loan and Security Agreement dated as of _____, 1979, between the undersigned and the Lender (the "Agreement") and is entitled to the benefits thereof, is secured as provided therein, and may be

prepaid in whole only at any time with a prepayment penalty (except in the case of prepayments made under and pursuant to Article 6 of the Agreement) in the amount of one (1%) percent of the then outstanding principal balance, provided, however, the Borrower shall give the Lender written notice of such prepayment not less than 30 days prior to the date of such prepayment. On the date fixed for prepayment in the aforesaid notice, the Borrower shall pay to the Lender an amount equal to the then outstanding principal balance to be prepaid, together with interest accrued thereon (at the rate of interest then in effect) to the date of such prepayment, and together with the prepayment penalty.

Upon the occurrence of any one or more of the Events of Default specified in the Agreement, the amounts then remaining unpaid on this Note may be declared to be immediately due and payable.

Interest shall accrue, to the extent legally enforceable, at the rate of 15% per annum, or at such lesser rate as may be legally enforceable, on all overdue payments of principal hereof (whether such payments are due at stated maturity, by acceleration or otherwise). Each monthly payment made hereunder by the Borrower shall be deemed to have been applied first to the payment of all interest accrued hereon and unpaid as of the date such monthly payment is required to have been made and thereafter to the outstanding principal amount hereof.

The Borrower hereby waives diligence, presentment, demand for payment, notice of dishonor or other notice in connection with the Note, or any right to require a proceeding first against any collateral or security held by the Lender under the Agreement or otherwise.

This Note shall be governed by and construed under the laws of the State of New Jersey.

Should the indebtedness represented by this Note be collected in any legal proceeding or placed in the hands of attorneys for collection after default, the undersigned agrees to pay, in addition to all other amounts due hereunder, reasonable attorneys' fees and expenses of collection.

REX RAILWAYS, INC.

WITNESS:

By: _____
Title: _____