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13194
RECORDATION NO. FILE 1425

JUL 21 1981 - 8 55 AM

Telephone 312/640-7000

INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. FILE 1425

JUL 21 1981 - 8 55 AM

July 17, 1981 INTERSTATE COMMERCE COMMISSION

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~~CC Washington, DC~~
~~INTERSTATE COMMERCE COMMISSION~~

13194 A
RECORDATION NO. FILE 1425

JUL 21 1981 - 8 55 AM

INTERSTATE COMMERCE COMMISSION

Mrs. Mildred Lee
Secretary
Interstate Commerce Commission
Office of the Secretary
Washington, DC 20423

RE: Recordation of Lease, Schedule, and Assignment between Stockton
Terminal & Eastern Railroad Company

Dear Mrs. Lee:

Enclosed for filing and recording are four fully executed counterparts
of the above mentioned lease.

Also enclosed is the Lessor's check in the amount of \$70.00, representing
the recordation fee. Upon recordation, kindly return the originals to the
undersigned at the letterhead address.

Very truly yours,
Paul J. Graf
Paul J. Graf

PJG:sm

Enclosure

13194

REGISTRATION NO. FILED 1425

LEASING JUL 21 1981 8 55 AM

AGREEMENT made and entered into this 8th day of December, 1980, between

EVANS RAILCAR LEASING COMPANY
an Illinois corporation (hereinafter called "Evans")

and

Stockton Terminal & Eastern Railroad Company

(hereinafter called "Lessee")

RECITALS

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

AGREEMENT

It is agreed:

1. Lease of Cars. Evans agrees to lease to Lessee and Lessee agrees to and does hereby lease from Evans that number of railroad cars, of the type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 of this Lease and as is set forth in Schedules which may from time to time be added to this Lease. The Cars covered by this Lease are those which shall be delivered to and accepted by or on behalf of Lessee pursuant to the terms hereof. This Lease shall become effective with respect to any Car as of the date of its delivery and acceptance hereunder and shall continue with respect to such Car for the term provided in the Schedule covering such Car unless sooner terminated as hereinafter provided. Evans shall deliver Cars f.o.t. at the delivery point specified in the Schedule covering such Cars and from and after such delivery, Lessee shall pay all costs and expenses on account of transportation or movement of the Cars to and from any place and for any reason whatsoever.
2. Rental. When Car Usage is equal to or less than seventy-four percent (74 %) in any calendar year, the rental per Car per day shall be all payments including but not limited to mileage charges, straight car hire and incentive car hire (if any) payable to Lessee on account of such Car. In the event Car Usage exceeds eighty-three percent (83 %) in any calendar year, Evans shall receive as rental an amount equal

to the total of the payments described in the previous sentence for Car Usage up to 83 % and Lessee shall be entitled to any excess payments. Daily Car Usage of each Car shall be deemed to be the average Car Usage as finally determined for all Cars covered by this Lease as of the end of each calendar year or other applicable period during the term of this Lease. Lessee shall pay to Evans within seven (7) days after receipt thereof at the address specified in Paragraph 14 the rental specified above with respect to any Car covered by this Lease. Evans will within sixty (60) days after the end of each calendar year during the term hereof compute the Car Usage for such year and the amount so determined to be due Evans or to Lessee shall be promptly paid. Rental on each Car shall accrue from and after the date of delivery and acceptance of each Car; provided, however, that rental shall be payable by Lessee only for amounts actually received by or credited to it.

3. Acceptance of Cars. Within three (3) days after Evans shall give Lessee notice that some or all Cars covered by a Schedule are ready for delivery, Lessee may have its authorized representative inspect such Cars at the point of delivery and accept or reject them as being or failing to be in compliance with the terms hereof. Cars so inspected and accepted and any Cars which Lessee does not elect to inspect shall be conclusively deemed to meet all requirements of this Lease and shall be conclusively deemed delivered to and accepted by Lessee.
4. Records. Lessee shall keep records of and monitor the use and movements of all Cars and shall promptly furnish Evans with all information and copies of all records and reports, pertaining to the Cars received by Lessee or available to it. Evans shall have the right at any time and from time to time to audit and verify any such information, records and reports and other data pertinent hereto and Lessee shall cooperate with and assist Evans in any such audit or verification. Lessee will at Evans' expense file such applications for relief from any interchange Rules as Evans may direct to increase revenues of the Cars and will at Evans' expense take all appropriate action to record and register the Cars as Evans may request. In addition, if Lessee knows of the initial loading of any of the Cars, Lessee shall promptly thereafter notify Evans of the date, handling railroad and destination of such initial loading.
5. Use - Lettering. Lessee shall use the Cars in a careful and prudent manner in compliance with all Interchange Rules and solely for the uses for which

they were designed. From and after the delivery of a Car to Lessee, so long as Lessee shall not be in default hereunder, Lessee shall be entitled to the use of the Car for the full term of this Lease, but solely within the continental limits of the United States of America. Except for the lettering to be placed on the Cars by prior to delivery indicating the interest of Lessee, Evans and any assignee or mortgagee of Evans as permitted in Paragraph 10 hereof, no lettering or marking shall be placed upon any of the Cars by Lessee except upon the written direction or consent of Evans. Lessee shall give preference and shall load the Cars prior to loading similar railroad cars leased from other parties or purchased by Lessee subsequent to the date of this Lease or interchanged with other railroads, provided, however, that this shall in no event prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request to shippers on its railroad tracks, and provide further, Lessee shall not have to provide the Cars priority at the expense of unreasonably disrupting Lessee's normal operations.

6. Repair Work. Except as otherwise provided herein, Evans shall at its sole cost and expense perform all Repair Work or authorize or cause same to be done. Lessee shall at its sole cost and expense perform or cause to be performed all Repair Work required by reason of the negligence of Lessee or an affiliate of Lessee. Evans shall have no responsibility for Repair Work until informed of the need therefor. Evans may require Lessee to return Cars for preventive maintenance or Repair Work and may withdraw from this Lease any Cars which it in its sole discretion deems uneconomical for Repair Work of any kind.
7. Casualty Cars. Evans shall bear the risk of any Car which is lost, stolen, destroyed or damaged beyond economical repair ("Casualty Car") other than on Lessee's lines. Lessee shall bear the risk of and be responsible for any Car which is lost, stolen, destroyed or damaged beyond economical repair on its lines and shall, within thirty (30) days after the occurrence of any such event, pay to Evans the amount provided in the Interchange Rules to be paid for such Casualty Car. This Lease shall terminate as to any Casualty Car on the date on which the casualty occurred. All payments for Repair Work or in connection with the loss of any Casualty Car due from third parties shall be assigned to and belong to Evans and Lessee shall cooperate with Evans in the prosecution and collection of all claims therefor.

Evans

8. Taxes. Lessee shall pay all property taxes assessed or levied against the Cars. Lessee shall pay all taxes assessed or levied upon its interest as lessee of Cars and all taxes based upon the earnings or rental of cars (other than income taxes of Evans upon rentals paid to it hereunder unless such tax is in substitution for or relieves Lessee of taxes, it would be otherwise obligated to pay hereunder). Lessee will file all property or ad valorem tax returns, copies of which shall be submitted to Evans. Evans and Lessee agree that, as between themselves, Lessee shall be entitled to claim the benefits of any available Investment Tax Credit for Federal income tax purposes. At the request of Lessee, Evans agrees to execute such documents as may be necessary to permit Lessee to claim any Investment Tax Credits relating to the Cars. Evans hereby represents that the Cars shall be new equipment when delivered to Lessee.
9. Termination. This Lease shall terminate upon expiration of its term, at election of either party hereto by reason of the default or breach of the other party in the terms hereof, or upon the election of Evans as hereinafter provided. In the event that (i) daily Car Usage for all Cars or any group of Cars in any calendar quarter is less than 74 % or (ii) the rental payable to Evans during such quarter averages less than \$ 27.78 per Car per day, then Evans may at its option upon thirty (30) days notice to Lessee terminate this Lease in its entirety, or terminate the Lease as to any or all of the Cars subject to this Lease or any Schedule hereto. Lessee shall at the termination of the Lease with respect to any Cars return such Cars to Evans in the same condition (except as to Casualty Cars) in which the Cars were furnished and maintained by Evans during the term hereof, ordinary wear and tear excepted. Upon the termination of this Lease with respect to any or all Cars, Lessee shall at its sole cost and expense forthwith surrender possession of such Cars to Evans at a point to be designated by Evans. If requested by Evans, Lessee shall provide free storage for a period of up to 120 days for Cars as to which the Lease is terminated, provided that risk of loss during such storage shall be Evans'. This Lease may be terminated as to all Cars or as to any group of Cars covered by a Schedule without termination of the Lease as to Cars covered by any other Schedule. From and after termination of this Lease with respect to any Car and until its return to Evans, all amounts earned by such Car shall be paid to Evans as additional rental for use of the Cars during the term hereof.
10. 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 this Lease or sublease or loan any of the Cars without the written consent of Evans.
- (b) All rights of Evans hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed of either in whole or in part with or without notice to Lessee. This Lease and Lessee's rights hereunder are and shall be subject and subordinate to any chattel mortgage, security agreement or equipment trust covering the cars heretofore or hereafter created by Evans. If Evans 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 Evans 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.

11. Default. If Lessee shall fail to make any payment required hereunder within five (5) after same shall have become due or shall breach any representation or warranty contained herein or shall default or fail for a period of ten (10) in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or other laws for the appointment of a receiver, assignee or trustee of Lessee or its property, or Lessee shall make a general assignment for the benefit of creditors, then and in any of said events Evans may in addition to all other rights and remedies provided in law of equity, upon written notice to such effect, terminate this Lease in its entirety or with respect to any group of Cars with respect to which said default has occurred and retake the Cars and thereafter recover any and all damages sustained by reason of Lessee's default in addition to all rental then or thereafter due. The obligation to pay rental then or thereafter due or any other 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.

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

"Repair Work" - all repairs, maintenance, modifications, additions or replacements required to keep Cars in good working order and condition and in compliance with all Interchange Rules.

"Interchange Rules" - all codes, rules, decisions, interpretations, laws and 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 during the term of this Lease by the Association of American Railroads and any other organization, agency or governmental authority, such as but not limited to 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, decisions, interpretations, laws or orders.

"Car Usage" - a percentage equal to the quotient obtained by dividing the aggregate number of hours in a calendar year (or other applicable time period) in which straight car hire is earned on a Car by the Lessee commencing with its date of delivery, by the aggregate number of hours in such year (or other applicable time period) in which the Car is under lease to Lessee commencing with its date of delivery.

13. Representations. Lessee covenants, warrants and represents that all of the following matters shall be true and correct at all times that any Car is subject to this Lease:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation and has the corporate power, authority and is duly authorized and qualified to do business wherever it transacts business and such qualification is required, and has corporate power to 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) No governmental, administrative or judicial authorization, permission, consent or approval is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder, nor will the execution or performance of this Lease violate any law, judgement order or regulation, or any indenture or agreement binding upon Lessee; and
- (d) Neither Lessee nor its counsel know of any requirements for recording, filing or depositing this Lease other than pursuant to Section 20c of the Interstate Commerce Act, which is necessary to preserve or protect the title of Evans or its assignee or mortgagee in the United States of America.

Upon request of Evans or its assignee or mortgagee at any time or times, Lessee shall deliver to Evans an opinion of its counsel addressed to Evans or its assignee or mortgagee, in form and substance satisfactory to Evans or its assignee or mortgagee, which opinion shall confirm the matters set forth in this Paragraph 13 (a) through (d).

14. Miscellaneous.

- (a) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns to the extent permitted herein.
- (b) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Evans at: East Tower
2550 Golf Road
Rolling Meadows, Illinois
60008

Lessee at: Suite 701
San Francisco, Calif. 94111

or such other address as either party may from time to time designate by such notice in writing to the other.

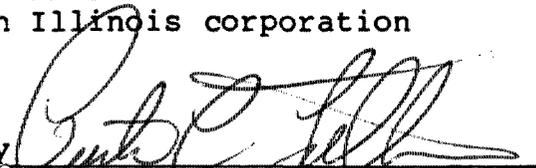
- (c) Lessee shall keep the Cars free from any encumbrances or liens, which may be a cloud upon or otherwise affect Evans' title, which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure

to comply with the provisions of this Lease and shall promptly discharge any such lien, encumbrance or legal process. Lessee shall take all action requested by Evans to confirm Evans' interest in the Cars as Lessor and that Lessee has no interest in the Cars other than as Lessee hereunder.

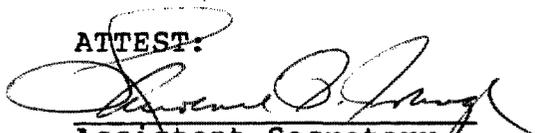
- (d) During the continuance of this Lease, Evans shall have the right, at its own cost and expense, to inspect the Cars at any reasonable time or time wherever the Cars may be. Lessee shall, upon request of Evans, but no more than once every year, furnish to Evans two (2) copies of an accurate inventory of all Cars in service.

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

EVANS RAILCAR LEASING
COMPANY
an Illinois corporation

By 
Senior Vice President

ATTEST:


Assistant Secretary

Stockton Terminal & Eastern Railroad Company

By 
President
Chairman

ATTEST:


Secretary

STATE OF Illinois
COUNTY OF Cook

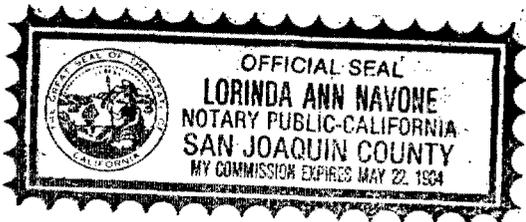
On this _____ day of _____, 19____, before me personally appeared _____ to me personally known, who being by me duly sworn says that he is _____ President of the Evans Railcar Leasing Company and _____, to me personally known to be the Secretary of said corporation, that the seal affixed to the foregoing 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.

Notary Public

STATE OF
COUNTY OF

On this 30th day of December, 1980, before me personally appeared J.P. Seard to me personally known, who being by me duly sworn, says that he is Chairman President of Shelton Terminal & Eastern Railroad, and B.D. Schneider, to me personally known to be the 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.

Lorinda Ann Navone
Notary Public



Lease dated December 8, 1980, by and between
Evans Railcar Leasing Company ("Evans") and _____
Stockton Terminal & Eastern Railroad Company
("Lessee").

DESCRIPTION OF CAR: New 70-Ton 52' 5" RBL Cars with 20" travel
cushion underframe with Dual Air Pak Bulkheads with standard floor
tracks, 16 ft. double plug doors.

NUMBER OF CARS: 50

REPORTING NUMBERS AND MARKS:

PLACE OF DELIVERY: Atlanta, Georgia

TERM: Fifteen (15) years from the average date of delivery
and acceptance of each Car covered by this Schedule.
Average date of delivery is that date which is determined
by (i) multiplying the number of Cars delivered by Evans
on each day by the number of days elapsed between such
day and the date of delivery of the first Car hereunder,
and (ii) adding all of the products so obtained and
dividing that sum by the total number of Cars delivered
and (iii) adding such quotient rounded out to the nearest
whole number to the date of delivery of the first Car.
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, as specified in Paragraph 2.

Stockton Terminal & Eastern Railroad Company
Lessee

EVANS RAILCAR LEASING COMPANY
Lessor

By J. Beard Chairman

By _____

SPECIAL TERMS: Notwithstanding the provisions of Paragraph 2, if the
utilization of 83% is achieved, mileage would be split in the same
manner for the first 3,000 miles with a 50-50 split for over 3,000
miles per month. If utilization is less than 83% but more than 74% all
time charges plus the first 3,600 miles per month would be for the account
of Evans. Any mileage earned over 3,600 miles would be for the account of
the Stockton Terminal & Eastern Railroad Company.