REXRAILWAYS

October 17, 1984

RECORDATION NO. 14456 Filed 1425
OCT 22 1984 -1 10 PM
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
12th Street & Constitution Avenue - NW
Washington, D.C. 20423

Attention: Ms. Mildred Lee
Room #2303

Dear Ms. Lee:

This package contains three separate leases and each lease is enclosed in triplicate for recording. We have also enclosed $150.00 for the recordation of these three leases.

The first lease is between Chicago & Northwestern Transportation Company, the lessee, and Rex Railways Inc., the lessor, and is dated July 6, 1984 and covers the lease of 33 covered hopper cars bearing numbers RREX 4504-4536 inclusive.

The second lease is between Chicago & Northwestern Transportation Company, the lessee, and Rex Leasing, Inc., the lessor, and is dated July 6, 1984 and covers the lease of 32 covered hopper cars bearing numbers CNW 182733-182764 inclusive. See 14456

The third lease is between Chicago & Northwestern Transportation Company, the lessee, and Rex Railways Inc., the lessor, and is dated July 6, 1984 and covers the lease of 65 boxcars bearing numbers CNW 165000-165064 inclusive. (see 14457)

Please send the official filing receipt and the stamped Lease copies to my attention.

Thanking you for your cooperation,

Most cordially yours,

Mark A. Salitan
President

MAS/dmh
Enclosures

Certified - RRR

REXRAILWAYS, INC. A REXNORECO Company 616 Palisade Avenue Englewood Cliffs, New Jersey 07632 (201) 567-8300

RECORDATION NO. 14456 Filed 1425

LEASE

OCT 22 1984 -1 10 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE dated as of July 6, 1984, between Rex Leasing, 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632, (The "LESSOR"), and **CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,** One North Western Center, Chicago, Illinois 60606, (The "LESSEE").

1. **Scope.** Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, Thirty-Two (32) 4650 cubic foot covered hopper cars (the "Cars") of the description set forth in the Attached Schedule "A". A listing of the reporting marks and numbers is contained on the attached Schedule "B", it being the intention of the parties hereto that this contract shall be deemed to be a lease. "Cars" shall mean all the covered hoppers subject to the Lease and "Car" shall mean an individual covered hopper subject to this Lease.

2. **Term.** The term of this Lease with respect to each Car shall commence September 15, 1984 and, unless earlier terminated in accordance with Paragraph 6, shall terminate upon the expiration of the sixtieth (60th) month following commencement.

3. **Delivery.** Upon execution of this Lease, Lessor shall inform Lessee of the location of the Cars, and thereafter shall deliver the Cars to Lessee at the interchange point on Lessee's tracks which is closest to such location or make its best effort to load the Cars to destinations in the United States. Lessee's trackage includes all railway lines which are owned, leased or controlled either directly or indirectly by Lessee. Each Car so delivered shall be in good operating condition, ordinary wear and tear excepted.

4. **Remarking.** (a) Lessee shall remark the Cars with CNW initials and numbers, the cost to be paid by Lessor, not to exceed $100.00 per Car.

(b) Lessor and Lessee shall mutually cause each Car to be registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register, and any change therein shall be Lessee's responsibility.

(c) Lessor shall, at its sole cost and expense, have the markings of Lessee removed from the Cars and suitable other marks applied at such time as any of the Cars are removed from Lessee's service or this Lease is terminated, except that Lessee shall pay the cost of remarking if Cars are removed pursuant to Section 6 of this Lease.

5. **Rental Per Car.** (a) Rental Per Car shall consist of a division of off line car hire earnings as outlined in Sections (b)-(d) below. The Cars will be liable for Car Hire payments at 1/2 the mileage rate (no time portion) while on Lessee's lines during the term of this Lease.

(b) Car Hire Revenue, both time and mileage, generated from mileage operated off the lines of Lessee shall be divided equally between Lessor and Lessee.

(c) Lessor agrees that Lessee may, with appropriate documentation, deduct the cost of any Car Hire Rule 5 or Arbitrary Allowance Reclaim Payments made by Lessee to other Carriers as a result of the operation of the subject Cars in switch service from those payments due Lessor as rental.

(d) Remittances to Lessor by Lessee shall be made monthly, within One Hundred Twenty (120) days following the end of the month in which such collections were earned.

6. **Recall Of Equipment.** (a) If the off-line utilization of the Cars, as defined in Section 6b hereof, shall fall below the level specified in the Formula for any calendar quarter, Lessor may, within 60 days after all rental payments shall have become due and payable for that calendar quarter, give Lessee not less than 30 days' written notice of its election to reclaim and remove from this Lease all or a portion of the Cars.

(b) The Formula for determining off-line utilization shall compare, for a three month period, the total earnings paid to Lessor with a "Base Amount". The "Base Amount" shall be calculated as follows: The average Car Hire Rate (Time portion only) prevailing at the time x 24 hours x 7.5 days x 3 months x 31 Cars = $ X (the "Base Amount").

(c) If Lessor gives the required 30 days written notice of its election to reclaim all or a portion of the Cars as specified in Section 6a above (The "NOTICE"), Lessee shall within ten (10) days of receipt of such Notice give Lessor either (i) written advice as to whether Lessee desires to terminate this Lease with respect to the Cars covered by Lessor's Notice or (ii) written advice that Lessee desires to redress the shortfall as provided herein. Lessee shall have 90 days after receipt of the Notice during which to redress the shortfall by any means whatsoever. If the shortfall is not made up by Lessee during this 90 day period, Lessor shall have the right to terminate the Agreement and remove the Cars. It is expressly understood that in the event of termination after Lessor shall have given the Notice, Lessee shall have no liability whatsoever for any deficiencies in earnings prior to the date of such termination.

(d) It is understood and agreed between the parties that the following will apply regarding the calculation of earnings and the "Base Amount":

1) All earnings paid to Lessor (including both time and mileage payments), less Car Hire Rule 5 reclaims refunded to Lessee, shall be considered as the earnings of the Cars, all of which are eligible to be compared with the "Base Amount" to determine utilization.

2) The formula for determining the "Base Amount" shall be adjusted to reflect any Cars which are destroyed, heavy bad orders or removed from the service of Lessee.

3) All earnings paid to Lessor in excess of the Base Amount, on a cumulative basis from the beginning of the Agreement, shall be available to offset any deficiency in any particular three month period, less those amounts previously applied to make up a previous deficiency.

7. **Right Of First Refusal.** At the termination of this Agreement, Lessee shall have a Right of First Refusal to lease the Cars at the same terms contained in a bonafide offer, received in writing, from another party.

8. **Maintenance, Taxes and Insurance.** (a) Lessee shall maintain the Cars in good operating condition, ordinary wear and tear excepted. All repairs, whether on or off Lessee's trackage, shall be at Lessor's expense, except as otherwise provided in Section 8, paragraph (c). The Lessee agrees, for the benefit of the Lessor, to comply in all respects with all applicable laws of the jurisdictions in which the Cars may be operated, with the Interchange Rules and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars, to the extent that such laws and rules affect the title, operation or use of the Cars. In the event that, prior to the expiration of this Lease, such laws or rules require the alteration of the Cars or in case any equipment or appliance on any Car shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Car in order to comply with such laws, regulations, requirements and rules, such alterations will be made at the sole cost and expense of the Lessor.

(b) Lessee shall not make any alteration, improvement or addition to any Car without the prior written consent of Lessor thereto which shall not be unreasonably withheld, and all such additions which are removable may be so removed by Lessee upon termination of this Lease.

(c) Lessee shall be responsible for the damage to or destruction of any Car, while on its trackage, ordinary wear and tear excepted. Lessee shall pass through to Lessor any settlement received by it as the result of any damage to or destruction of a Car occurring while on the trackage of others. All settlements for damage to or destruction of any car occurring on or off Lessee's property shall be in accordance with and on at least as favorable terms as those set forth in the Field Manual of the AAR Interchange Rules, and shall be

in U. S. Dollars. Settlements for damaged or destroyed Cars shall be in accordance with AAR Rule 107 and payable in U. S. Dollars.

(d) Lessor shall be responsible for the filing and payment of all taxes, assessments and other governmental charges of whatsoever kind or character which may be accrued, levied, assessed or imposed during the lease term and which relate to the operation and use of any Car or Cars.

(e) The parties acknowledge that Lessee intends to be self-insured as to the Cars during the term of this Agreement. Should Lessee carry any insurance policies covering the Cars, Lessor shall be named an additional co-insured.

9. **Use of Cars.** (a) So long as Lessee shall not be in default under this Lease and subject to the next sentence, Lessee shall be entitled to the possession, use and quiet enjoyment of the Cars in accordance with the terms of this Lease. Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into in connection with the acquisition of the Cars, provided that Lessee shall not be required at any time to duplicate any of its obligations hereunder or to assume additional responsibilities due to the terms of any such financing agreement. Upon notice to Lessee from any such owner or secured party that an event of default has occurred and is continuing, such party may require that all rentals be paid directly to it or the Cars be returned to it. Lessee shall give Lessor at least 10 days' written notice thereof before complying herewith.

(b) It is presently anticipated that Lessee shall keep the Cars in assigned service for clean and non-corrosive loadings. Lessee shall not change such loadings by it without Lessor's consent. Lessee shall not be monetarily liable for any damage to a Car caused by loadings of other railroads.

(c) Lessee agrees that, to the extent it has physical possession or can control use of any Car, such Car shall be used and operated in compliance with the laws of the jurisdiction in which it is located and with all lawful acts, rules, regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of that Car, except that Lessee may in good faith and by appropriate proceedings or other reasonable manner, not jeopardizing the ownership, use or operation of that Car, contest the application of such act, rule, regulation or order at its expense. Lessee shall operate the Cars in accordance with its management practices as to railroad cars of its ownership.

(d) Lessee shall not directly or indirectly create or allow to exist any claim, lien, security interests, or encumbrance with respect to any car, except for Permitted Encumbrances as herein defined and shall promptly discharge the same should it arise. Permitted Encumbrances shall mean liens for taxes, assessments or governmental charges for levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's, or other like liens arising in the ordinary course of business and in each case, not delinquent. Provided, however, that the Lessee shall be under no

obligation to pay or discharge any such claim, lien, security interest, or encumbrance so long as it is contesting in good faith and by appropriate legal proceedings such liens for taxes, assessments or governmental charges for levies, in each case not due and delinquent, or undertermined or inchoate materialmen's, mechanics', workmen's, repairmen's, or other like liens arising in the ordinary course of business and in each case, not delinquent. Lessee's obligations hereunder shall not arise if any such claim, lien, security interest or encumbrance arose solely through the action or inaction of Lessor or any owner of the Cars or any other person, corporation, railroad company or government, whether federal, state, provincial or municipal.

10. Substitution of Cars; Earlier Termination. (a) Lessor shall have the right at any time and from time to time to substitute one or more Cars of similar design, age and quality upon at least 60 days' notice thereof, all at the expense of Lessor both for the displaced Car and its replacement. The parties shall cooperate with each other to effectuate such substitution at a mutually agreeable point without unduly burdening Lessee's operation hereunder. Upon such substitution this Lease shall terminate as to the Car being substituted for, and the car substituted in place of that Car shall thereupon become a "Car" for all purposes of this Lease.

(b) Any Car suffering a casualty occurrence shall, upon 30 days' notification to Lessor thereof, no longer be subject to this Lease.

11. **Defaults and Remedies.** (a) Any of the following events shall constitute an event of default:

(1) Nonepayment when due of any amount required to be paid by Lessee if such non payment shall continue for more than 5 days after written notice of such non payment from Lessor;

(2) Failure to promptly redeliver any Car required to be returned to Lessor hereunder;

(3) Failure to cure a breach by Lessee of any material term, covenant or condition within 30 days following notice by Lessor of such breach;

(4) Any act of insolvency or bankruptcy by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law or any other law for the relief of debtors, or the filing of any such petition or action against Lessee not dismissed within 60 days;

(5) Appointment of any receiver or trustee to take possession of a substantial portion of Lessee's properties not set aside within 60 days;

(6) Levy upon, seizure, assignment, or sale of any Car, or the eminency of such an event; or

(7) Discontinuance of rail service on all or any major portion of Lessee's trackage.

(b) Upon the occurrence of any event of default, Lessor may, at its option, terminate this Lease (which shall not release Lessee from any obligations incurred through such date or from thereafter paying rentals upon the Cars until they are returned to Lessor). In such an event, Lessor may proceed by any lawful means to recover damages for Lessee's breach (to include transportation and remarketing costs, reasonable attorney's fees and court costs and other expenses) and to take possession of the Cars wherever they are located free and clear of Lessee's interest.

12. **Return of Car Upon Termination.** Upon termination of this Lease as to any Car, Lessee shall surrender possession thereof to Lessor at the place on Lessee's trackage east of the Missouri River reasonably designated by Lessor or at a place mutually agreed upon by the parties. All Cars so returned shall be free of debris and in good operating condition, ordinary wear and tear excepted. Lessee shall further provide Lessor up to 90 days free storage on its trackage for any terminated Car in order to arrange disposal thereof, after which if deposition has not been furnished, Lessor shall be liable for storage charges of $5 per day per car commencing on the 91st day after the termination date of this Lease and ending on the date Lessee received deposition therefor.

13. **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 Lessor, which consent shall not be unreasonably withheld, provided, however, that Lessee shall have the right

to sublease any of the Cars to its wholly owned affiliates, or may sublease, for a term not exceeding one year, to a responsible company as determined by the Lessee (without being released from the obligations hereunder). 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 Lessor hereunder may be assigned, pledged, mortgaged, transferred or otherwise deposed 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 Lessor or any chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by Lessor, 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 Lessor 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 to 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 Lessor 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 sublease or assignee.

14. Notices. Any notice required or permitted to be given hereunder shall be given in writing either by telex or by mail, and if mailed, shall be sent, first-class postage prepaid, addressed as follows:

If to Lessor: Mr. Peter Schan
Vice President
Rex Leasing, Inc.
616 Palisade Avenue
Englewood Cliffs, NJ 07632

If to Lessee: Chicago and North Western
Transportation Company
One North Western Center
Chicago, Illinois 60606
Attention: Vice President
Equipment Management

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other.

15. Governing Law. The Lease shall be governed by and construed in accordance with the laws of the State of Illinois. 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.

16. Miscellaneous. (a) This Lease shall be binding upon, and inure to the benefit of, the parties hereto, their respective successors and assigns, except that Lessee may not assign this Lease or any of its rights hereunder without the prior written consent of the Lessor, which will not be unreasonably withheld.

(b) The waiver of any right accruing to any party by failure of that party to exercise that right in a given instance, or delay in exercising that right, shall not be deemed a waiver of that right in future instances of a similar nature or affect any other right, power or remedy available to that party.

(c) Nothing contained herein shall be construed in any way whatsoever so as to constitute or establish a partnership, joint venture or contract of employment between the parties hereto.

17. Addendum. The parties hereto agree that fifteen (15) cars were added to this Agreement after it was first drafted and that the following shall apply as to the fifteen (15) additional cars (RRRX 1406 - 1420).

(a) The additional cars were off the lines of Lessee in service when added to and made a part of this Agreement, and hence were not readily available to be remarked by Lessee.

(b) The additional cars shall not be added to and made a part of the calculations as provided in Section 6 hereof until the last of the fifteen (15) additional cars has been received and restencilled by Lessee. Prior to this time the "Base Amount" shall be calculated on the basis of seventeen (17) cars, less any cars not in service due to being bad order.

(c) After such time as the last of the additional cars has been received and restencilled, all other provisions of this Agreement shall apply to the additional cars.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed on the day and year first above written.

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

(CORP. SEAL)

ATTEST: James M. Foote

BY: Robert A. Johnson

TITLE:

REX LEASING, INC.

(CORP. SEAL)

ATTEST: Duane Harmon

BY: Peter Shea

TITLE: Vice President

SCHEDULE "A"

CAR SERIES	RRRX 1406 - 1437
MECHANICAL DESIGNATION	C113
NOMINAL CAPACITY	100 TON
CUBIC FEET CAPACITY:	4650
LENGTH, INSIDE:	
WIDTH, INSIDE:	
HEIGHT, INSIDE:	

SCHEDULE "B"

CAR NUMBERS: CNW 182733 - 182764

RexLeasing(LEASE) 1-16
pb

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 15th day of October, 198 , before me personally appeared ROBERT A. JAHNKE, to me personally known, who being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Virginia S Collins
Notary Public

My commission expires:
5/4/1987

STATE OF NEW JERSEY)
)
COUNTY OF BERGEN)

On this 16 day of Oct, 1984, before me personally appeared PETER SCHAN, to me personally known, who being by me duly sworn, says that he is a Vice President of REX LEASING, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Rubin Schertz
Notary Public

RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 16, 1985

My commission expires:

Verification 1
pb