

RECORDATION NO. 10131-5

OCT 26 1979-3 50 PM

INTERSTATE COMMERCE COMMISSION

RELEASE OF CONDITIONAL SALE AGREEMENT,
LEASE AGREEMENT ASSIGNMENT,
AND MANAGEMENT AGREEMENT ASSIGNMENT

RECORDATION NO. 9453-E

OCT 26 1979-3 50 PM

INTERSTATE COMMERCE COMMISSION

Dated October 16, 1979

The undersigned, THE PROVIDENT BANK, does hereby release all of its rights and security interests in and under that certain Conditional Sale Agreement, Lease Agreement Assignment and Management Agreement Assignment described as follows:

Conditional Sale Agreement dated as of February 13, 1979, by and between Twitter, Inc., Skiva International, Inc., and Rex Railways, Inc. filed with the Interstate Commerce Commission February 22, 1979, 4:40 p.m., Recordation No. 10131.

Lease Agreement Assignment dated as of February 13, 1979, from Skiva International, Inc. to The Provident Bank filed with the Interstate Commerce Commission March 15, 1979, 11:40 a.m., Recordation No. 9453-C.

Management Agreement Assignment dated as of February 13, 1979, from Skiva International, Inc. to The Provident Bank filed with the Interstate Commerce Commission March 15, 1979, 11:40 a.m., Recordation No. 9453-E.

IN TESTIMONY WHEREOF, the undersigned has caused this Release to be duly executed on its behalf by its undersigned, properly authorized officer, this day and year first above set forth.

THE PROVIDENT BANK

BY


Assistant Vice President

STATE OF OHIO)
) SS
COUNTY OF HAMILTON)

On this 16th day of October, 1979, before me personally appeared J. Lynn Brewbaker, to me personally known, who being by me duly sworn, says that he is Assistant Vice President of The Provident Bank, that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and he acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

IN TESTIMONY WHEREOF, witness my hand and notorial seal.



Notary Public

RICHARD SIEGEL

Notary Public, State of Ohio

My Commission has no Expiration date

Section 147.03 R. C.

My Commission expires:

Consolidated under
10903

RECORDATION NO. *10131-J* FILED 1425

OCT 18 1979 - 1 50 PM

INTERSTATE COMMERCE COMMISSION

Partial **RELEASE AND AGREEMENT**

Dated as of October 1, 1979

between

TWITTER, INC.

and

CITICORP INDUSTRIAL CREDIT, INC. ✓

(COVERING 100 GENERAL PURPOSE BOXCARS)

RELEASE AND AGREEMENT

This **RELEASE AND AGREEMENT** dated as of October 1, 1979 between **TWITTER, INC.** (the Vendor) and **CITICORP INDUSTRIAL CREDIT, INC.** (the Lender).

W I T N E S S E T H :

WHEREAS, the Vendor, Rex Railways, Inc. (the Manager), and, through an Assignment dated March 15, 1979 from Skiva International, Inc. (Skiva), C&H Railways, Ltd. (the Borrower) are parties to a Conditional Sale Agreement dated as of February 13, 1979 as amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment**);

WHEREAS, the Vendor has assigned substantially all of its right, title and interest in, to and under the Conditional Sale Agreement and other agreements to The Provident Bank (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979 (the **Agreement and Assignment**) in connection with the financing by Provident of a portion of the purchase price of the Equipment pursuant to a Finance Agreement dated as of February 13, 1979 (the **Finance Agreement**), among Provident, the Vendor, the Manager, Skiva and Rex-Noreco, Inc.;

WHEREAS, the Borrower desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**) and all other amounts owing under the Conditional Sale Agreement;

WHEREAS, the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 (the **Mortgage**, and all terms used herein shall have the respective meanings assigned to them in the Mortgage, unless otherwise defined herein) between the Lender and the Borrower, to make a loan to the Borrower (the **Loan**) to finance the prepayment of the Conditional Sale Indebtedness upon the condition, among others, that the Vendor execute and deliver this Release and Agreement; and

WHEREAS, the Vendor desires to have the Lender make the Loan to the Borrower pursuant to the Mortgage.

NOW, THEREFORE, in consideration of the agreements of the Lender under the Mortgage and the premises hereof and thereof and other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. Consent to Mortgage.

The Vendor hereby consents to the terms and provisions of the Mortgage and to the transactions contemplated thereby including, but not limited to, prepayment of the Conditional Sale Indebtedness by the Borrower, the making of the Loan by the Lender to the Borrower and the mortgage of, and grant of a security interest in, the Collateral by the Borrower to the Lender.

SECTION 2. Release.

The Vendor hereby agrees that on the Closing Date any and all of the right, title and interest of the Vendor in, to and under the Conditional Sale Agreement shall vest in the Borrower. The Vendor hereby forever releases, relinquishes and quitclaims unto the Borrower and its successors and assigns any and all of the right, title and interest of the Vendor in, to and under the Conditional Sale Agreement, including, but not limited to, any and all of the right, title and interest of the Vendor in and to the Equipment and all proceeds thereof. The Vendor agrees that the Conditional Sale Agreement and the Agreement and Assignment are each hereby terminated on and as of the Closing Date and that on and as of the Closing Date the Conditional Sale Agreement and the Agreement and Assignment shall each be of no further force and effect and any party to each such agreement shall have no further liability to any other party thereto. The Vendor hereby represents and warrants that any and all of the right, title and interest of the Vendor which is released, relinquished or quitclaimed unto the Borrower pursuant hereto is free and clear of all claims, liens, security interests and other encumbrances arising by act of the Vendor or by, through or under the Vendor.

SECTION 3. Agreement of the Vendor.

The Vendor hereby agrees that on the Closing Date, the Vendor shall deliver to Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 4 of this Release and Agreement, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

SECTION 4. Representations and Warranties of the Vendor.

The Vendor represents and warrants that:

(a) **Due Organization.** It is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware and has the corporate power and authority to enter into and perform its obligations under this Release and Agreement.

(b) **Due Authorization and Enforceability.** This Release and Agreement has been duly authorized, executed and delivered by the Vendor and, assuming due authorization, execution and delivery by the other party hereto, is a legal, valid and binding obligation of the Vendor, enforceable in accordance with its terms.

(c) **No Violation.** The execution and delivery by the Vendor of this Release and Agreement is not, and the performance by it of its obligations under this Release and Agreement will not be, inconsistent with its charter or by-laws, do not and will not contravene any law, governmental rule or regulation, judgment or order applicable to it and do not and will not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound or require the consent or approval of, the giving of notice to, the registration with or the taking of any action in respect of or by, the Interstate Commerce Commission or any other Federal, state, local or Canadian governmental authority or agency, except such as have been obtained, given or accomplished.

(d) **Title to the Equipment.** On the Closing Date, each Unit of Equipment will be free of all claims, liens, security interests and other encumbrances (**Liens**) arising by, through or under the Vendor other than the rights of the Lender under the Mortgage, the Note and the Guaranty, the rights of the Manager under the Management Agreement and the rights of the Lessee under the Lease.

(e) **Performance Will Not Create Liens.** The performance by it of its obligations under this Release and Agreement will not subject the Collateral, including, without limitation, the Equipment, the Lease and the Management Agreement, to any Lien (other than the Liens provided in the Mortgage) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of the Vendor, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Release and Agreement or which might affect the ability of the Vendor to perform its obligations hereunder, or which might result, either individually or in the aggregate, in a material adverse change in the business, operations, affairs or condition of the Vendor, except as previously disclosed in writing to the Lender.

SECTION 5. Survival of Representations and Warranties; Binding Effect.

(a) **Survival.** All agreements, representations and warranties contained in this Release and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Release and Agreement and shall continue in effect so long as any amount owing under the terms of the Mortgage remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Release and Agreement, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

SECTION 6. Notices.

All communications and notices with respect to the transactions contemplated by this Consent and Agreement shall become effective when deposited in the United States Mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; and (b) if to the Vendor, to Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other party hereto.

SECTION 7. Miscellaneous.

(a) **Execution.** This Release and Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Release and Agreement is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Release and Agreement shall be governed by, and be construed in accordance with, the laws of the State of New York, 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 of this Release and Agreement and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Release and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Release and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Release and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

**CITICORP INDUSTRIAL CREDIT,
INC.**

By *W. H. Bequaert*

Title: *V.P.*

Date: *10/16/79*

Attest: *Kenneth C. Rod*

[Seal]

TWITTER, INC.

By _____

Title: _____

Date: _____

Attest: _____

[Seal]

or depositing of this Release and Agreement and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Release and Agreement nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Release and Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Release and Agreement to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

**CITICORP INDUSTRIAL CREDIT,
INC.**

By _____

Title: _____

Date: _____

Attest: _____

[Seal]

TWITTER, INC.

By *Michael J. Soltan*

Title: *Pres.*

Date: *10/16/79*

Attest: *Doris Wilson*
[Seal] *Asst. Secy.*

State of New York)
)
) ss.:
)
County of New York)

On this 16th day of October, 1979, before me personally appeared W.H. Berger, to me personally known, who being by me duly sworn, says that he is the VP of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patrice A. Marclese
Notary Public

EXPIRES 8/15/1985
Notary Public, State of New York
No. 94-15954
Qualified in Dutchess County
Certificate filed in New York County
Commission Expires March 30, 1981

[Notarial Seal]

State of New York)
)
) ss.:
)
County of _____)

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

Notary Public

[Notarial Seal]

State of New York)
 ss.:
County of New York)

On this _____ day of October, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

State of New York)
 ss.:
County of Bergen)

On this 16th day of October, 1979, before me personally appeared Mark A. Galanter, to me personally known, who being by me duly sworn, says that he is the President of Twitter, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Rubin Schertz
Notary Public

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

[Notarial Seal]