

**REX RAILWAYS**

REGORDATION NO. .... Filed 1425

13772

AUG 23 1982 - 11 15 AM

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INTERSTATE COMMERCE COMMISSION

No. AUG 23 1982

August 20, 1982

Date.....  
Fee \$ 50.00

ICC Washington, D. C.

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

Dear Mrs. Lee:

Please find enclosed a Lease Agreement in triplicate dated August 4, 1982 between Rex Railways, Inc., lessor and Missouri Pacific Railroad Company, lessee.

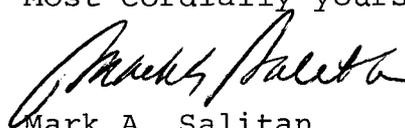
The lease is for a five (5) year period for 400 cars marked as follows falling with the following series numbers DK&S 7001 thru 7250, DK&S 13001 thru 13250, DK&S 5000 thru 5399 and DK&S 12001 thru 12200.

Would you please be kind enough to file and record one set of the Lease Agreement and return the other two copies showing the recording numbers and filing dates thereon.

For this purpose, we are enclosing a check to the order of the ICC in the sum of \$50.00.

Thanking you for your courtesy and cooperation, I am

Most cordially yours,



Mark A. Salitan  
President

MAS:las  
Enclosures

RECEIVED  
AUG 23 11 12 AM '82  
I.C.C.  
FEE OPERATION BR.

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/30/82

OFFICE OF THE SECRETARY

**Mark A. Salitan, President**  
**RexRailways**  
**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 **8/23/82** at **11:15am**, and assigned re-  
recording number (s). **13772**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

AUG 23 1982 - 11 15 AM

LEASE AGREEMENT INTERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this <sup>4<sup>th</sup></sup> day of August, 1982, between REX RAILWAYS, INC., a New Jersey corporation, 616 Palisade Avenue, Englewood Cliffs, New Jersey, as Agent for Car Owners, (hereinafter referred to as "Lessor" or "Rex") and MISSOURI PACIFIC RAILROAD COMPANY, a Delaware corporation, with principal place of business in St. Louis, Missouri, (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, at Rex's sole cost and expense, change markings on Cars before delivery and deliver Cars to Lessee. Delivery will be effected at time of actual placement for first load or after interchange receipt by Lessee, whichever occurs first.
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.
4. Term. This Lease shall be effective upon the date provided in Paragraph 2. The lease term shall commence on said date and shall terminate upon expiration of the lease term specified in the applicable schedule, unless sooner terminated in accordance with the provisions of this lease.
5. Rental Per Car. Rental per Car shall be in accordance with Schedule 1 attached hereto as part hereof, provided however, Lessee shall deduct from said rental the cost of all repairs made to said Cars by Lessee or by other railroads and paid to said other railroads by Lessee, in the event Rex fails to reimburse Lessee the cost of said repairs within 30 days of receipt of bills for said repairs.

6. Payment. Lessee shall make payment of all sums due hereunder to Rex at the address shown above, or such other place as Rex may direct, within thirty days of the receipt of such sums from other railroads.

7. Title. Lessee shall not by reason of this Lease or any action taken hereunder acquire or have any right or title in the Cars.

8. Repairs. All repair work, maintenance, etc. will be for the account of Rex. Lessee may return Cars to Rex upon thirty days' notice if Cars are not maintained by Rex in good working condition, with roofs, floors, lining and doors of said Cars being maintained in Class A condition, as said class is defined in Paragraph 7, Rule 1 of the Field Manual of the Interchange Rules adopted by the Association of American Railroads, effective January 1, 1982, as amended effective July 1, 1982. 

9. Abatement of Rent. As all lease payments are based on a sharing of off-line per diem and mileage, less cost of repairs as provided in Paragraph 5 hereof, there will be no abatement of rental during lease term unless Cars are reclaimed by, or returned to, Rex under terms of this Lease.

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's 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, expenses 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's 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 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. 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's election all Cars may be marked to indicate the rights of Rex, or any 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 or 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 as a result of any act or omission not attributable to Lessor, Lessee shall, within five days of its knowledge thereof, by written notice, fully advise Rex of such occurrence. Lessee shall, within forty-five days after demand by Rex, promptly make payment to Rex in the amount as prescribed by the AAR. Upon notification of same, upon mutual consent of both parties, a car of equivalent type, condition and value may be substituted in the lease agreement.

14. Return of Cars. Upon the expiration or termination of this Lease, Lessee shall surrender possession of such Cars to Rex by delivering same to designated carrier at its interchange with Lessee or to a storage facility on Lessee. 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, and shall be free from all accumulations or deposits from commodities transported in or on the Cars while in the service of Lessee. Rex shall, at Rex's sole cost and expense, upon surrender of said Cars as herein provided, change markings on said Cars. In the event this Lease is terminated prior to the expiration of its five-year term, Cars shall be surrendered to Rex upon change of markings on said Cars, at Rex's sole cost and expense, and Lessee shall arrange for loading said Cars. The XM mechanical designation of Cars shall not be changed during the term of this agreement or while Cars are under load as provided in this Paragraph 14.

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 days from the date of expiration of this Lease. Rex shall prior to the expiration of said sixty-day period advise Lessee the designated carrier and interchange point with Lessee where said Cars are to be delivered as provided in this Paragraph 14. Nothing in this Paragraph 14 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 sixty days after same shall have been received by Lessee from other carriers or shall default or fail for a period of thirty days after notice thereof in the due observance or performance or 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.

(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 let 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. 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's favor existing at law or in equity.

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 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 either 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. 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, New Jersey 07632

Lessee at:  
210 North 13th Street  
St. Louis, Missouri 63103  
Attn.: Vice President-Transportation

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

19. Governing Law -- Writing. The terms of the 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.

20. 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.

21. 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.

22. 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.

23. Past Due Payments. Not applicable.

24. 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 -- See Paragraph 2 above.

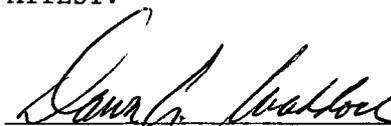
(c) Repair Work -- all repairs, maintenance, modifications, additions or replacements required to keep and maintain the Cars in good working order and repair in accordance with and on the effective date of the requirements of all Interchange Rules and preventive maintenance necessary to keep and maintain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

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

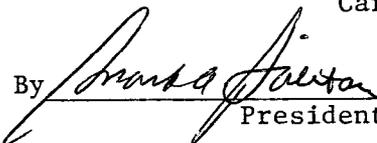
25. Benefit. Except as otherwise provided herein, the covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of the parties and (to the extent permitted in Paragraph 16 hereof) their successors and assigns. Without limiting the generality of the foregoing, the indemnities of the Lessee contained in Paragraph 11 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.

26. 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.

ATTEST:

  
Assistant Secretary  
(Corporate Seal)

REX RAILWAYS, INC., as Agent for  
Car Owners

By   
President

ATTEST:

  
Secretary  
(Corporate Seal)

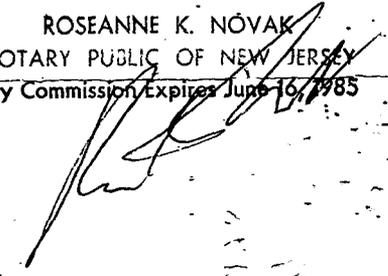
MISSOURI PACIFIC RAILROAD COMPANY

By   
VICE PRESIDENT

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

On this 4<sup>th</sup> day of August, 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.

ROSEANNE K. NOVAK  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires June 16, 1985



STATE OF Missouri )  
City )  
COUNTY OF St. Louis )

On this 17<sup>th</sup> day of August, 1982, before me personally appeared J. M. Toler, to me personally known, who being by me duly sworn, says that he is <sup>Vice</sup> President of Missouri Pacific Railroad Company and W. J. Harold 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 acknowledge that the execution of the foregoing instrument was the free act and deed of said corporation.

Loretta L. Edwards

LORETTA L. EDWARDS  
Notary Public  
Commissioned within and for the County of St. Louis,  
Missouri, which adjoins the City of St. Louis,  
Missouri, where this act was performed.  
MY COMMISSION EXPIRES: January 28, 1986



SCHEDULE 1

Description of Cars: 50'6" - XM Boxcars

Number of Cars: 400

Lease Term: Five years (60 months)

Rent: Rental to Rex shall be computed up to the first 7.5 days per month of net off line car hire. Up to the second 7.5 days per month of net off line car hire to be retained by Lessee. In addition Rex and the Lessee will share equally the net off line car hire earnings in excess of the net car hire earnings after the first 15 days per month. For purposes of computing off line mileage car hire earnings each Car shall be deemed to earn 50 car miles per day while off line. Off line car hire earnings shall not include car hire earnings paid to Lessee by any subsidiary railroads. Net off line car hire shall be off line car hire received minus reclaims allowed.

Substitution of Equipment: Rex reserves the right to substitute similar cars at any time during the Lease Agreement.

Rex's Option to Reclaim Equipment: Except as hereinafter otherwise provided in this Schedule 1, in the event the off line utilization falls below a three-month moving average of 7.5 days, Rex has the right to take back all or a portion of the Cars by providing Lessee with thirty (30) days' prior written notice.

Lessee's Option to Retain Equipment: In the event Rex gives notice to return Cars, as hereinabove provided, Lessee may, at its option, in lieu of returning said Cars, pay to Rex as additional rental the difference between rental paid to Rex for said Cars and the rental which would have been paid to Rex if the above referred to three-month moving average of 7.5 days had been reached.

