

REX LEASING

7-181A112

1 5254
RECORDATION NO. Filed 1426

JUN 30 1987 -3 40 PM June 22, 1987

INTERSTATE COMMERCE COMMISSION

No. JUN 30 1987

Date JUN 30 1987
Fee \$ 10.00

ICC Washington, D.C.

Mrs. Mildred Lee
Interstate Commerce Commission
Recordation Dept. Room 227
12th & Constitutional Ave., N.W.
Washington, D.C. 20423

Dear Mrs. Lee:

Enclosed please find an original and two copies of a Lease Agreement dated June 1, 1987 between Rex Leasing, Inc., 616 Palisade Ave., Englewood Cliffs, N.J. (Lessor), and Waterloo Railway Co., 233 North Michigan Ave., Chicago, Ill. (Lessee) respecting 45 Covered Hopper cars. The Leases are properly notarized and we are enclosing a check for \$10.00 payable to the ICC for recording.

Please send us back the recorded copies.

Thank you for your cooperation.

Most cordially yours,

Mark A. Salitan
President

MAS:jgm
Encl.

JUN 30 3 31 PM '87
MOTOR VEHICLE UNIT
ICC OF THE
T. STONE

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

7/1/87

REX Leasing, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632

Dear

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 6/30/87 at 3:40 PM, and assigned re-
recording number (s) 15253, 15254, 15255, 15256 and 15257

Sincerely yours,

Noreta R. McGehee
Secretary

Enclosure(s)

SE-30
(7/79)

7-181A112

No. _____

Date JUN 30 1987

Fee \$ 10.00

1 5254
RECORDATION NO. _____ Filed 1425

REX LEASING, INC.
AGREEMENT OF RAILWAY COVERED HOPPER CARS
WITH
WATERLOO RAILWAY COMPANY

ICC Washington, D.C.

JUN 30 1987 - 3 40 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT, made and entered into this 1st day of June, 1987, by and between REX LEASING, INC., a corporation of New Jersey, hereinafter called Car Company, and WATERLOO RAILWAY COMPANY, a corporation of Delaware, hereinafter called Lessee,

WITNESSETH:

WHEREAS, Car Company is willing to assign forty-five (45) railway covered hopper Cars of 100 ton and 4,650 cubic foot capacity, initialled and numbered per Schedule "A" attached, and Lessee is desirous of accepting assignment of said Cars.

NOW, THEREFORE, in consideration of the premises and of the covenants, promises and undertakings of the parties hereof, as hereinafter contained, it is agreed as follows:

(1) This Agreement shall become effective with the delivery of the first Car, and unless otherwise terminated by any other provision hereof, shall continue in full force and effect until two years following receipt of last Car, and shall continue month to month thereafter until terminated by either party upon thirty (30) days prior written notification to the other party.

Car Company shall deliver the Cars to any point on the lines of the Lessee. Any transportation charges to move the Cars to the Lessee shall for the sole account of the Car Company.

(2) Subject to provisions of this Agreement, Lessee shall have exclusive use and control of the Cars during the term of this Agreement, or extension thereof, provided, however, that Lessee will use its best efforts to insure that said Cars shall be used only within the Continental limits of the United States of America, or in temporary or incidental use in Canada.

(3) Lessee agrees that while on the lines of the Lessee's parent company or its other subsidiaries, full per diem and mileage will be paid. Lessee further agrees that the first Two Hundred and Fifty-Five Dollars (\$255.00) of the aggregate per diem and mileage revenues collected per Car per month, except for any partial month, as defined herein, will be for the sole

Rule

account of the Car Company. Any excess of Two Hundred and Fifty-Five (\$255.00) of the aggregate of per diem and mileage revenues collected will be for the sole account of the Lessee. Partial months, whether at the inception or conclusion of this Agreement ~~due to the Car or Cars being destroyed or shopped for repairs~~ ^{for maintenance} shall be paid at the rate of Eight Dollars and Fifty Cents (\$8.50) per Car per each day of the partial month. Lessee agrees to make estimated car hire payments to the Car Company, such estimates to be not less than Two Hundred Fifty-Five Dollars (\$255.00) per Car per month, during the terms of this Agreement, within fifteen days following the end of the service month payable to the Car Company at:

Rex Leasing, Inc.
616 Palisades Avenue
Englewood Cliffs, New Jersey 07632

(4) (a) Lessor agrees that at Car Company's expense and before delivery to Lessee the Cars will be lettered with the Lessee's reporting marks and all other markings shall be painted over in a professional manner. In addition, each Car may be lettered, at Lessor's expense, with the name of the owner thereof and/or the institution which has a security interest therein. Such markings shall comply with all applicable regulations.

(b) Except as otherwise provided below, Lessee shall be required to preserve the Cars in good operating condition while the Cars are on Lessee's trackage. All repairs, whether on or off Lessee's trackage shall be performed at Car Company's expense, except that any damage to a Car caused by a derailment, cornering or sideswiping on Lessee's line or damage due to carrying corrosive or abrasive materials, or spilling of damaging material, shall be at the expense of the Lessee.

(c) It is the intent of this Agreement that Car Company have all of the rights and obligations of an owner of the Cars (including but not limited to inspection, maintenance and repair obligations), except for any rights reserved or given to Lessee herein. Lessee shall have the right to perform all repairs necessary except as provided in Paragraph 4(d) below, to maintain the Cars in good working order and in compliance with all pertinent rules, regulations and Agreements at Car Company's expense without Car Company's prior consent.

(d) Should a Car require extensive repair, or modification for which Car Company is responsible, Lessee shall have the right to participate in competitive bidding of repair work

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on such Car. Should Lessee not have the lowest bid, then upon Car Company's instructions, Lessee will bill the Car to a repair shop ~~for Lessee's tackage~~ for any such repair or modifications. The repair shop shall be designated by Car Company and all transportation costs off Lessee's trackage shall be for the account of Car Company.

(e) Lessee shall not make any alteration, improvement or addition to any Car without the prior written consent of Car Company thereto. Such consent shall not be unreasonably withheld in regard to any alteration required by the AAR or governmental body authorized to require such change. Any alteration, improvement or addition made to a Car shall be at the sole expense of Car Company and shall become the property of Car Company upon installation.

(f) Lessee shall pass through to Car Company any settlement received by it as the result of any loss or destruction of a Car occurring while on the trackage of others. All settlements for loss 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. Settlements for a destroyed Car shall be in accordance with AAR Rule 107.

(g) Lessee will submit to Car Company monthly statements of the cost of all repairs and maintenance to the Cars and for all other amounts due Lessee. Lessee will obtain payment for all such repair and maintenance costs and other amounts due by offsetting such charges against car hire revenues payable to Car Company pursuant to Paragraph 3 hereof. Said statements shall be prepared in a manner similar to that prescribed by AAR Rules for Interline Settlement and submitted to Car Company monthly along with the reports of car hire revenues and maintenance required by Paragraph 3 hereof.

(h) Lessee shall promptly notify Car Company of the location and condition of any Car which has been substantially damaged or destroyed and shall thereafter continue to give Car Company any additional information which Lessee obtains about such Car.

(i) Notwithstanding anything herein contained, Car Company may notify Lessee that it is withdrawing from this Agreement any Car which in the opinion of Car Company has been destroyed, damaged or needs repairs in excess of its economic value, whereupon this Agreement will terminate as to such withdrawn Car; provided, however, Car Company may, with Lessee's

consent, substitute a Car of like specifications, age and per diem value for such withdrawn Car, in which case all of the terms and conditions of this Agreement will apply to the substituted Car.

(j) On any car requiring repair and/or maintenance, compensation shall cease five days after notification to the Car Company that the Car is currently mechanically unfit for service. Compensation shall resume when the car is again made available for loading by either release from a designated shop if located on the lines of the Lessee or by receipt in interchange when from a designated shop located off the lines of the Lessee.

(k) Upon confirmation that any Car or Cars has been lost due to destruction or damage beyond economical repair, per diem and mileage shall be abated upon the date of notification to Car Company of said destruction or damage to said Car or Cars.

(l) Following termination of this Agreement, Car Company agrees to re-stencil these cars without cost to the Lessee. Any transportation costs beyond the lines of the Lessee will be for the sole account of the Car Company.

(5) Car Company shall not be liable for any loss of, or damage to, commodities or property, or any part thereof, loaded or shipped in said assigned cars, however such loss or damage may be caused or result. Car Company shall not be liable for any loss or damage arising through injury to or death of persons or damage to any other property, however such loss or damage may be caused or result. Lessee assumes responsibility for and agrees to indemnify Car Company against, defend and save it harmless, from any such loss or damage or claim therefrom or judgments arising thereout.

(6) Lessee shall be responsible for all property, sales, and/or use taxes imposed by federal, state, municipal, or other governmental authority, and in addition, Lessee agrees to assume cost of duty, and all other taxes incidental to exportation of the cars out of or operation thereof in Canada.

(7) Upon termination of this Agreement in accordance with provisions hereof, or upon failure of Lessee to cure the breach of any condition or covenant herein by it within ten (10) days after written notice thereof by Car Company to Lessee, Lessee shall deliver said assigned cars, free and clear of any and all transportation charges, to the Car Company at any on-line

interchange point designated by Car Company. If Lessee shall fail or refuse to deliver said cars as aforesaid, Car Company shall have the right, without further notice or demand, and in addition to and without personal liability claims against Lessee, and without constituting a waiver or any other remedy, claim or right hereunder or at law (i) if the Agreement is terminated in accordance with provisions hereof, to take possession of said cars wherever found, or (ii) either to take possession of said cars wherever found without termination of this Agreement, or to terminate this Agreement and to take possession of said cars wherever found, and in all cases with or without legal process, and remove them at Lessee's expense, and for such purpose only, Lessee authorizes Car Company to enter any premises occupied by Lessee upon prior notification and with Lessee's approval which will not be unreasonably withheld. Lessee agrees to indemnify and pay to the Car Company reasonable attorney's fees and costs of repossession.

(8) This Agreement and the terms, provisions and covenants herein contained shall extend to and be binding upon and shall inure to the benefit of the respective successors and assigns of the respective parties hereto. Lessee, however, shall not assign, transfer, or encumber their interest in any of the cars, or sublet any of the cars, without prior written consent of the Car Company. Notwithstanding any written consent of the Car Company, Lessee shall remain bound by all the terms, covenants and conditions of this Agreement unless said written consent explicitly releases Lessee from any liabilities and obligations.

(9) A waiver of a breach of any of the conditions, covenants or terms in this Agreement by any party shall not be a waiver of any subsequent breach of any such conditions, covenants or other terms.

RWH

N.J.

(10) The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of ~~Delaware~~. The terms of this Agreement 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 terminations is sought.

RWH

(11) Any notice required or permitted to be given pursuant to the terms of this Agreement shall be properly given when made in writing, deposited in United States mail, registered or certified, postage paid, addressed to:

RWH

(12) Deletion of Equipment: As these Cars are managed by REX and owned by individual Investors, REX reserves the right to delete a Car(s) from this Lease Agreement should an Investor sell his car, and/or remove from REX'S Management, with no need to substitute equipment or at no penalty.

(13) Upon termination of this Agreement, Cars shall be free of per diem and mileage charges while on Lessee's line until delivered to designated Interchange point.

Rex Leasing, Inc.
616 Palisades Avenue
Englewood Cliffs, N.J.

Waterloo Railway Company
233 North Michigan Avenue
Chicago, Illinois 60601

Attention: Vice President

Attention: Treasurer

cc: Supervisor Car Control

or at such other addresses as Car Company or Lessee may from time to time designate by such notice in writing.

IN WITNESS WHEREOF, Car Company and Lessee respectively, each pursuant to due corporate authority, have caused these presents to be executed and their respective corporate seals to be hereonto affixed duly attested, as of the day and year first above written.

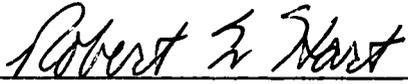
REX LEASING, INC.


JANET MAGUIRE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Oct. 23, 1991

By 
Name Peter Schan
Title Vice President

WATERLOO RAILWAY COMPANY


My Commission Expires February 26, 1993

By 
Name ROBERT W. HART
Title VICE-PRESIDENT

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W/o 768175 *(old)* SCHEDULE A *W/o*
~~ICG 768715~~ through and Including ~~ICG 768219~~