

REX RAILWAYS

RECORDATION NO. 13702 Filed 1425

JUL 21 1982 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

July 19, 1982

2-2021048

No. [Stamp]
Date..... [Stamp]
Fee \$ 50.00

Mrs. Mildred Lee
Recordation Department, Room 2227
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423
ICC Washington, D. C.

RECEIVED
JUL 21 2 15 PM '82

Dear Mrs. Lee:

Please find enclosed a Lease Agreement, in triplicate, dated June 17, 1982 between Rex Railways, Inc. lessor and The Bangor and Aroostook Railroad Co., lessee.

The lease is for a term of five years (to July 1987) and for car numbers:

BAR 5500 thru BAR 5599 inclusive

Please be good enough to file and record one set of the Lease Agreement and return two copies to us with the recording numbers and recordation date thereon.

Enclosed please find our check in the sum of \$50.00 to cover the filing cost.

Thanking you for your courtesy and prompt attention,

Most cordially yours,

Mark A. Salitan
President

MAS:dw
encl.

Interstate Commerce Commission

Washington, D.C. 20423

7/21/82

OFFICE OF THE SECRETARY

Mark A. Salitan, President
Rex Railways, Inc.
616 Palisade Avenue
Englewood Cliffs, New Jersey 07632

Dear **Sir**:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **7/21/82** at **2:20pm**, and assigned re-
recording number(s). **13702**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

LEASE AGREEMENT

JUL 21 1982 2 28 PM

INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 17th day of June, 1982 between REX RAILWAYS, INC., a New Jersey corporation, 616 Palisade Ave., Englewood Cliffs, N.J. as Agent for Car Owners (hereinafter referred to as "REX" or "LESSOR"), and The Bangor & Aroostook Railroad Company, a Maine corporation (the "LESSEE"), as Lessee.

RECITALS

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

AGREEMENT

It is Agreed:

1. Lease of Cars. REX agrees to lease to Lessee and Lessee agrees to and does hereby lease from REX railroad cars of the number of units, model, type, construction and such other description (hereinafter referred to as the "Cars") as is set forth in Schedule 1 attached hereto and by this reference made a part hereof and as set forth in Schedules which may from time to time be added to this Lease and thereby made a part hereof.
2. Delivery of Cars. REX shall deliver the cars immediately, and will be considered upon changing of markings on each individual car, delivered, for the purpose of earning. For the purpose of lease term and take back provision, delivery will be considered at the date upon which markings are changed on the last car of the 100, this to take place within one month from the date of arrival of the last car on the Bangor & Aroostook Line. If markings have not been changed within the one month period, the one month date will be used.
3. Use and Possession. Throughout the continuance of this Lease so long as Lessee is not in default hereunder, Lessee shall be entitled to possession of each Car from the date the Lease becomes effective as to such Car and shall use such Car on its own property or lines or in the usual interchange of traffic; provided, however, that Lessee agrees that the Cars shall at all times be used (i) in conformity with Interchange Rules; (ii) in compliance with the terms and provisions of this Lease; (iii) in a careful and prudent manner, solely in the use, service and manner for which they were designed; (iv) only within the continental limits of the United States of America or in temporary or incidental use in Canada and Mexico.

4. Term. This Lease shall be effective through and including five years from the date of delivery as defined in paragraph 2.

5. Rental Per Car. During the term of this Lease, Lessee shall pay one-half ($\frac{1}{2}$) of all income earned on these cars while off The Bangor and Arcoostook Line.

6. Payment. Lessee shall make payment of all sums due hereunder to REX in immediately available funds at the address provided in Paragraph 20 hereof, or such other place as REX may direct. Rental payments shall be made in accordance with normal car hire receipts monthly.

7. Title. Title to the Cars shall remain that of the Lessor.

8. Maintenance. All running repairs will be for the account of REX. Any parts replacements or additions made to any Car shall be accessions to such Car and title thereto shall immediately vest in REX. Improvements, changes and remarking will be at the expense of the LESSEE.

9. Abatement of Rent. If cars are out of service for repairs, or destroyed, these cars will be removed from any calculations used to arrive at take back of equipment.

10. Liens. Lessee shall keep the Cars free from any and all encumbrances or liens in favor of anyone claiming by, through or under Lessee which may be a cloud upon or otherwise affect REX' title, including, but not limited to liens or encumbrances which arise out of any suit involving Lessee, or any act or omission of Lessee or Lessee's failure to comply with the provisions of this Lease, and Lessee shall promptly discharge any such lien, encumbrance or legal process.

11. Indemnities -- Patent Covenants. Lessee agrees to indemnify REX and hold it harmless from any loss, expense or liability which REX may suffer or incur from any charge, claim, proceeding, suit or other event which in any manner or from any cause arises in connection with the use, possession or operation of a Car while subject to this Lease, excepting only any such loss, expense or liability which arises solely from REX' negligence REX agrees to indemnify Lessee and save it harmless against any charge, loss, claim, suit, expense or liability arising out of or on account of the use or incorporation by REX upon delivery of a Car or upon the making of repairs thereto by REX, of any invention or the infringement of any patents, except if such invention was used or incorporated by reason

of Lessee's specifications. The term "REX" shall mean and include any subsidiary, parent or affiliated corporation for all purposes of this Paragraph 11. Lessee's indemnity shall not eliminate the rights given Lessee under any manufacturer's warranty assigned to it pursuant to Paragraph 20. The indemnities and assumptions of liability herein contained shall survive the termination of this Lease. Each party shall, upon learning of same, give the other prompt notice of any claim or liability hereby indemnified against.

12. Lettering -- Inventory. At REX' election all Cars may be marked to indicate the rights of REX, or an assignee, mortgagee, trustee, pledgee or security holder of REX or a lessor to REX and may bear the following inscription: "Title to this Car subject to documents recorded under Section 11303 of the Interstate Commerce Act." Except for renewal and maintenance of the aforesaid lettering or lettering indicating that the Car is leased to the Lessee or to a sublessee in accordance with demurrage tariffs, no lettering or marking (other than Lessee's reporting marks) shall be placed upon any of the Cars by Lessee and Lessee will not remove or change the reporting marks and numbers indicated on the applicable schedule except upon the written direction of consent of REX. REX may at its own cost and expense inspect the Cars from time to time wherever they may be, and Lessee shall, upon request of REX, but not more than once every year, furnish to REX its certified inventory of all Cars then covered by this Lease.

13. Loss, Theft, or Destruction of Cars. In the event any Car is lost, stolen, destroyed or damaged beyond economic repair, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise REX of such occurrence. Lessee shall, within 45 days after demand by REX promptly make payment to REX in accordance with AAR Rulings. This lease shall continue in full force and effect with respect to any Casualty Car irrespective of the cause, place or extent of any casualty occurrence, the risk of which shall be borne by Lessee, provided, however, that this Lease shall terminate with respect to a Casualty Car on the date REX shall receive all amounts and things granted it on account of such Car under this Paragraph ~~14~~¹³, and thereafter Lessee shall have no further liability to REX hereunder with respect thereto excepting accrued rent and liabilities arising or existing under Paragraphs 10, 11 and 12 hereof.

14. Return of Cars. Upon the expiration or termination of this Lease, Lessee shall at its sole cost and expense forthwith surrender possession of such Car to REX by delivering to interchange of BAR Line. Each Car so surrendered shall be in the same or as good condition, order and repair as when delivered to Lessee, wear and tear from ordinary use and the passage of time excepted, shall be in need of no repairs, and shall be free from all

accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. If any of the Cars do not bear REX' reporting marks and numbers, Lessee shall place such reporting marks and numbers on any or all of the Cars as REX shall designate in writing to Lessee prior to the end of the lease term. This may be done by blocking out BAR markings and applying temporary markings. Until the delivery of possession to REX pursuant to this Paragraph 16, Lessee shall continue to be liable for and shall pay rental at the rate being paid immediately prior to termination or expiration, and Lessee as though such termination or expiration had not occurred. If Lessee is a railroad, Lessee agrees to provide storage at its expense, upon the request of REX for any or all of the Cars for a period of sixty (60) days from the date of expiration or termination of this Lease. Nothing in this Paragraph 16 shall give Lessee the right to retain possession of any Car after expiration or termination of this Lease with respect to such Car except as provided herein.

15. Default. If Lessee shall fail to make any payment required hereunder within 30 days after same shall have become due or shall default or fail for a period of 30 days after notice thereof in the due observance or performance of any covenant, condition or agreement required to be observed or performed on its part hereunder, or if a proceeding shall have been commenced by or against Lessee under any bankruptcy laws, Federal or State, or for the appointment of a receiver, assignee or trustee of Lessee or its property, or if Lessee shall make a general assignment for the benefit of creditors, then and in any of said events REX may at its election:

(a) terminate this Lease by written notice to such effect, and retake the Cars and thereafter recover as liquidated damages for loss of a bargain and not as a penalty, any and all damages sustained by reason of Lessee's default in addition to all rental unpaid as of said date; or

(b) without terminating the Lease repossess the Cars, and may relet the same or any part thereof to others upon such rental and other terms as it may see fit. The proceeds of any such reletting shall first be applied to the expenses (including reasonable attorneys' fees) of retaking and reletting of the Cars and delivery to the new lessee and then to the payment of rent due under this Lease. Lessee shall pay any deficiency remaining due after so applying the proceeds as the same shall accrue. REX shall not be obligated to accept any lessee offered by Lessee, or to do any act or exercise any diligence whatsoever in the procuring of another lessee to mitigate the damages of Lessee or otherwise. The election by REX to relet the Cars and the acceptance of a new lessee shall not operate to release Lessee from liability for any existing or future default in any other covenant or promise herein contained. The obligation to pay such deficiency or any 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.

15
The remedies provided in this Paragraph 15 in favor of REX shall not be deemed exclusive but shall, where not by rule of law inconsistent with each other, be cumulative and may be availed of singly, in combination, or all together and in any order, and shall be in addition to all other remedies in REX' favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law now or hereafter in effect which might limit or modify any of the remedies herein provided to the extent that such waiver is permitted by law.

16. 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 REX, 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 REX hereunder may be assigned, pledged, mortgaged, transferred or otherwise disposed 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 REX chattel mortgage, security agreement or equipment trust or other security instrument covering the Cars heretofore or hereafter created by REX 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 REX 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 REX 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.

17. Opinion of Counsel. Upon the request of REX or its assignee, Lessee will deliver to REX an opinion of counsel for Lessee, addressed to REX or its assignee in form and substance satisfactory to counsel for REX or its assignee, which opinion shall be to the effect that:

(a) Lessee is a corporation duly organized and validly existing in good standing under the laws of the state of its incorporation, and has corporate power 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 subject to limitations as to enforceability imposed by the laws of bankruptcy, insolvency, moratorium and similar laws affecting creditor's rights;

(c) the Cars which are then subject to the Lease are held by Lessee under and subject to the provisions of this Lease prior to any lien, charge or encumbrance in favor of anyone claiming by, through or under Lessee; and

(d) no governmental, administrative or judicial authorization, permission, consent, or approval or recording is necessary on the part of Lessee in connection with this Lease or any action contemplated on its part hereunder.

18. Agency. It is understood that REX, Rex Railways is acting herein in the capacity as Agent for the Car Owners.

19. Notice. Any notice required or permitted to be given pursuant to the terms of this Lease shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

REX at:

P. O. Box 968

Englewood Cliffs, N.J. 07632

Lessee at:

Attention of:

or at such other addresses as REX may from time to time designate by such notice in writing and to Lessee at the address above or any such other address as Lessee may from time to time designate by notice in writing.

20. Warranty. REX agrees to assign to Lessee such rights as it may have under warranties, if any, which it may have received from the manufacturer of any Cars or parts therefor and shall at Lessee's expense cooperate with Lessee and take such action as may be reasonably requested to enable Lessee to enforce such rights. REX makes no warranty or representation of any kind, either express or implied, as to any matter whatsoever, including specifically but not exclusively, merchantability, fitness for a particular purpose extending beyond the description in the applicable Schedule, or the design, workmanship, condition or quality of the Cars or parts thereof which Cars have been accepted by Lessee hereunder; and REX shall have no liability hereunder for damages of any kind, including specifically but not exclusively, special, indirect, incidental, or consequential damages on account of any matter which might otherwise constitute a breach of warranty or representation. Lessee represents that all of the matters set forth in Paragraphs 17 (a), (b) and (c) shall be and are true and correct at all times that any Car is subject to this Lease.

21. Governing Law -- Writing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New Jersey. 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.

22. Counterparts. This Lease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which may be evidenced by any such signed counterpart.

23. Severability -- Waiver. If any term or provision of this Lease or the application thereof to any persons or circumstances shall to

any extent be invalid or unenforceable, the remainder of this Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. Failure of REX to exercise any rights hereunder shall not constitute a waiver of any such right upon the continuation or recurrence of the situation or contingency giving rise to such right.

24. Terminology. In construing any language contained in this Lease, no reference shall be made and no significance given to paragraph titles, such titles being used only for convenience of reference. Where the context so permits, the singular shall include the plural and vice versa.

25. Past Due Payments. Any nonpayment of rentals or other sums due hereunder, whether during the period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Lease, shall result in the obligation on the part of the Lessee to pay also an amount equal to twelve per cent per annum (or if such rate may not lawfully be charged, then the highest rate which may lawfully be charged) of such overdue sum for the period of time from one week after the due date until such overdue sum is paid.

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

(a) "Interchange Rules" -- all codes, rules, interpretations, laws or 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 by the Association of American Railroads and any other organization, association, agency, or governmental authority, including 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, interpretations, laws or orders.

(b) "Delivery Date" --

AS specified in Paragraph 2, hereof.

(c) "Repair Work" -- all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain the Cars in good working order and repair.

(d) "Casualty Cars" -- Cars which are lost, stolen, destroyed or damaged beyond economic repair.

27. Benefit. Except as otherwise provided herein the covenants conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 18 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 12 hereof shall apply to and inure to the benefit of any assignee of REX, and if

such assignee is a trustee or secured party under an indenture under which evidence of indebtedness has been issued in connection with the financing of the Cars, then also to the benefit of any holder of such evidence of indebtedness.

28. Taxes. All property taxes which, from time to time, during the Lease term, shall be assessed against the Cars, shall be paid by Lessee for the account of REX. REX shall reimburse Lessee for such tax payments within thirty days of receipt of Lessee's billing for such tax payments.

REX RAILWAYS, INC. as Agent for Car Owners

By: *James J. Sturtevant*
President

(Corporate Seal)

ATTEST:

John H. Sheldon
Assistant Secretary

BANGOR AND AROOSTOOK RAILROAD COMPANY

By: *Walter E. Evans*
President

(Corporate Seal)

ATTEST:

Orwell Bingle
Assistant Secretary

STATE OF NEW JERSEY)
) ss.
COUNTY OF BERGEN)

On this 17 day of June, 1982, before me personally appeared MARK A. SALITAN to me personally known, who being by me duly sworn, says that he is President of REX RAILWAYS, INC., and Dawn Maddock to me personally known to be the Assistant 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.

Rubin Schertz

RUBIN SCHERTZ
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 16, 1987

STATE OF MAINE)
)
COUNTY OF PENOBSCOT)

On this 16th day of July, 1982, before me personally appeared Walter E. Travis, to me personally known, who being by me duly sworn, says that he is President of BANGOR AND AROOSTOOK RAILROAD COMPANY and Owen H. Bridgham to me personally known to be the Assistant ^{Clerk} ~~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 acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

Joan H. Butler
Notary Public



MY COMMISSION EXPIRES JANUARY 14, 1984.

SCHEDULE I

Description of Cars: One hundred (100) used 50'6" Boxcars, numbered as listed on the attached Exhibit "B".

Lease Term: Five (5) years .

Rent: Rental shall be fifty percent (50%) of all income earned while off line of the "Bangor and Aroostook Railroad Company".

Take Back Provision: Beginning with the first of the month following the remarking of the last car delivered, Rex reserves the right to take back all or any portion of the cars, should average off-line utilization fall below 50% for any consecutive 3 month period, with 30 day written notice. Lessee may, but not be required to, pay such additional amount as will bring the total payment for such a 90 day period to 50% off-line utilization, thus negating the outcome of the letter to take back cars.

Substitution of Equipment: Rex reserves the right to substitute cars from the same series as originally leased, if a car or cars are destroyed.

Max
WTR