

Citicorp Industrial Credit, Inc.

A Citibank Affiliate
399 Park Avenue
New York, N.Y.
10043

RECORDATION NO. 9453-H
Filed 1425
OCT 18 1979-1 50 PM
INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10131-H
Filed 1425
OCT 18 1979-1 50 PM
INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Citicorp Industrial Credit, Inc.
Refinancing of Railcar Acquisition

Dear Sir:

Enclosed for recordation with the Interstate Commerce Commission pursuant to Section 11303 of Title 49 of the United States Code ("Section 11303") are one original and two counterparts of each of the following documents:

1. Mortgage dated as of October 1, 1979 (the "Mortgage") between Citicorp Industrial Credit, Inc., as Lender (the "Lender"), and C&H Railways, Ltd., as Borrower (the "Borrower"), which evidences, among other things, the mortgage and assignment as security by the Borrower to the Lender of the Borrower's right, title and interest in, to and under (a) certain railroad equipment (the "Equipment") described in Annex 1 to the Mortgage and all proceeds thereof; (b) a Lease Agreement made as of September 23, 1977 between Rex Railways, Inc., as Lessor, and the Lenawee County Railroad Company, Inc., as Lessee, which was recorded pursuant to Section 11303 on June 22, 1978 at 9:20 A.M. under Recordation No. 9453, as amended by an Equipment Schedule which was recorded pursuant to Section 11303 on February 26, 1979 at 11:20 A.M. under Recordation No. 9453-A, a First Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-B, a Second Amendment to Equipment Schedule which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-G and which identifies the Borrower as the principal for whom Rex Railways, Inc. acts and who owns the Equipment (as so amended, the "Lease"), and all payments to become due thereunder; and (c) a Management Agreement dated as of February 15, 1979 (the "Management Agreement") between Rex Railways, Inc. and Skiva International, Inc. which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 9453-D, and all payments to become due thereunder. The

Conrad — *Ms. Dolores M. Rodriguez*

RECORDATION NO. 10902
Filed 1425

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902-A
Filed 1425 October 18, 1979

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

9-231A091
No. 9-231A091
Date OCT 18 1979
Fee \$ 260.00
ICC Washington, D. C.

RECORDATION NO. 10902-B
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 10902-C
Filed 1425

OCT 18 1979-1 50 PM

INTERSTATE COMMERCE COMMISSION



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10043

right, title and interest of the Borrower which is mortgaged and assigned as security pursuant to the Mortgage was acquired from Skiva International, Inc. pursuant to an Assignment dated March 15, 1979 (the "Assignment") which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation Nos. 9453-F and 10131-F.

2. Guaranty and Agreement dated as of October 1, 1979 among Citicorp Industrial Credit, Inc., Rex Railways, Inc. and Rex-Noreco, Inc. which evidences, among other things, the guarantee by Rex Railways, Inc. and Rex-Noreco, Inc., severally and jointly, of certain of the obligations of the Borrower under the Mortgage and the mortgage and assignment as security by Rex Railways, Inc. to the Lender of its right, title and interest in, to and under the Lease and all payments to become due thereunder.

3. Consent and Agreement dated as of October 1, 1979 between the Lenawee County Railroad Company, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of the Lenawee County Railroad Company to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage.

4. Consent and Agreement dated as of October 1, 1979 between Skiva International, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the consent of Skiva International, Inc. to the mortgage and assignment as security made by the Borrower to the Lender pursuant to the Mortgage; the right, title and interest subject to such mortgage and assignment having been assigned to the Borrower by Skiva International, Inc. pursuant to the Assignment.

5. Release and Agreement dated as of October 1, 1979 between Twitter, Inc. and Citicorp Industrial Credit, Inc., which evidences, among other things, the release by Twitter, Inc. to the Borrower of all of its right, title and interest in, to and under a Conditional Sale Agreement dated as of February 13, 1979 among Twitter, Inc., as Vendor, Rex Railways, Inc., as Manager, and Skiva International, Inc., as Vendee, which was recorded pursuant to Section 11303 on February 22, 1979 at 4:40 P.M. under Recordation No. 10131, as amended by Amendment Agreement #1 dated as of February 13, 1979 which was recorded pursuant to Section 11303 on March 15, 1979 at 11:40 A.M. under Recordation No. 10131-B, including all of its right, title and interest in and to the Equipment.

6. Amendment dated as of October 1, 1979 between Rex Railways, Inc. and C&H Railways, Ltd., which amends the



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10043

Management Agreement; the rights and obligations of C&H Railways, Ltd. under the Management Agreement having been acquired from Skiva International, Inc. pursuant to the Assignment.

The addresses of the parties to the enclosed documents are as follows:

1. Citicorp Industrial Credit, Inc., 399 Park Avenue, New York, New York 10043.
2. C&H Railways, Ltd., 1250 Broadway, New York, New York 10018.
3. Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.
4. Rex-Noreco, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.
5. Twitter, Inc., c/o Rex Railways, Inc., 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632.
6. Lenawee County Railroad Company, Inc., 708 East Michigan Street, Adrian, Michigan 49221.
7. Skiva International, Inc., 1250 Broadway, New York, New York 10018.

The Equipment covered by the enclosed documents consists of 100 70-ton, 50'6" general purpose box cars, manufactured by Pullman Standard Division of Pullman Incorporated, having the mechanical designation of the American Association of Railroads "XM", bearing the road numbers of the Lenawee County Railroad Company, Inc. LCRC 2001 through 2100, inclusive, and bearing the legend "Ownership Interest Subject to a Security Agreement Filed under the Interstate Commerce Act."

Also enclosed is a check in the amount of \$260 for payment to the Interstate Commerce Commission of the required filing fees of \$10 for the Amendment to the Management Agreement and \$50 for each of the other five documents which are enclosed.

Please accept the enclosed documents for recordation and make the appropriate entries to the Index of Documents in order to reflect the assignments, transfers, releases and amendments which are effected by such documents and described above. Please return the original of each of the enclosed documents, stamped with a recordation number, together with the usual letter of the Commission confirming recordation, to the delivering messenger of our counsel,



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399 Park Avenue S. Mudge Rose Guthrie & Alexander, 20 Broad Street, New York,
New York, N.Y.
10043 New York 10005, for transmittal to the undersigned.

Very truly yours,

CITICORP INDUSTRIAL CREDIT,
INC.

By W.H. Bergew
Title Vice President

Marguerite Kahn
(212) 422-6767

Citicorp Industrial Credit, Inc.

Dolores Rodriguez
298-5970

10902-13
RECORDATION NO. Filed 1425

OCT 18 1979 -1 50 PM

INTERSTATE COMMERCE COMMISSION

CONSENT AND AGREEMENT

Dated as of October 1, 1979

between

SKIVA INTERNATIONAL, INC.

and

CITICORP INDUSTRIAL CREDIT, INC. ✓

(COVERING 100 GENERAL PURPOSE BOXCARS)

CONSENT AND AGREEMENT

This **CONSENT AND AGREEMENT** dated as of October 1, 1979 between **SKIVA INTERNATIONAL, INC. (Skiva)** and **CITICORP INDUSTRIAL CREDIT, INC. (the Lender)**.

W I T N E S S E T H :

WHEREAS, Skiva, as vendee, entered into a Conditional Sale Agreement, dated as of February 13, 1979, among Skiva, Twitter, Inc. (the **Vendor**) and Rex Railways, Inc. (the **Manager**), which Agreement was amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the sale of the railroad equipment described in Annex A to such Conditional Sale Agreement (the **Equipment**);

WHEREAS, the Manager and Skiva have entered into a Management Agreement dated as of February 13, 1979 (the **Management Agreement**);

WHEREAS, the Manager has entered into an Equipment Schedule (the **Equipment Schedule**) which amends the Lease Agreement dated September 23, 1977 (the **Lease Agreement**) between the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**), which Lease Agreement provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement;

WHEREAS, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the **First Amendment**) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and subsequent to the assignment by Skiva of its interest in the Conditional Sale Agreement, the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, and the Management Agreement to C&H Railways, Ltd. (the **Vendee**) pursuant to an Assignment dated March 15, 1979 (the **Assignment**), the Manager and the Vendee delivered to the Lessee a Second Amendment to Equipment Schedule (the **Second Amendment**) identifying the Vendee as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the **Lease**);

WHEREAS, the Vendor has assigned substantially all of its right, title and interest in and to the Conditional Sale Agreement to The Provident Bank (**Provident**) pursuant to an Agreement and Assignment dated as of February 13, 1979;

WHEREAS, the Vendee desires to prepay the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**) and the Lender has agreed, pursuant to a Mortgage dated as of October 1, 1979 between the Lender and the Borrower (the **Mortgage**, and all terms used herein shall have the

respective meanings assigned to them in the Mortgage, unless otherwise defined herein), to make a secured loan to the Vendee to finance such prepayment upon the condition, among others, that Skiva execute and deliver this Consent and Agreement;

WHEREAS, the Vendee and the Manager are entering into a Management Agreement Amendment dated as of October 1, 1979 (the **Management Agreement Amendment**); and

WHEREAS, Skiva desires to have the Lender make such loan pursuant to the terms of 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.

(a) Skiva hereby consents, notwithstanding any provisions of the Conditional Sale Agreement, the Finance Agreement, the Management Agreement Assignment and the Lease Agreement Assignment which may be to the contrary, to the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Vendee of the Conditional Sale Indebtedness and the assignment by the Vendee to the Lender, as security, of all of the right, title and interest of the Vendee in, to and under the Equipment, and the payments due or to become due under the Lease or the Management Agreement.

(b) Skiva hereby agrees that, notwithstanding the terms and provisions of Section 4 of the Lease Agreement Assignment and Section 4 of the Management Agreement Assignment, to the extent such agreements remain effective, the obligations of Skiva, as assigned to the Vendee, under the Lease Agreement and Management Agreement may be performed by the Lender without releasing the Vendee, as assignee of Skiva, therefrom.

SECTION 2. Agreements of Skiva. Skiva hereby agrees that:

(a) **Assignment by Lender.** The Lender may assign, without the consent of Skiva, any or all of its rights under the Lease, the Management Agreement, the Note, the Mortgage and the other documents referred to therein.

(b) **Opinion of Counsel.** On the Closing Date Skiva shall deliver to the Lender an opinion of counsel, dated the Closing Date, to the effect set forth in paragraphs (a) through (f) of Section 3 of this Consent and Agreement and to the further effect that assuming due

authorization, execution and delivery by the Vendee of the Assignment and due authorization by the Vendee to act thereunder, the Vendee has been vested with all of the right, title, interest, powers, privileges and remedies purported to be assigned by the Assignment, which opinion may be subject to the qualifications set forth in paragraph (b) of Section 12 of the Mortgage.

SECTION 3. Representations and Warranties of Skiva.
Skiva 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 New York and has the corporate power and authority to enter into and perform its obligations under this Consent and Agreement and, at the respective times of execution of the Assignment, the Lease and the Management Agreement, was a corporation duly organized and validly existing in good standing under the laws of the State of New York and had the corporate power and authority to enter into such agreements and at all times at which it had obligations under such agreements had the corporate power and authority to perform such obligations.

(b) **Due Authorization.** This Consent and Agreement and the Assignment have been duly authorized, executed and delivered by Skiva and, assuming due authorization, execution and delivery by the other parties thereto, are legal, valid and binding obligations of Skiva, enforceable in accordance with their respective terms. The First Amendment and the Management Agreement have been duly authorized, executed and delivered by Skiva and, assuming due authorization, execution and delivery by the other parties thereto, these agreements as well as the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, were legal, valid and binding obligations of Skiva, enforceable in accordance with their respective terms prior to the effectiveness of the Assignment. Under the Assignment, Skiva assigned all of its rights and delegated all of its duties and obligations in, to and under the Equipment, the Lease and the Management Agreement to the Vendee and the Vendee assumed all of the duties and obligations of Skiva thereunder.

(c) **No Violation.** The execution and delivery by it of this Consent and Agreement is not, and the execution and delivery by it of the Assignment was not, and the performance by it of its obligations under this Consent and Agreement and the Assignment 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 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. The execution and delivery by it of the First Amendment and the Management Agreement were not, and the performance by it of its obligations under these agreements as well as under the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, was not, at any time at which it had such obligations, inconsistent with its charter or by-laws, did not contravene any law, governmental rule or regulation, judgment or order applicable to it and did not contravene any provision of, or constitute a default under, any indenture, mortgage, contract or other instrument to which it was a party or by which it was bound at the time of such performance or require the consent 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 were obtained, given or accomplished.

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

(e) **Performance Does Not Create Liens.** The performance by it of its obligations under this Consent and Agreement and the Assignment 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 the Mortgage, the Note and the Guaranty) under any indenture, mortgage, contract or other instrument to which it is a party or by which it is bound. The performance by it of its obligations under the Assignment, the Lease Agreement, as amended by the Equipment Schedule and the First Amendment, and the Management Agreement did not, at any time at which it had such obligations, subject the Collateral, including, without limitation, the Equipment, the Lease, and the Management Agreement, to any Lien (other than the Liens

provided in the Conditional Sale Agreement, the Lease Agreement Assignment, the Management Agreement Assignment and the Agreement and Assignment) under any indenture, mortgage, contract or other instrument to which it was a party or by which it was bound at the time of such performance.

(f) **No Litigation.** There are no actions, suits, proceedings or investigations pending, or to the knowledge of Skiva, threatened, before any court, regulatory commission, board or other governmental authority which question the validity of this Consent and Agreement or the Assignment or which might affect the ability of Skiva to perform its obligations hereunder or thereunder. There were at all times at which Skiva had obligations under the Lease and Management Agreement no actions, suits, proceedings or investigations pending, or to the knowledge of Skiva, threatened, before any court, regulatory commission, board or other governmental authority which questioned the validity of the Lease or the Management Agreement or which might have affected the ability of Skiva to perform its obligations thereunder.

SECTION 4. Survival of Representations and Warranties; Binding Effect.

(a) **Survival.** All agreements, representations and warranties contained in this Consent 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 Consent 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 Consent 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 5. 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 Skiva, to 1350 Broadway, New York, New York 10018, Attention: Issac Chehebar; 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 6. Miscellaneous.

(a) **Execution.** This Consent 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 duplicate thereof. Although this Consent 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 Consent 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 hereof and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Consent 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 Consent 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 Consent 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. Besjou

Title V.P.

Date 10/16/79

Attest: Kim H.C. Park

[Seal]

SKIVA INTERNATIONAL, INC.

By _____

Title _____

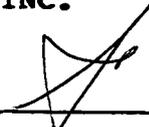
Date _____

Attest: _____

[Seal]

IN WITNESS WHEREOF, the parties hereto have caused this Consent 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]

SKIVA INTERNATIONAL, INC.

By 

Title V.P.

Date 10/16/29

Attest: 

[Seal]



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

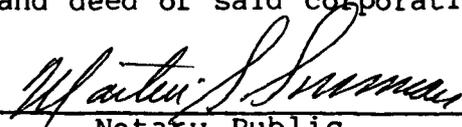
On this _____ day of October, 1979, before me personally appeared _____, to me personally known, who being by me duly sworn, says that he is the _____ of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument 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 New York)

On this 16 day of October, 1979, before me personally appeared Isaac Sheeba, to me personally known, who being by me duly sworn, says that he is the Vice Pres of Skiva International 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

MARTIN S. SUSSMAN
Notary Public, State of New York
No. 30-4500640
Qualified in Nassau County
Commission Expires March 30, 1981

[Notarial Seal]